SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

M. Ramachandra Bail Vs. M.R. Kanniah

M. Ramachandra Bail Vs. M.R. Kanniah

SooperKanoon Citation : sooperkanoon.com/786274

Court : Chennai

Decided On : Nov-09-1965

Reported in : AIR1966Mad401; 1966CriLJ1276

Judge : Ramakrishnan, J.

Acts : Indian Companies Act, 1956 - Sectons 166, 224, 255, 256, 256(4), 280, 280(2), 281, 282, 282(2) and 282(2)(B)

Appeal No. : Criminal Revn. Case No. 1169 of 1965 (Crl. Revn. Petn. No. 1149 of 1965)

Appellant : M. Ramachandra Bail

Respondent : M.R. Kanniah

Judgement :
ORDER

(1) This revision case in filed by Mr. Ramachandra Bail, who was the second accused in C. C. 3475 of 1965 on the file of the learned Third Presidency Magistrate, Madras. He was prosecuted under S. 282(2)(b) of the Indian Companies Act (Act I of 1956) hereinafter called the Act), convicted and sentenced to pay a fine of Rs. 200, or in default, to suffer simple imprisonment for two months. Along with him, one other person was prosecuted as the first accused, but he was found not guilty and acquitted.

(2) The question for consideration in this case, relates to the proper interpretation of the rule for retirement of directors in one-third proportion prescribed in S. 256 of the Act, in relation to the rule for the retiring age for directors prescribed in S. 280, and finally the penal provision enunciated in S. 282 of the Act. The circumstances of the case are briefly the following.

(3) The petitioner, Dr. M. Ramachandra Bail, was born on 8-2-1899. He completed 65 years on 8-2-1964. He was elected as a director of the Mylapore Hindu Permanent Fund Ltd, which is a company as defined in the Act, at a General Body meeting held on 28th July 1962. At that time, he was less than 65 years old, and, therefore, he was within the age limit prescribed for the directors of companies, namely, 65 years, in S. 281 of the Act. Under S. 256 of the Act, which provides for the retirement of directors by rotation at one-third of the strength at every annual general meeting his turn to retire came at the General Body meeting (92nd) which was scheduled to be held, after the proper prior notice to shareholders, on 24-4-1965. Three other directors, namely, Messrs. Ramaswami Iyer, Shanmugham and Balasundaram, were also due to retire on that date. But since the petitioner had completed 65 years of age on 8-2-1964, his reappointment as director had to depend upon a special resolution being passed, granting him exemption under S. 281 of the Act. There was also a special resolution brought for the consideration at the General Body meeting to be held on 24-4-1965, for granting such exemption to the petitioner.

In the meantime, some other shareholder (other than the complainant in this case) filed a suit in the City Civil Court, for stay of the election, and the City Civil Court issued an ad interim injunction order only for that purpose, at the meeting scheduled to be held on 24-4-1965. Item III in the Agenda for that meeting was the consideration of the election of directors in the place of the retiring directors. In consequence of the injunction order granted by the City Civil Court, at the meeting held on 24-4-1965, item III in the Agenda regarding the election of directors alone was not taken up for consideration; the other items were all taken up and considered; and the General Body Meeting was adjourned to 1-5-1965, for consideration of the above mentioned item III. At the time of the adjourned meeting on 1-5-1965, the stay order by the City Civil Court continued, and,

therefore, the meeting was adjourned sine die without considering item III in the agenda.

(4) On 6-5-1965, the Board of Directors of the Fund, at a meeting of the Board, recorded that the three other persons mentioned above, who were due to retire on the one-third rotation rule, would be deemed to have been appointed as directors by virtue of the provision in S. 256(4)(b) of the Act. They also made a note at the same time that the petitioner 'continued as director'. The reason apparently was that since the petitioner had completed 65 years on 8-2-1964, and since there was no special resolution under S. 281 in his case, he could not claim the benefit of being deemed to have been reappointed, within the meaning of S. 282(2)(b) of the Act. This last mentioned section provides that if, at the original meeting as well as at the adjourned meeting the place of the retiring director is not filled up, and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been reappointed at the adjourned meeting, subject to certain further conditions prescribed in the section.

(5) On the allegation that the further functioning as director, of the petitioner, whether after the adjourned meeting on 24-4-1965, or after the meeting of the Board of Directors on 6-5-1965, involved a violation of S. 282(2)(b) of the Act, one M. R. Kanniah a shareholder, filed the complaint, which led to conviction of the petitioner and the present revision case. Sec. 282(2)(b) reads thus:

'282(2)(b). Any person who acts as director under any appointment which is invalid or which has terminated, by reason of his age, shall be punishable with fine which may extend to fifty rupees for every day during which the failure continues or during which he continues to act as aforesaid, as the case may be'.

