

Mica Export Promotion Council and ors. Vs. G.C.L. Joneja and ors.

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Court : Kolkata

Decided On : Jul-19-1966

Reported in : [1968]38CompCas371(Cal),72CWN117

Judge : A.N. Sen, J.

Acts : Companies Act - Section 256

Appeal No. : Suit No. 975 of 1966

Appellant : Mica Export Promotion Council and ors.

Respondent : G.C.L. Joneja and ors.

Advocate for Def. : A.K. Sen and ;B.N. Sen, Advs.

Advocate for Pet/Ap. : R.C. Deb and ;Somnath Chatterjee, Advs.

Disposition : Application dismissed

Judgement :

A.N. Sen, J.

1. Mica Export Promotion Council is a company incorporated under the Companies Act, 1956. Disputes have arisen with regard to the election of the committee members of the said company. The petitioners in the present application are the company itself and some of the members of the said company.

There are 16 respondents who are also members of the said company and the said respondents have been sued in their personal capacity and also in their representative capacity, as representing the other members of the said company who are supporting the validity of an election proposed to be held pursuant to the decision alleged to have been taken at the 9th annual general meeting of the company held on the 25th March, 1966. In this application the petitioners ask for an injunction restraining the respondents, their agents and servants from holding any election pursuant to the alleged resolution and/or decision and/or agreement and also from counting or allowing to be counted the ballot papers, if any, received by the respondent No. 16 and from declaring the results of the counting of the ballot papers and from declaring and giving any effect to the results of the said election and from giving effect to the results of the counting.

2. The facts relevant for the purpose of this application are as follows:

The petitioner No. 1, Mica Export Promotion Council, hereinafter referred to as the Council, was incorporated under the Companies Act, 1956, as a company limited by guarantee and the main objects of the Council are to promote exports of mica and by-products of the mica industry. Under the articles of association the management and administration of the affairs of the Council are entrusted to a committee of administration consisting of 15 members, including the chairman, the vice-chairman and at least 2 Government nominees. The provisions of some of the relevant articles may be noted.

' Article 10.--Members of the Council shall as soon as possible after the 1st of April in each year elect the committee from amongst themselves, provided that the first election shall take place after the expiry of twelve months from the date of registration of the company.

Article 11.--At the first general meeting of the company, after the expiry of twelve months from the date of registration the whole of the members of the committee shall retire from office, and at the general meeting in every subsequent year, one-third of the members of the committee for the time being, or, if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.

Article 12.--The members of the committee who retire every year shall be those who have been longest in office since their last election, but as between persons who became members of the committee on the same day, those to retire, shall (unless they otherwise agree amongst themselves) be determined by lot.

Article 13.--A retiring member of the committee shall be eligible for re-election.

Article 14.--The Council at the general meeting at which a member of the committee retires in the manner aforesaid may fill up the vacated office by electing a person thereto.

Article 15.--If at any meeting at which an election of members for the committee ought to take place, the places of the vacating members of the committee are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and if at the adjourned meeting the places of the vacating members of the committee are not filled up, the vacating members of the committee or such of them as have not had their place filled up shall be deemed to have been re-elected at the adjourned meeting.

Article 34.--The principal business of an annual general meeting shall be to receive and pass the report of the proceedings of the committee and also the report and accounts for the preceding financial period, to elect a chairman, to elect new members of the committee, to appoint auditors and fix their remuneration and to consider or transact any business, which under these articles have to be transacted at an annual general meeting.'

3. Certain rules have been framed by the committee of the Council for holding the election of the office bearers of the Council. Prior to 25 March, 1966, the following members constituted the committee of the Council:

Mr. U.C. Lal -- Vice-Chairman

Christian Mica Industries Ltd.--Member

Chattaram Horilram Pvt. Ltd.--Member

Gunpatray Pvt. Ltd.--Member

Goenka Mica Co.--Member

Ratan Mica Produce Co.--Member

Mica Mfg. Pvt. Ltd.--Member

Inderchand Rajgharia & Sons Pvt. Ltd.--Member

Mr. N.D.J. Rao--Member

Sree Baidyanath Mica Works Pvt. Ltd.--Member

Bengal Ruby Mica Supply Co.--Member

C.M. Rajgharia -- (Resigned)

Nuram Reddy Raghava Reddy & Co. (Regd.)--(Reserved seat for Andhra Pradesh)

R. B. Nemichand Mulchand & Co. Pvt. Ltd.--(Ceased to be Member) (Reserved seat for Rajasthan)

S. B. Roy--(Co-opted).

Indian Standards Institution--(Co-opted).

