Madras High Court
Oriental Benefit And Deposit ... vs Bharat Kumar K. Shah on 20 December, 1995
Equivalent citations: 2001 103 CompCas 947 Mad
Author: Srinivasan
Bench: Srinivasan, A Hadi
JUDGMENT Srinivasan, J.

1. The defendant in the suit is the appellant. The grievance of the respondent is that his nomination for election as a director in the annual general body meeting to be held on September 30, 1995, was rejected illegally on account of mala fides on the part of the appellant-company. The respondent sought for a declaration that the said rejection is illegal and mala fide. The respondent has also prayed for a declaration that the company is not entitled to transact the subject mentioned as item 7 in the notice for the annual general body meeting. The said item is to confirm the co-option of Sri K. Divakar as director in the vacancy caused by the death of K. Kumarasami, ex-director and legal adviser. Items 7 and 8 are shown under the caption "special business". According to the respondent, the subject cannot be discussed in the annual general body meeting without complying with the provisions of Article 34 of the articles of association of the company. The third prayer in the suit is for injunction restraining the appellant from holding its annual general body meeting on September 30, 1995, or any other day unless and until the candidature of the plaintiff for election to the post of director is accepted.

2. The respondent filed O. A. No. 1011 of 1995 praying for interim injunction restraining the appellant from holding" the annual general body meeting on September 30, 1995, or any other date unless and until the respondent's candidature for election was included in the meeting and after deleting item No. 7 mentioned in the notice for the meeting. The application was contested by the appellant on several grounds. In short, the appellant contended that there was neither illegality nor mala fides in the rejection of the nomination. It is submitted that the nomination was itself tendered only at 3.31 p.m. on September 14, 1996, practically at the last moment and without being accompanied by a deposit of Rs. 500. It is his further contention that the suit itself was not maintainable.

3. The learned judge has granted the injunction as prayed for by the respondent. However, he made it clear that the appellant is at liberty to hold the annual general body meeting on any other future date, after rectifying the defects pointed out both in respect of the rejection of the nomination of the respondent and in notifying "special business" in item No. 7, after giving due notice as per the provisions, of the Companies Act. Aggrieved by the said order, the appellant has preferred this appeal.

4. Learned counsel for the appellant fairly stated that the date fixed for the annual general body meeting having already passed, several of the contentions, which he wanted to urge, have become academic and it is not necessary for this court to consider the same. However, he stressed three of the contentions for our consideration.

5. The first is, that the view expressed by the learned single judge that the entire meeting should not be permitted to go on, there cannot be two annual general body meetings and if an injunction is granted, it should be with reference to the entire meeting and not in respect of a part thereof. Learned counsel submitted that if it is taken as a decision on the proposition of law, it will cause undue hardship and even bring about havoc in the matter of administration of companies. It is submitted by him that it is open to the general body to consider a part of the business as per the notice, even if the general body is prevented by an order of the court from considering the remaining part. It is pointed out by him that in the notice, eight items are mentioned out of which, only four became the subject of matter the suit. It is submitted by him that the general body could have been and should have been permitted to carry on the other part of the business as per the notice.

6. Learned counsel for the respondent submits that it is a matter to be argued in detail, though it may be said in general that a meeting" can be held to consider a part of the business as per the notice ; but according to him, it has to be considered in each case and decided with reference to the facts of that case. In our opinion, it is not necessary for us to give a decision on that question, as it has become academic at this stage. However, we wish to point out that the view expressed by the learned judge cannot be considered as an abstract proposition of law applicable to all cases arising under the Companies Act with reference to the annual general body meeting. It is a question which has to necessarily depend upon the facts of each case and the court has to decide whether the entire meeting has to be stopped or only a part thereof as per the notice of the meeting. We are unable to agree with learned counsel for the appellant that the view expressed by the learned judge would amount to a general proposition of law in the abstract. We do not understand the view expressed by the learned judge in that manner. In our opinion, he has only expressed a view with reference to the facts in this case and it cannot be treated as a precedent in other matters.

