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Court : Chennai

Decided On : Sep-05-1975

Reported in : [1976]46CompCas613(Mad)

Judge : Krishnaswamy Reddy, J.

Acts : Companies Act, 1956 - Sections 283

Appeal No. : Criminal Revision Case Nos. 328 and 329 of 1971 and Criminal Revision Petition Nos. 315 and 316 of 1

Appellant : T. Murari

Respondent : State

Advocate for Def. : S. Gopalarathnam, Amicus Curiae and ;Additional Public Prosecutor

Advocate for Pet/Ap. : K. Radhakrishnan, Adv.

Disposition : Petition allowed

Judgement :

Krishnaswamy Reddy, J.

1. The revision petitioner is the same in both these petitions. He was tried in two different cases under Section 220 of the Companies Act and Section 159 read with

Section 162 of the said Act separately and convicted thereunder and sentenced to pay a fine of Rs. 50 in each of those cases.

2. The revision-petitioner was accused No. 2 in both the cases, accused No. 1 being a firm, namely, Blue Valley Dairies Private Ltd. A complaint was filed by the Assistant Registrar of Companies, Madras, under Sections 220 and 159 read with Section 162 of the Companies Act on the allegation that accused No. 1, firm, and the revision-petitioner (accused No. 2), the managing director of that firm, had failed to submit the balance-sheet of the company for the year 1968 in spite of service of notice and that the company further failed to submit the annual return for the year 1968 which should have been submitted on or before February 7, 1969.

3. When the substance of the complaint was read out to the petitioner (accused No. 2), he stated that he had resigned his directorship and, therefore, he was not liable.

4. Blue Valley Dairies Private Ltd. was registered under the Companies Act on 19th June, 1967. The main object of the company was to establish and run a dairy, agricultural and livestock farms and to carry on business in the manufacture and distribution of cream, butter, ghee, condensed milk, etc., and do all those things necessary for the purpose of developing and improving dairy. By the articles of association, there were four directors. The petitioner, who was a technical expert, was appointed as managing director of the said company at the meeting of the directors of the company held on July 7, 1967.

5. The Assistant Registrar of Companies had issued notices to the company and its directors intimating that the annual general body meeting of the company ought to have been held at the latest on December 9, 1968, and the balance-sheet and profit and loss account laid before that meeting and filed in his (Assistant Registrar's) office before January 8, 1969, and that till January 28, 1969, the same had not been done and asking for an explanation as to why the company had failed to submit the prescribed annual return on or before February 7, 1969, before him. The notices had been returned unserved. So far as the petitioner is concerned, the endorsement made on the notice was : 'refused'. Again, several notices weresent. The Assistant Registrar came to know that the company was

closedand the petitioner had left the company.

6. The petitioner does not dispute that he was appointed managing director ; but, however, he would say that he had sent, exhibit P-13, a letter to the complainant, namely, the Assistant Registrar, on January 17, 1968, itself stating that he had resigned his office with immediate effect and that, therefore, he was not liable for the filing of the returns. It is not in dispute that the petitioner had sent a letter of resignation on January 17, 1968. P. W. 1 admitted that the Assistant Registrar by his letter, exhibit P-14, addressed to the chairman, board of directors, asking him whether the resignation of the petitioner had been accepted by the board and if so, it should be notified to the office in Form No. 32 with the requisite filing fee. P. W. 1 stated that to this letter, there was no reply from the chairman of the company.

7. The learned Magistrate proceeded on the footing that the resignation should have been accepted by the board for a valid resignation and since this was not done, the revision-petitioner continued to hold the office and, therefore, he would be liable for failure to submit the return as provided under the law.

8. The only point that arises for consideration is whether exhibit P-13, the letter of resignation, sent by the petitioner on January 17, 1968, would itself constitute a valid resignation without its acceptance by the board. It may be noted here that the company was incorporated in June, 1967, and the letter of resignation was sent in January, 1968, namely, within six months after the company was registered. If the letter of resignation itself was sufficient for a valid resignation, the revision-petitioner will not be liable to submit the return. This is not in dispute.