The lower court held that the petitioner automatically lost his directorship by the operation of the one-third rotation rule at the very commencement of the meeting held on 24-4-1965, and that the fact that Item III of the agenda, could not be taken up, or the fact that the meeting was adjourned first of all to 1st May, and then sine die for consideration of that item did not alter this position. Sec. 280(2), second proviso, of the Act, contained a qualification.

'that where a person who had been appointed as a director of a public company or of a private company which is a subsidiary of a public company, before he has attained the age of sixty five years, he shall not be required to vacate his office within a period of three years after his appointment, merely on the ground that he has attained that age within that period'.

Since the petitioner was appointed director on 28-7-1962, attaining the age of 65 years, this proviso would permit him to continue in office, without the age disqualification being put against him, till 28-7-1965. The lower court was of the opinion that this proviso would not save the operation of S. 256 of the Act-the retirement on the basis of the rotation rule-in the case of the petitioner, and therefore, he must be considered to have lost his directorship on 24-4-1965. Since admittedly the petitioner continued to function as director after that date, the lower court found him guilty under S. 282(2)(b) of the Act, and filed him as above.

(6) The lower Court relied upon certain decisions both of this court as well as of other High Courts, for its view, that notwithstanding the failure of the General Body meeting to consider item III in the agenda dealing with the retirement of directors as per the one-third rotation rule, and the re-election of fresh directors, the petitioner should be considered to have vacated his directorship at the very commencement of the meeting. Ananthalakshmi v. Indian Trades and Industries Ltd. : AIR1953 Mad467 , Krishnaprasad v. C. L. and Mills Co., Ltd. : AIR1960 Bom312 and Ramakrishna Prasad v. State of Madras, : 30(1964)CLT163 (2)) were relied upon in this connection. These decisions deal with a broad rule that if, on account of some default, the directors of a company fail to convene a General Body meeting as they are required to do under S. 166 of the Act, they cannot take advantage of their default and claim the right to continue indefinitely as directors. In such cases, the one-third proportion rule for retirement, prescribed in S. 256 will apply automatically, with effect from the date when the General Body meeting has to be held obligatorily under the provisions of the Act, and the directors, who are due to retire, cannot continue in office after such date. Of the decisions cited above the first two relate to applications under the Companies Act on the civil side. The third decision, which was decided by Sadasivam J. of this Court, dealt with the prosecution of certain directors for failure to submit returns after the period when

they should have retired as directors notwithstanding the failure to hold a General Body meeting in the anterior period. Sadasivam J. applied the principle laid down in the two earlier Bench decisions cited above and exonerated the directors from criminal liability, as they ceased to be directors, on the expiry of the anterior period. There was also one other decision, viz, In re, Hindustan Co-operative Insurance Society Ltd, : AIR1961 Cal443 , which also lays down a similar proposition.

(7) In the lower Court it was urged by the petitioner that as long as item III did not come up for consideration at the meeting held on 24-4-1965, and on the subsequent date, it must be held that the General Body meeting had been continued indefinitely, and that the resolution was still on its agenda. To repeal this argument, the lower court held that the one-third rotation rule came into effect at the very commencement of the General Body meeting and that for the rule to take effect, the meeting need not proceed to its conclusion. In answer to this reasoning of the lower court, learned counsel Sri Rajagopalachariar appearing for the petitioner herein, referred to an English decision reported in Eyre v. Milton Proprietary Ltd, 1936 Ch. 244. The question which arose in that case was to determine the one-third proportion of the directors due for retirement. The Board of directors comprised of three types of persons (1) the managing director (2) Additional directors and (3) ordinary directors. Under the rules in England for the computation of the one-third proportion, the Managing director had to be excluded, and the term of the additional directors in that case came to an end even before the date of the General Body meeting. In such circumstances, at page 254 of the report it was observed by Lord Wright M. R.

'There is no express provision as in Art. 90 that their office is to continue only until-that is to cease just before-the ordinary general meeting. It follows that, in my opinion, at the critical time, which is the commencement of the ordinary general meeting, the number of directors to be considered is the number of directors exclusive not only of the managing director but also of the two additional directors'.

There is an earlier observation in the same judgment that the other five ordinary directors, whether retiring or not, are to act as directors throughout the meeting.

These observations were relied upon by the learned counsel for the petitioner, to urge that the view of the lower court that the directors should be considered to have demitted their office at the commencement of the meeting is erroneous. But, Sri Rajagopalachariar, did not pursue this line of reasoning further. Obviously, there will be difficulties if this reasoning is pressed too far. It may be used for example, as in this case, for an argument that as long as the meeting remains adjourned sine die, there can be no question of the directors retiring from their office under the one-third rotation rule until the adjourned meeting is held, or until the last date for holding such meeting under the statutory provision in S. 166 of the Act expires.