4. One-third of the total number of the members constituting the said committee were liable to retire at the general meeting to be held in 1965, but owing to various disputes and litigations, no valid general meeting of the Council could be held in that year. On or about 22nd January, 1966, the secretary of the Council issued a notice to the members that the 9th general meeting of the Council would be held on 25th March 1966. The said notice had further stated the names of the persons on the committee who were liable to retire at the said next general meeting and called upon the members of the Council to file nominations for the said positions in accordance with the rules for election of office-bearers. Pursuant to the said notice several nominations for the said offices had been filed. On or about 23rd February, 1966, the secretary of the Council issued a notice to the members of the Council stating that the 9th annual general meeting of the Council would be held on the

25th March, 1966, at 11 a.m.; the agenda for the said meeting as also short notes thereto had also been enclosed along with the said notice. Item 3 of the agenda was as follows :

' Confirmation of election of office-bearers of the Council for 1966-67.'

5. The following members were due to retire and vacated their offices as members of committee at the 9th annual general meeting of the Council held on the 25th March, 1966.

(1) G.C.L. Joneja (Chairman)

(2) U.C. Pal

(3) Ratan Mica Produce Co.

(4) Bengal Ruby Mica Supply Co.

(5) Mica .

(6) Goenka Mica Company.

6. In addition, the following three other seats on the Committee had also become vacant :

(i) The seat vacated on the resignation of M. Rajgharia.

(ii) Menan Reddy Raghava Reddy & Co. (Reserved seat for Andhra Pradesh).

(iii) R.B. Nemichand Mulchand Private Ltd. (Reserved seat for Rajas-than).

7. The petitioners Nos. 2 to 5 herein had contested four of the seats on the committee of the Council. The returning officer to whom the ballot papers had been sent, had declared the results of the election at the annual general meeting of the Council on the 25th March, 1966, when item No. 3 on the agenda, namely, ' Confirmation of election of the office-bearers of the Council for 1966-67 ' was taken up for consideration. The said election's result was not accepted by some members and the validity of the said election's result was challenged on certain

grounds at the said meeting. Sri S.R. Sengupta, one of the members, moved at the said meeting that the election of office bearers for 1966-67 including vice-chairman should be held again. This motion of Mr. Sengupta was put to vote by the chairman of the meeting and 12 members cast their votes in favour of upholding the results of the election, while 20 members opposed the same. In consequence, the election of the office-bearers could not be confirmed and Sri Sengupta's motion for holding a fresh election of the office-bearers for 1966-67, including vice-chairman was carried. It appears that thereafter it was agreed at the meeting that a fresh election should be held in respect of vice-chairman and 5 committee members on the basis of the existing rules of election and it was also further decided that the present members of the committee would continue in office until a fresh election was held and confirmed in an extraordinary general meeting. The unanimous election of Sri G.C.L. Joneja, I.A.S., Jute Commissioner as the chairman of the Council, Sri M.R. Reddy and Sri K.L. Mathur who were selected as members of the committee of administration representing the States of Andhra Pradesh and Rajasthan for 1966-67, were approved at the said meeting. Copies of the proceedings of the said annual general meeting have been annexed to the petition and also to the affidavits filed on behalf of the respondents. It appears that there is some dispute with regard to the correctness of the minutes and of the copy of the proceedings annexed to the affidavit of S.R. Sengupta. I shall deal with this aspect of the case later on. On the 30th March, 1966, the secretary of the Council addressed the following letter to all the members of the Council other than associate members.

' REGISTERED WITH A/D.

THE MICA EXPORT PROMOTION COUNCIL, 14/1B Ezra Street, Cal.-1.

No. MEP C/1/56. Dated the 30th March, 1966.

To All Members of the Council (other than Associate Members) Dear Sir(s),

Sub: Election of Vice-Chairman and 5 Members of Committee of Administration of the Council for the year 1966-67.

Pursuant to the decision taken in the 9th annual general meeting of the Council held in Calcutta on March 25, 1966, the election of vice-chairman and 5 members of the committee of administration of the Council for the year 1966-67 will have to be held again.

