

Gopal Vyas Vs. Sinclair Hotels and Transportation Ltd.

Gopal Vyas Vs. Sinclair Hotels and Transportation Ltd.

SooperKanoon Citation : sooperkanoon.com/852043

Court : Kolkata

Decided On : Mar-16-1989

Reported in : AIR1990Cal45,[1990]68CompCas516(Cal)

Judge : Mrs. Padma Khastgir and ;Mahitosh Majumdar, JJ.

Acts : [Companies Act, 1956](#) - Sections 140, 140(4), 140(5), 142, 173, 188, 188(3), 188(4), 237, 257 and 257(1)(A);; [Code of Civil Procedure \(CPC\), 1908](#) - Order 1, Rule 8

Appeal No. : Appeal No. Nil of 1986, Suit No. 934 of 1986

Appellant : Gopal Vyas

Respondent : Sinclair Hotels and Transportation Ltd.

Advocate for Def. : Mrs. S.B. Mukherji, Adv.

Advocate for Pet/Ap. : Dipankar Ghosh, Adv.

Judgement :

ORDER

Mrs. Padma Khastgir, J.

1. The only point which calls for consideration in this application arises under the following facts and circumstances.

2. The petitioner Gopal Vyas filed a suit under O. 1, R. 8 of the C.P.C. In the said suit the petitioner moved an application before Mr. Justice R.N. Pyne (as his Lordship then was) whereupon the learned Judge directed that the annual general meeting of the company. Sinclair Hotels & Transportation Ltd. be held under the chairmanship of a member of the Bar but for adjournments of the same until further orders. The petitioner, being aggrieved thereby preferred this appeal apart from the usual prayers the petitioner prayed for an order directing the company to hold the 14th Annual General Meeting and at such meeting to consider the notices and the proposal made by the petitioner under S. 257 of the Companies Act.

3. The petitioner Gopal Vyas proposed the candidature of one Navin Chand Suchanti for the office of a director of the respondent No. 1 at such annual general meeting. The petitioner had given a notice under S. 257 of the [Companies Act, 1956](#). The petitioner contended that the company was under an obligation to inform its members of such proposal made by the petitioner at such annual general meeting due to be held on 29th December, 1986. But the company being the respondent No. 1 herein according to the petitioner wrongfully refused to comply with the said proposal on the alleged ground of non-compliance of the provisions of S. 188 of the Companies Act.

4. There has been many proceedings so far this company is concerned, for various reliefs. After protracted litigations the matter went before the Supreme Court of India and ultimately the learned Judges of the Supreme Court directed that all pending matters before the High Court should go on but no effect be given to any of such orders till the matter is finally decided by the learned Judges of the Supreme Court.

4A. Section 257 of the [Companies Act, 1956](#) provides as follows:

'257. Right of persons other than retiring directors to directors to stand for directorship.--

(1) A person who is not a retiring director shall, subject to the provisions of this Act, be eligible for appointment to the office of director at any general meeting, if he or some member intending to propose him has, not less than fourteen days before

the meeting, left at the office of the company a notice in writing under his hand signifying his candidature for the office of director or the intention of such member to propose him as a candidate for that office, as the case may be.

(1-A) The company shall inform its members of the candidature of a person for the office of director or the intention of a member to propose such person as a candidate for that office, by serving individual notices on the members not less than seven days before the meeting;

Provided that it shall not be necessary for the company to serve individual notices upon the members, as aforesaid if the company advertises such candidature of intention not less than seven days before the meeting in at least two newspapers circulating in the place where the registered office of the company, is located, of which one is published in the English language and the other in the regional language of that place.

(2) Sub-sec. (1) shall not apply to a private company, unless it is a subsidiary of a public company.'

5. Under this section a person, other than a retiring director, if he desires to be appointed as a Director, a notice of his candidature may be given to the company. Such notice may be given by the candidate himself or by any member intending to propose him as a candidate. This candidate may be an outsider or a member of the company. He need not be a shareholder even but such notice has to be given fourteen clear days before the meeting. On receipt of such notice the company shall inform the members at least seven days before the meeting either by individual notice or by advertisement.