9. In the Indian Companies Act (hereinafter called ' the Act'), there is no provision relating to the resignation of office of director as in the case of managing agent provided under Section 342 of the Act. In exhibit P-l, the memorandum of articles of association, there is no provision giving the right' to a director to resign at any time. Under Section 284 of the Act, a company may remove a director before the expiry of his office under the conditions mentioned therein. Section 262 of the Act provides for filling of casual vacancies among the directors if a director appointed by the company in the general meeting vacates before his term of office.

10. Section 283 of the Act deals with the vacation of office by directors, and the circumstances under which the office is vacated are mentioned therein. The relevant portion of Section 283 is as follows :

' (1) The office of a director shall become vacant if-

(a) he fails to obtain within the time specified in Sub-section (1) of Section 270, or at any time thereafter ceases to hold, the share qualification, if any, required of him by the articles of the company:

(b) he is found to be of unsound mind by a court of competent jurisdiction;

(c) he applies to be adjudicated an insolvent;

(d) he is adjudged an insolvent;

(e) he is convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;

(f) he fails to pay any call in respect of shares of the company held by him, whether alone or jointly with others, within six months from the last date fixed for the payment of the call unless the Central Government has, by notification in the Official Gazette, removed the disqualification incurred by such failure ;

(g) he absents himself from three consecutive meetings of the board of directors, or from all meetings of the board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the board ;

(h) he (whether by himself or by any person for his benefit or on his account), or any firm in which he is a partner or any private company of which he is a director, accepts a loan, or any guarantee or security for a loan, from the company in contravention of Section 295 ;

(i) he acts in contravention of Section 299 ;

(j) he becomes disqualified by an order of court under Section 203 ;

(k) he is removed in pursuance of Section 284 ; (1) having been appointed a director by virtue of his holding any office or other employment in the company, or as a nominee of the managing agent of the company, he ceases to hold such office or other employment in the company or, as the case may be, the managing agency comes to an end.....'

11. It is clear from the provisions of the Act that there is no provision for vacancy by resignation. But, however, we find that the word 'resignation ' occurs in Section 318(3)(a) and (b) of the Act. It is as follows:

'(3) No payment shall be made to a managing or other director in pursuance of Sub-section (1), in the following cases, namely:--

(a) where the director resigns his office in view of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing director, managing agent, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation ;

(b) where the director resigns his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid ;... '

12. This provision contemplates a resignation by director though, as already observed by me, there is no express provision for vacancy byresignation and as to when a resignation by a director takes effect. Thus, we are now left with the precedents and practice on the subject.

13. So far as the Indian Companies Act is concerned, this has followed the pattern of the British law relating to companies. If there is any provision in the articles giving right to a director to resign at any time, the resignation will take effect without any need for its acceptance by the board or the company in the general meeting. In the absence of any provision relating to resignation in the articles of association, it is well-settled that a resignation once made takes effect immediately when the intention to resign is made clear.

14. In Halsbury's Laws of England, fourth edition, volume 7, at page 316, in paragraph 536, under the heading 'Resignation', it is stated as follows:

' Where by the articles a director has power to resign at any time, his resignation takes effect independently of acceptance by the other directors or the company. Where the articles of association of a company provide that the office of a director is to be vacated ipso facto if by notice in writing to the company a director resigns office, an oral resignation if accepted by the company is valid.'

15. Of course, it is not made clear here as to what happens when no provision for resignation is made either in the Act or in the articles of association as in the instant case. But the true position of directors is that of agents for the company,

16. In Palmer's Company Precedents, seventeenth edition, Part I, at page 565, it is stated as follows :

'Even in the absence of any express power to resign, it is submitted that, unless the articles are specially framed, a director may by notice to the company resign his directorship. Directors ' are merely agents of the company'....., and an agent may determine his agency.'