Article No. 11 of the articles of association of the Council requires that one-third of the members of the committee should retire from office at the end of every year. Present committee consists of 17 members, 15 of which are elected and 2 co-opted. Of the 15 committee members, 2 are selected by the members (other than associate members) belonging to the States of Andhra Pradesh and Rajasthan only. Of the remaining 13 committee members six viz., (1) Shri U.C. Lal, (vice-chairman) Tawwa Mica Works, Giridih, District Hazaribagh, Bihar, (2) Shri G. Bagaria, Ratan Mica Produce Co., P.O. Giridih, District Hazaribagh, Bihar, (3) Shri Basdeo Bhatia, Bengal Ruby Mica Supply Co., P. O. Giridih, Distt. Hazaribagh, Bihar, (4) Shri Manik Lal Rajgarhia, Mica ., 81, Karnoni Estate, Acharya J.C. Bose Road, Calcutta-17 and (5) Shri Basdeo Goenka, Goenka Mica Company, 19, R.N. Mukherjee Road, Calcutta-1 being the committee members elected by the members (other than the associate members) will, according to article No. 12 of the articles of association of the Council, retire by virtue of their being longest in office, but are eligible under article No. 13 of the articles of association of the Council for re-election. The sixth seat has been lying vacant since April 3, 1964, owing to the resignation of Shri C.R. Rajgarhia from the chairmanship of the Council. The present vice-chairman will also retire and a new vice-chairman will have to be elected.

Members are requested to send their nominations according to the new rules of election adopted in the 19th meeting of the committee of administration of the Council held in Calcutta on January 24, 1961 (copy enclosed).

There will be 6 vacancies in the committee of administration and one for vice-chairmanship. You may nominate only 5 persons/firms for membership of the committee and also one for vice-chairmanship (6 seats in all-- 1 vice-chairman and 5 committee members).

A list of members of the Council (other than the associate members) including members nominated by the Government is also enclosed.

It is, therefore, requested that special care may kindly be taken to make your nomination on the basis indicated in the new rules of election mentioned above and forward the same to the undersigned within the prescribed time i.e., 13th April, 1966. The list bearing your nomination may kindly be signed, stamped with the official rubber-stamp of your firm/office and dated. Yours faithfully, Encls : As stated above. sd/- R.N. Mukherjee Secretary.

8. Pursuant to the said letter of the secretary, various members including the petitioners Nos. 2 to 5 had filed their nominations. On the 18th April, 1966, the secretary by a further letter informed the members of the names of the persons who have been nominated for vice-chairmanship and also for membership of the committee of administration of Council (5 seats). The petitioners Nos. 2, 3, 4 and 5 had applied for such nominations and had also been nominated. By the said letter of the 18th April, 1966, the secretary had fixed the time for withdrawal of such nominations by the 28th April, 1966. On the 5th May, 1966, the secretary in continuation of his earlier letter of 18th April, 1966, had informed the members about the final position after the time for withdrawal was over and had given necessary particulars of the persons who were contesting for the office of the vice-chairmanship of the Council and for the membership of the committee of administration of the Council (5 seats). Along with the said letter the secretary had sent the ballot papers and had informed the members that the ballot papers must reach the secretary positively before 2 p.m. on May 19, 1966. The counting of votes was fixed for 20th May, 1966. This application was moved on behalf of the petitioners on the 19th May, 1966.

9. It is the case of the petitioners that the elections, the results of which were declared by the returning officer at the annual general meeting held on the 25th March, 1966, was valid and proper; and as a result thereof the persons including the petitioners Nos. 2 to 5, whose names were announced, have become elected as the members of the committee of the Council and they are entitled to act as such. In the alternative, the petitioners make the case that if the said persons have

not been elected members of the committee, then the old committee continues under the articles of the company and also by virtue of the provisions contained in Section 256 of the Companies Act. It is, however, the case of the petitioners that in any event there cannot be any further or fresh election and the election sought to be held is illegal, null and void. The grounds on which the petitioners challenge the validity of the fresh or further election to be held are set out in paragraph 20 of the petition.

10. Mr. R.C. Deb, learned counsel has opened the case on behalf of the petitioners and Mr. Somnath Chatterjee, his learned junior, has argued the case on behalf of the petitioners. The learned counsel appearing in support of the application has contended before me that the election the results of which were declared by the returning officer at the annual general meeting held on the 25th March, 1966, must be held to be valid and there cannot be any question of any confirmation of such election results. According to learned counsel, as soon as results of the election are announced, successful candidates automatically become elected, whether there is any confirmation or not. The learned counsel argues that there is no provision either in the articles of the Council or in the Companies Act, requiring any such confirmation.