6. Section 188 of the Companies Act makes the provision for circulation of members resolution in the manner following:

'188. Circulation of member's resolutions. -- (1) Subject to the provisions of this section, a company shall, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists:--

(a) given to members of the company entitled to receive notice of the next annual general meeting, notice of any resolution which may properly be moved, and is intended to be moved at that meeting.

(b) circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or any business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under sub-sec. (1) shall be --

(a) Such number of members as represent not less than one-twentieth of the total voting power of all the members having at the date of the requisition a right to vote on the resolution or business to which the requisition relates or

(b) not less than one hundred members having the right aforesaid and holding shares in the company on which there has been paid-up an aggregate sum of not less than one lakh of rupees in all.

(3) Notice of any such hundred shall be given, and any such statement shall be circulated to members of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each member in any manner prescribed for service of notice of the meeting; and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the Company.

Provided that the copy shall be served, or notice of the effect of the resolution shall be given as the case may be, in the same manner and, so far as practicable, at the same time, as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless --

(a) a copy of requisition signed by the requisitionists (or two or more copies which, between them, contain the signatures of all the requisitionists) is deposited at the registered office of the company :--

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting:

(ii) in the case of any other requisition, not less than two weeks before the meeting; and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under the section to circulate any statement if on the application either of the company or of any other person who claims to be aggrieved the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's cost, on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) A banking company shall not be bound to circulate any statement under this section, if in the opinion of its Board of Directors, the circulation will injure the interests of the company.

(7) Notwithstanding anything in the company's articles the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this sub-section, notice shall be deemed to have been so given, notwithstanding the accidental omission, in giving it, of one or more members.

(8) If default is made in complying with the provisions of this section, every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.'

7. Under this section members resolution intended to be moved at an annual general meeting or at any other meeting after the circulation to members in each case of the text of the proposed resolution with explanatory statement, if any, in respect of the resolution or other business. This section has conferred on shareholders an important right to give through the company machinery publicity among all the members of the company the resolution which he intends to propose or for statements which he wants to make at the annual general meeting.

8. The question which calls for determination in this appeal is as to whether the company was justified in refusing to circulate the notice given by the petitioner under S. 257 of the Companies Act on the ground that such proposal was made by one member for the candidature of directorship of Navin Chand Suchanti on the ground that it was not proposed either by 500 shareholder members or by 1/10th strength of the members. The provision of S. 257 is an independent section. It is not subject to the provision of S. 188. Section 257 is a specific provision giving a right to an individual member to give such notice. It is a self-contained provision and under S. 257 there is no scope for introduction of any other qualification which the legislature in its wisdom did not think necessary to incorporate. The specific right that had been given under S. 257 does not provide that the implementation of such right will have to be in accordance with the procedure as laid down under S. 188 of the Companies Act. In fact the provision of Ss. 188 and 257 of the Companies Act cover two different fields. From a comparative perusal of the provisions of the two sections indicate that under S. 257 any person can apply by giving the requisite notice whereas under S. 188 some specific percentage of shareholding that is either 1/20th or hundred members are the necessary-requisite for such requisition. Not only there is difference as to who can apply under both the sections but also there is a difference in respect of the subject-matter of such notice. Under S. 257 such notice is given when a proposal is given for appointment to the office of Director at any general meeting provided it has been not less than fourteen days before the meeting and the consent signifying his