17. In Palmer's Company Law, twenty-first edition, at page 543, under the heading ' Resignation ', it is stated as follows :

' A director can at any time resign his office, and usually the articles make express provision accordingly. If he communicates his resignation to the company, for instance, by a notice upon the company served in the manner provided by Section 437, his resignation is effective. A resignation once made cannot be withdrawn, except with the consent of the company.

The same result can, of course, in appropriate cases be achieved by a director parting with his qualification shares, and so vacating office by disqualification.

A verbal resignation accepted at a general meeting is effective, though the articles provide that a director shall vacate office if by notice in writing he resigns his office. A verbal resignation would not, however, be effectivein the light of such an article if

made to and accepted by the board, since the board would have no authority to accept and the resigning director would be unable to end his contract with the company, except in accordance with its terms, express or implied, or with the company's agreement.

Where a director who was both a permanent and an ordinary director resigned, it was held that the resignation applied to both offices.'

18. In Ramaiya's Guide to the Companies Act, sixth edition, page 452, under the heading 'Resignation of office of director' it is stated as follows :

' There is no provision in the Act relating to the resignation of his office by a director as in the case of a managing agent (Section 342). If there is any provision in the articles giving the right to a director to resign at any time, the resignation will take effect without any need for its acceptance by the board or the company in general meeting. Where a director is elected or has contracted to act for a fixed period, his resignation, before the expiration of the period, may make him liable for damages for breach of his contract, unless the articles permit such resignation.

In the absence of any provision in the articles the ordinary rule of common law as regards resignation by an officer or agent must be followed, namely, intimation by notice given either to the company or the board and acceptance of same by them. See Glossop v. Glossop, [1907] 2 Ch 370and Latchford Premier Cinema Ltd. v. Ennion, [1931] 2 Ch 409. In the latter case, even resignation orally tendered at a general meeting and accepted by the meeting was held to be effective. See also State of Bihar v. Sitaram Jhunjhunwala, : AIR1967 Pat433 .

Where a resignation states that it is to take effect on acceptance, or the articles so require, acceptance is necessary to end the tenure of office. Where, however, resignation says that it is to take effect immediately, acceptance is not necessary, unless the articles or any provision of law makes it necessary. Any form of resignation, whether oral or written, is sufficient provided the intention to resign is clear. In the absence of any indication otherwise, a resignation takes effect immediately. Resignation will not, however, relieve him from any accountable or other liability which he may have incurred while in office.

A resignation once made cannot be withdrawn except with the consent of the company or the board. See R. v. Mayor of Wigan , [1885] 14 QBD 908 Glossop v. Glossop and Shivlal Motilal v. Tricumdas Mills Co., I.L.R. [1921] Bom 564 '

19. In the decision in State of Bihar v. Sitaram Jhunjhunwala, in considering as to when the resignation takes effect, it was held that the acceptance of resignation is unnecessary for the resignation to take effectwhen once it is tendered in writing. In that case, the articles of association of the company itself provided that the director will cease to hold office ipso facto upon giving the notice of resignation in writing.

20. But, however, in the instant case, the articles of association do not provide specifically about 'resignation '.

21. I am of the view that even in the absence of a provision in respect of resignation under the Act or under the articles of association of the company, the resignation tendered by a director or managing director unequivocally in writing will take effect from the time when such resignation is tendered. It is clear from the evidence in this case that even within six months after the company was formed, the petitioner tendered his resignation in writing on January 17, 1968, and, in my view, the resignation had taken effect on that day itself and the petitioner ceased to hold office from January 17, 1968.

22. In the result, I set aside the conviction and sentence imposed on the petitioner and so acquit him. The fine amounts, if paid, will be refunded to the petitioner.

23. The petitions are allowed.

24. The valuable assistance rendered by Sri S. Gopalarathnam as amicus curiae is appreciated and recorded.

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