11. The learned counsel has next contended that even if it be held that there has been no valid election, the old committee will continue to function under the provisions of the Companies Act and also in accordance with the articles of the Council. In support of this contention reliance is placed on Section 256 of Companies Act, the relevant provisions of which may be set out:

Section 256(4)(a) ' If the place of the retiring director is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.

(b) If at the adjourned meeting also the place of the retiring director is not filled up and that meeting has also not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting

unless--

(i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost; '

12. The learned counsel also relies on Article 15 of the articles of the Council which I have already set out. Relying on these provisions, the learned counsel argues that if the election, the results of which were announced at the annual general meeting held on the 25th March, 1966, is invalid, then the vacancies created have not been filled up at the said meeting or at the subsequent meeting which should have been held on the same day in the next week at the same time and place; and consequently the directors who had retired shall be deemed to have been re-elected. The learned counsel has challenged the correctness of the minutes which have been annexed to the petition and has submitted that there was no agreement at the said meeting to hold any fresh election, as recorded in the minutes. The learned counsel has contended that in any event no proper or valid resolution has been passed at the said meeting for holding any fresh or further election and no such resolution could be passed, as there was no such agenda of the said meeting. It is contended that in the absence of any such agenda, any purported agreement would be of no consequence and would be null and void. The learned counsel has further argued that any alleged participation by the petitioners Nos. 2 to 5 cannot preclude them from questioning the illegality of the further election, as the same is absolutely void and of no consequence. The learned counsel has submitted that as the further or fresh election that is being held is illegal and void, necessary injunction should be granted as prayed for in this application. In support of the contention that the injunction prayed for should be granted, the learned counsel has relied on the following observations of the Judicial Committee in the case of *Thomas Walker v. Auber George Jones*, (1866) L.R.. 1 P.c. 50,61 :

' The real point before us upon this appeal is not how these questions ought to be decided at the hearing of the cause, but whether the nature and difficulty of the questions is such that it was proper that the injunction should be granted until the time for deciding them should arrive.'

13. Mr. A.K. Sen, learned counsel has mainly argued the case on behalf of the respondents opposing this application. Mr. Sen has argued that the election of the office bearers of the Council is to be held under the articles of the Council and also under the provisions of the Companies Act, only at the annual general meeting at which the office bearers retire ; and such election has to be by show of hands, or by ballot if poll is demanded. To facilitate the holding of the election, the committee of the Council has framed certain rules, but the said rules cannot override the provisions of the articles or the Companies Act and as a safeguard against any such lacuna, the confirmation of such election is required at the annual general meeting ; and according to Mr. Sen this confirmation at the annual general meeting is the real and proper election of the office bearers at the said meeting in accordance with the law and the provisions of the articles. Mr. Sen contends that so long as there has been no confirmation at the annual general meeting there can be no valid election and nobody can claim to have been elected unless his election has been confirmed at the said meeting. Mr. Sen has drawn my attention to the minutes of the meeting and has submitted that in the instant case, the members at the meeting have expressly refused to sanction any confirmation by an overwhelming majority. Mr. Sen has argued that the case of the petitioners that the election, the results of which were announced at the annual general meeting on the 25th March, 1966, is valid and that the petitioners Nos. 2 to 5 have been duly elected members of the committee, is absolutely baseless and untenable.

14. Mr. Sen has next submitted that there is no substance in the alternative case made on behalf of the petitioners. Mr. Sen has argued that necessary averments for making a case under Section 256 of the Companies Act are not there either in the plaint or in the petition and that in the facts of this case the said provisions contained in Section 256(4) of the Companies Act have no application. It is Mr. Sen's argument that to build a case under Section 256(4) of the Companies Act, it is necessary to allege and establish the further fact that the annual general meeting which has not expressly resolved not to fill vacancy, stood adjourned till the same day at the same time and place in the next week and at the adjourned meeting also the vacancy was not filled up and the meeting had not expressly resolved not to fill the vacancy. Mr. Sen contends that in the absence of this essential averment in the plaint or in the petition, it is not open to the petitioners to