7. The second condition of learned counsel is that the learned judge is in error in characterising the rejection of the nomination as illegal and mala fide. It is submitted by him that the contention of the respondent is disputed by the appellant and without any evidence on record, it cannot be held that the action of the appellant is illegal and mala fide. Insofar as mala fides are concerned, we agree with the argument of learned counsel for the appellant that it cannot be decided without any evidence in that regard. But insofar as illegality is concerned, prima facie the materials on record would show that the rejection of the nomination is not in accordance with the provisions of the Companies Act. A xerox copy of the nomination given by the respondent has been produced before us. It is at page 101 of the typed set of papers. It contains the rubber stamp seal of the company and an endorsement by an official of the company, which shows that the nomination was received at 3.31 p. m. on September 14, 1995. The endorsement reads as follows :

"Without paying fees for Rs. 500 in time."

8. Below that, the initials of the official and below that the date and time are mentioned. The endorsement itself shows that the rejection is on the ground that the money was not paid in time. The endorsement is not to the effect that the nomination form did not accompany the deposit. If no money was tendered, the endorsement would have been to the effect that (deposit amount did not accompany the nomination). In such circumstances, even on the face of the nomination form

produced by the appellant, it is seen that the reason for rejection is that the tender was not in time.

9. Section 257(1) of the Companies Act, 1956, read as follows :

"257. Right of persons other than retiring 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 14 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, along with a deposit of five hundred rupees which shall be refunded to such person, or, as the case may be, to such member if the person succeeds in getting" elected as a director."

10. The section does not prescribe any hour as time-limit on a particular date. According to the section, the nomination should be filed not less than 14 days before the meeting. Apart from that, the section does not say that such tender of nomination should be before a particular time on the last day. We are not informed by counsel for the appellant that there is any article in the articles of association prescribing such time-limit. What has been contended by learned counsel is that there is a rule to the effect that the office hours of the company are 9 a.m. to 1 p.m. and 2 p.m. to 4.30 p.m. and that no cash transaction will be held after 3.30 p.m. on a working day and 2.30 p.m. on Sundays. It was contended before the learned judge that the time specified in the said rule relates only to cash transactions between the company, on the one hand, and the shareholders or any other person, on the other. According to the respondent, the said time-limit is not for filing nomination by a candidate and tendering application fees along with the nomination form. That contention has been accepted by the learned judge and he has held that the rejection of the deposit on the ground that it was tendered one minute later than 3.30 p.m. was erroneous, as that time-limit was not applicable to the same. The learned judge was right in holding so, inasmuch as it contravenes the provisions under Section 257 of the Companies Act.

11. The last contention put forward by learned counsel for the appellant is that in the meeting to be held hereafter, on a fresh notice, the respondent has to comply with the provisions of Section 257 of the Companies Act. According to learned counsel, the order of the learned judge reads as if that the respondent is to be treated as a candidate automatically, because of what has happened already. We are unable to accept this contention, as no such view has been expressed by the learned judge. The learned judge has only given liberty to the appellant to hold the annual general meeting after rectifying the defects, pointed out by him in the order. In fact, learned counsel for the respondent submits that the respondent is bound to comply with the provisions of Section 257 of the Companies Act, if he wants to submit himself as a candidate in the election to be held hereafter.

12. Though the learned judge has not said so, in his order, the decretal order drafted by the office reads as if the candidature of the respondent should be included in the meeting to be held hereafter irrespective of his complying with Section 257 of the Companies Act. Clause (1) of the decretal order reads as follows :

"(1) That the Oriental Benefit and Deposit Society Limited, the respondent herein, its agents, servants and representatives be and are hereby restrained by an injunction until further orders of this court from holding its annual general body meeting on September 30, 1995, or on any other day unless and until the plaintiff/applicant's candidature for election to the post of director of the said defendant is included in the said meeting after deleting item No. 7 mentioned in the notice of the said company for its annual general body meeting proposed to be held on September 30, 1995."

13. Learned counsel for the appellant is right in submitting that this clause is likely to be understood by any person as to permit the respondent to submit himself as a candidate even without complying with Section 257 of the Companies Act. We agree with him and in fact, we find that the said clause is wrongly drafted by the Registry. Hence, we delete the said clause and instead, substitute the same by a clause restraining the appellant from holding its annual general body meeting on September 30, 1995, or any other date, unless and until the defects pointed out in the order of the learned judge, are rectified.

14. It is made clear that the respondent shall also comply with the provisions of Section 257 of the Companies Act if he wants to submit himself as a candidate for the election.

15. With the above observations, the O. S. appeal is dismissed. There will be no order as to costs.