candidature for the office of the Director has been given whereupon it shall be the duty of the company to inform its members of such candidature. Whereas under S. 188 any matter can be transacted. There is also difference in respect of time which has to be given within fourteen days before the meeting under S. 257 of the Companies Act. Whereas under sub-sections (3) and (4) of S. 188 different times have been provided. The condition for such application under S. 257 are different from the conditions as provided under S. 188 inasmuch as under the previous provision of S. 257 the member was not required to deposit any sum whereas under S. 188 specific provision has been made for deposit and or tender of the requisite amount reasonably sufficient to meet the company's expenses in giving effect to such members, requisition. Under S. 257 it has been specifically provided that notice of such requisition under S. 257 individual notice will have to be given by the company upon its members or if the company decides to advertise such candidature in two newspapers having circulation at the place where the registered office of the company is located either in English language or in any other regional language of that place. Such provision has not been made under S. 188. The provision of S. 257 shall not apply to a private company unless it is a subsidiary of a public company. There is no such corresponding restriction so far the provision of S. 188 is concerned. Under S. 257 as soon as the notice complying the provision of S. 257 is served, the company has no discretion in the matter inasmuch as it has been provided under S. 257(1)(A) that the company shall inform its members of the candidature of a person for the office of a Director or the intention of a member to propose such a person as a candidate of the office by serving individual notice or by advertisement as provided in the said section.

9. The provision of S. 173 of the Companies Act does not seem to be necessary in the instant case inasmuch as S. 173 of the Companies Act provides as follows: --

'173. Explanatory statement to be annexed to notice-- (1) For the purpose of this section --

(a) in the case of annual general meeting, all business to be transacted at the meeting shall be deemed special, with the exception of business relating to (i) the consideration of the accounts, balance-sheets and the reports of the Board of

Directors and Auditors, (ii) the declaration of a dividend, (iii) the appointment of directors in the place of those retiring, and (iv) the appointment of and the fixing of the remuneration of, the auditors, and

(b) in the case of any other meeting, all business shall be deemed special.

(2) Where any items of business to be transacted at the meeting are deemed to be special as aforesaid, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each such item of business including in particular the nature of the concern or interest, if any, therein, of every director, the Managing agent, if any, the secretaries and treasurers, if any, and the manager, if any.

Presided that where any item of special business as aforesaid to be transacted at a meeting of the company relates to or affects any other company, the extent of share-holding interest in that other company of every director, and the manager, if any of the first-mentioned company shall also be set out in the statement if the extent of such shareholding interest is not less than twenty per cent of the paid up share capital of that other company.

(3) Where any item of business consists of the according of approval to any document by the meeting, the time and place where the document can be inspected shall be specified in the statement aforesaid."

10. Under the circumstances, it appears that the transaction proposed by the appellant at such meeting was an ordinary business and not a special one in view of (iii) of sub-el, (1)(a). Moreover, S. 173 provides in the case of annual general meeting all business to be transacted at the meeting shall be deemed specially with the exception of the business as provided under sub-cl. (i), (ii), (iii) and (iv) and under sub-cl. (b) in case of any other meeting all business shall be deemed special and it is only where any items of business to be transacted at the meeting are deemed to be special there shall be annexed to the notice of the meeting a statement setting out all material facts as provided under sub-cl. (b). The appointment of a director in the place of those retiring is an item of ordinary business to be transacted at the annual general meeting of the company. The

petitioner has not called for the meeting. It is at a meeting called by the company the petitioner has given the notice for transaction of the business which is ordinary in nature at such meeting. Under S. 237 any member is entitled to take advantage of such provisions as contained in S. 257.

11. The petitioner's name appears in the register of shares, so until his name is removed by rectification of such share register his right remains. The very fact that there are proceedings pending before the company Court challenging the petitioner's membership which matter is going on for a pretty long time will not disentitle the petitioner from giving such notice. In any event, in view of the order passed by the learned Judges of the Supreme Court that no effect be given to any of the orders passed in these proceedings relating to Sinclair Hotels and Travels Ltd. whether the petitioner has the right to give notice would be determined finally by the learned Judges of the Supreme Court. This proceeding before this Court only relates to the construction of two particular sections of the Companies Act.