make out the alternative case under Section 256 of the Companies Act or under the articles of the Council. Mr. Sen has further contended that in the instant case at the said meeting the members had in fact expressly decided to hold a fresh election in respect of vice-chairman and 5 committee members and that the present members of the committee would continue in office until the fresh election was held and confirmed in an extraordinary general meeting. Mr. Sen has argued that there is no basis for the contention that the minutes are not correctly recorded. Mr. Sen points out that at no point of time before coming to court the petitioners have challenged the correctness of the minutes and even in the petition itself, apart from a vague allegation that no such agreement had been reached, the petitioners do not seriously challenge the correctness of the minutes and do not choose to state in what respect the said minutes are incorrect. Mr. Sen submits that the said agreement recorded in the minutes really amounts to a decision taken by the members present at the said meeting and to a resolution unanimously adopted by the members present at the said meeting. Mr. Sen has contended that the said decision or resolution has in fact been implemented and the petitioners Nos. 2 to 5 have themselves accepted the said decision and have acted upon the same by submitting their own nomination papers. Mr. Sen has contended that after having participated in the election the petitioners Nos. 2 to 5 moved this court at the last stage when the results of the said election were going to be announced and confirmed, realising that the said petitioners Nos. 2 to 5 have no possible chance of being elected to the committee.

15. In support of this contention that the provisions of Section 256 of the Companies Act can have no application in the facts of this case, Mr. Sen has referred to the decision in the case of *Spencer v. Kennedy*, [1926] Ch. 125 and also to the decision in the case of *Grundt v. Great Boulder Proprietary Mines Ltd.*, [1948] Ch. 145

16. Mr. Sen has finally contended that the present application should be dismissed in limine on the ground that there has been suppression of material facts from this court and that the application is thoroughly mala fide. Mr. Sen has argued that the fact that the petitioners Nos. 2 to 5 had submitted their nomination papers and had contested the election on the basis of the decision taken by the members at the

meeting held on the 25th March, 1966, had been deliberately suppressed from this court in the petition and the petition has been moved mala fide at the last moment when the counting was about to take place after the petitioners had realised that they had no chance of being elected.

17. Mr. B.N. Sen, learned counsel opposing this application has adopted the arguments advanced by Mr. Sen and has further submitted that the provisions of Section 256(4) of the Companies Act can have no application in any event so far as the petitioners Nos. 2 to 5 are concerned, as at the meeting of the 25th March, 1966, the resolution for their re-appointment had been put to the meeting and had been lost.

18. In my view, the case of the petitioners that they have been validly elected members of the committee as a result of the election, the results of which were announced at the annual general meeting held on the 25th March, 1966, is not prima facie tenable.

19. In the facts of this case I am inclined to agree with the contention of Mr. A.K. Sen, that the validity of the election depends upon the same being confirmed at the annual general meeting and a confirmation at the meeting really constitutes the valid election. Article 34 of the articles of the Council expressly requires election of the new members of the committee to be held at the annual general meeting and makes it clear that one of the principal business to be transacted at the annual general meeting is the election of such new committee members. It is also to be noted that in so far as the Council and the members thereof are concerned, confirmation of the results of the election has always been considered to be necessary and such confirmation forms one of the items of the agenda at the annual general meeting. It is further to be noted that in paragraph 16 of the petition the petitioners make the case that the election of the new members had been completed and confirmed and an objection had been raised by the respondent No. 15 thereafter. In the petition itself the petitioners nowhere make the case that such confirmation is not necessary and any member may be validly elected without such confirmation at the annual general meeting. To my mind the case made by the petitioners in paragraph 16 that the election of the new members of the

committee had been confirmed is palpably false, as the minutes of the meeting clearly indicate that the members present had expressly refused to confirm by an overwhelming majority. It may be noted that the correctness of the minutes on this point is not challenged.

20. The case made by the petitioners in the alternative that the old committee should be deemed to continue, is, in my view, not prima facie acceptable in the facts and circumstances of this case. As the minutes of the meeting clearly indicate, the members at the said meeting had unanimously decided to fill in the vacancy in respect of the office of the vice-chairman and 5 members of the committee by holding a fresh and further election. I am unable to accept the contention of the learned counsel of the petitioners that there was no such agreement at the meeting and the minutes do not correctly represent the said fact. On the materials on record I am of the opinion that there is no sound basis for the contention. It does not appear that the correctness of the minutes had been challenged by any of the petitioners at any point of time before coming to court. It further appears that the decision arrived at on the basis of the said agreement had in fact been given effect to without any protest or objection from any of the members of the Council including the petitioners herein. I am also unable to accept the contention that there was no resolution at the meeting in the absence of any agenda. Confirmation of the results of the election was an item on the agenda; and in my view, it clearly follows from that agenda that if the election results are not confirmed, the members of the said annual general meeting would be entitled to adopt any consequential resolution or decision with regard to holding fresh or further election for filling up the vacancies. In my view the agreement arrived at the meeting by the members present amounts to a valid resolution adopted at the meeting and to a valid and proper decision taken by the members at the said meeting. It is to be noted that after the said meeting on the 30th March, 1966, the secretary of the company addressed a letter to all the members of the Council. The said letter which I have earlier set out in its entirety, begins as follows:

' Pursuant to the decision taken in the 9th annual general meeting of the Council held in Calcutta on the 25th March, 1966, the election of vice-chairman and 5 members of the committee of administration of the Council for the year 1966-67

will have to be held again.'