(8) On the other hand, learned counsel for the petitioner preferred to rest his case on a broader point, which can be put down thus. S. 282(2)(b), the punishing section, which has been already extracted above, deals with two types of situations-It deals with the case of a person who acts as director under any appointment (1) which is invalid or (2) which has terminated by reason of his age. This section is placed in the Act in the middle of a group of sections which are catalogued under the subheading 'Retiring age of directors'. There is a comma after the word 'terminated' and also after 'age'. Viewed grammatically this form of punctuation may indicate, that the age disqualification should operate both for the purpose of invalidating the appointment, as well as for terminating it. This position of the punctuation in the section itself, together with the heading 'Retiring age of directors' for the group of sections in which S. 282 is found, may give support to the view that S. 282(2)(b) of the Act, will apply only to cases of invalidity of the appointment of a director on account of the age disqualification enunciated in S. 281 of the Act, besides applying to the termination of the appointment on account of age disqualification.

Maxwell on Interpretation of Status in the 11th Edn, at pages 48 and 49, gives the nature of the importance to be attached to the headings, prefixed before sections or sets of sections in some modern statutes.

'They are to be regarded as preambles to those sections. While they cannot control the plain words of the statute, they may explain ambiguous words.

Similarly, a cross-heading in an Act can probably be used as giving the key to the interpretation of the section unless the wording of the section is inconsistent with such interpretation'.

In the present case, both the wording of the section and the adoption of the punctuation therein together with the heading, support the view that the age disqualification in S. 282(2)(b) should be applied both to the initial appointment, as well as the termination of an appointment, which is originally valid, but which later on becomes invalid when the age disqualification supervenes.

(9) Sri Rajagopalachari's further argument, however, is even assuming that for interpreting S. 282(2)(B), the age disqualification will not be applicable to the initial appointment of the director, still, the penal provisions in S. 282(2)(b) will not apply to the case of the petitioner. His argument is this: The petitioner's appointment relevant for the purpose of this case was on 28-7-1962, at the General Body meeting held on that date. There was no question of that appointment being invalid, either on account of age disqualification or for any other reason. Therefore, automatically the first limb of S. 282(2)(b) relating to an invalid appointment will be excluded. There is only the second limb, which refers to the termination of the appointment by reason of age. It is clearly the basis of the complainant's claim, that the reason of the termination of the petitioner's appointment was not on account of his age, but on account of the one-third proportion rule of rotation for retirement, enunciated in S. 256. Therefore, according to the strict terms of S. 282(2)(b), the petitioner cannot be considered to have been guilty of any contravention.

(10) In an attempt to meet this argument, learned counsel for the respondent referred to the proceedings of the Board of Directors at the meeting held on 6-5-1965, an extract of which has been marked as Ex. D. 8, which reads thus:

'Extract from the proceedings of the meeting of the Board of Directors of the Mylapore Hindu Permanent Fund Ltd, Mylapore, held on 6th May 1965 at 5-12 p.m.

Subject 1. Proceedings of the 92nd Adjourned Annual General Meeting held on 1-5-65 together with the office note dated 6-5-65 for information and orders.

Resolution Noted. Messrs. U.S. Ramaswami Iyer, T.M Shanmugham, M. K. Balasundaram shall be deemed to have been reappointed under Section 256(4)(b) of the Companies Act. Dr. M.R. Bail continues as a director'.

The directors recorded that Messrs. U. S. Ramaswami Iyer, T. M. Shanmugham and M. K. Balasundaram shall be deemed to have been reappointed under S. 282(2)(b) of the Companies Act, and the petitioner continues as a director. The argument of the learned counsel is that before the Board of Directors could deem the three former persons as re-appointed, there must be the fact of their actually having retired. What applies to the former three persons would also apply to the petitioner, and therefore in the view of the directors, the petitioner also had lost his appointment, at the General Body meeting of 24-4-1965. Learned counsel urged that the recording in the minutes of the directors that Dr. Bail (the petitioner) 'continues as a director' would be tantamount to an appointment, and the functioning of the pet as director in any event after the date of the aforesaid meeting on 6-5-1965, would be in pursuance of an appointment which is invalid so as to attract the first limb of S. 282(2)(b) of the Act. This argument involves an error. The word 'appointment' in the context of the Companies Act is used in the sense of 'election'. Instances of such usage of the term are found in the provisions relating to the election of auditors in Ss. 224 and 255 of the Act. Therefore, whether the directors acted regularly or irregularly in recording at their meeting on 6-5-1965, that Dr. Bail (petitioner) 'continues in office', there was no question of his being appointed by the directors on that date, because obviously, the directors had no such power. Therefore, the recording of continuance of Dr. Bail as director in the minutes of the meeting of the Board of Directors, will not constitute an appointment for the purpose of S. 282(2)(b), and much less an invalid appointment, attracting the first limb of that section.

(11) For the foregoing reasons, I am of the opinion that the case of the petitioner does not fail within the four corners of S. 282(2)(b) of the Act, which is the section for whose contravention, he had been prosecuted and convicted in this case. I

allow the revision case, set aside the conviction of the petitioner, acquit him and direct the fine amount, if paid by him, to be refunded.

(12) Conviction set aside.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com