12. This is not an appeal from an inter locutory order passed by the learned Court below but it is only pursuant to the leave granted by the learned Judges of the Division Bench the present application had been taken out. The case cited by Mr. S.B. Mukherjee appearing on behalf of the company reported in (1977) 1 AER p. 209, *Pedley v. Inland Waterways Association Ltd.* does not seem to have any application to the facts and circumstances of this case. That was a case of removal of a director. The articles of the company in that case did not confer any power on individual member to require such a resolution to remove the director be included in the agenda. Under the circumstances, the company could not be compelled to give such notice of resolution proposed to by the member to be included in the agenda. The company also rejected the said notice on the ground that he had not complied with the provisions of S. 140 of the Companies Act of 1947. There S. 142 did not confer on any individual member the right to compel the inclusion of a resolution in the agenda of a company meeting. At page 212 it was observed that the company's Articles of Association conferred no express right on any one individual member to have any item included in the notice of the agenda. Therefore, the plaintiff had to claim to compel the company to include the notice in the agenda of the annual general meeting of an intended resolution, he

had to come under some provisions of the act giving him the right. Section 140 of the Act plainly gave him this right if he could find members representing him not less than 1/20th of the total voting rights complying with the conditions as to time and other matters as set out under S. 140, sub-sections (4) and (5). Then it was the company's duty under S. 140(1) at the expense of the requisitionists Unless the company otherwise resolved to give to its members the notice. The procedure for removal of a director has been specially provided in our Companies Act. Section 284 makes specific provision for such removal where special notice is required for any resolution of removal of a director or for appointment of somebody instead of that director so removed at the meeting at which he is removed, But there is no corresponding provision given in the English Act as provided under S. 257 of the Indian Companies Act. Under the special facts and circumstances of this case, the case reported in 1977 (1) A.E.R. has no application --

13. By allowing this application in favour of the petitioner this court does not pass a mandatory order upon the company to pass such resolution. It is only a direction to enable the petitioner to express before the members at such meeting his intention as contained in the notice. In the case reported in : AIR1985 Cal248 , Indian Cable Co. Ltd. v. Smt. Sumitra Chakraborty the learned Judges of the Division Bench of this Court after discussing various cases were of the view that if a court is called upon to grant any relief on an interlocutory application which when granted would mean granting substantially the reliefs claimed in the suit, the court will be very slow and circumspect in the matter of granting any such prayer. It is indeed true that such a relief should be granted only in exceptional cases though exercise of such a discretion should be limited to rare and exceptional cases, still at the same time no court should think that in law there is any absolute bar to the court granting such a relief. In deserving cases, the court should not hesitate to come in aid of a litigant and uphold the causes of justice by granting such relief.

14. The observation of the learned Judges of the Supreme Court at paragraph 100 of the case reported in : 1986(8)ECC189 , L.I.C. of India v. Escorts Ltd. indicates that the duty is cast on the management to disclose in explanatory note all material facts relating to the resolution coming up before the general meeting to enable the share-holders to form a judgment on the business before them. It does

not require the share-holders calling a meeting to disclose the reasons for the resolution which they proposed to move at the meeting. It was further observed that every shareholder of a company has the right subject to the statutory prescribed procedure and numerical requirement to call an extraordinary general meeting in accordance with the provisions of the Companies Act. He cannot be restrained from calling a meeting and he is not bound to disclose the reasons for the resolution proposed to be moved at the meeting. Factually the present case is different inasmuch as the petitioner being a shareholder has not called an extraordinary general meeting but at a meeting called by the company he has only proposed for the candidature of a particular person in the place of the retiring director. In our view to hold that the provision of S. 257 is subject to the provision of S. 188 will, render the provisions of S. 257 nugatory and redundant. Under the circumstances there will be an order directing the company to consider the notice given by the petitioner in accordance with law at its fourteenth annual general meeting.

15. The meeting was scheduled to be held on 18th March, 1989. In any event the meeting cannot be held on 18th March inasmuch as clear 21 days notice is required to be given. Under these circumstances the meeting is to be held on 20th April, 1989.

16. Mrs. Mukherji, learned Lawyer appearing on behalf of the company, prays for stay of the operation of this order. Such prayer is allowed. There will be a stay for a period of fortnight.

Mahitosh Majumdar, J.

17. I agree.

18. Order accordingly.