21. No objection was taken by any of the members of the Council including the petitioners Nos. 2 to 5 herein to the said statements in the letter of the secretary. On the other hand the members of the Council including the petitioners Nos. 2 to 5 have accepted the said decision, have acted upon the same and have proceeded to hold the said election on the basis of the said decision ; and the petitioners Nos. 2 to 5 have submitted their nomination papers and have participated in the election pursuant to the notice given by the secretary in the said letter. It further appears to me from the materials on record that the election on the basis of the said decision had in fact been held and the members of the Council including the petitioners Nos. 2 to 5 have participated in the election and have submitted their ballot papers. I accept the contention of Mr. Sen that in the facts of this case Section 256(4) of the Companies Act, and Article 15 of the articles of the Council have no application. In my view, there is a good deal of force in the contention of Mr. Sen that there is no proper pleading either in the plaint or in the petition to build up a case on the basis of the provisions of Section 256(4) of the Companies Act or of Article 15 of the articles of the Council, but it is not necessary for me to pronounce any opinion finally at this stage. It is, however, to be noted that it is nobody's case that the said meeting had stood adjourned to the same day in the next week at the same time and place and that on that date any such meeting had been held. I am inclined to accept the contention of Mr. Sen that the deeming clause contained in Section 256(4) of the Companies Act and in Article 15 of the articles of the Council can have any application only in the case of complete silence and inaction on the part of the company or its members and I do not consider it necessary to discuss the cases cited by Mr. Sen. In my view, Mr. B.N. Sen, learned counsel supporting Mr. Sen, also rightly contends that Section 256(4) of the Companies Act can have no application as in the instant case the resolution for re-appointment had been put to the meeting and had in fact been lost when confirmation of the said candidates had been negatived on being put to vote. I am not satisfied that any prima facie case has been made out on the basis of the alternative claim of the petitioners.

22. I am further of the opinion that this application is not bona fide and there has been suppression of material facts from the court in the petition presented. It is nowhere stated in the petition that the petitioners Nos. 2 to 5 have submitted their nominations for further or fresh election to be held and have participated in the said election. It has been submitted on behalf of the learned counsel appearing on behalf of the petitioners that this fact will appear from the documents which have been annexed to the petition and therefore it cannot be said that there has been any suppression. In my view, in the facts of this case, it is not enough ; and the petitioners should have clearly stated these facts in the body of the petition itself and should have offered their explanation with regard to the same if they had any to offer. It does not appear to me that the petitioners Nos. 2 to 5 have any explanation to offer with regard to their conduct in having wholeheartedly participated at the further election and to my mind it appears that they have moved this application at the very last stage when they might have realised that there was little possibility of their succeeding at the election, mala fide to stop the said election, to continue their position and control in the committee. In view of the conduct of the petitioners, I am of the opinion that they are not entitled to any relief in this application and the petitioners Nos. 2 to 5 cannot be heard to complain that the fresh or further election cannot be held.

23. I have to note that the company itself is the first plaintiff in the suit and is also one of the petitioners. In the affidavit in opposition affirmed by Sisir Ranjan Sengupta on the 9th June, 1966, an objection had been taken in paragraph 3 with regard to the maintainability of the action by the company. Mr. A.K. Sen, learned counsel who has appeared on behalf of Sisir Ranjan Sengupta, stated that as no application has been made for striking out the name of the company, he was unable to press the said objection and the said objection was not pressed.

24. In my view there cannot be any dispute with regard to the principle laid down in the case of *Walker v. Jones*, but the principle laid down therein and the passage at page 61 of the said report, relied on by the counsel for the petitioners which I have already quoted, have no application to the facts and circumstances of the present case.

25. For reasons hereinbefore stated I am of the opinion that this application has no merits and must be dismissed. I, therefore, dismiss this application with costs and I direct that all ad interim orders made will stand vacated.

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