

Gopal Vyas Vs Sinclair Hotels and Transportation Ltd.

Court: Calcutta High Court

Date of Decision: March 16, 1989

Acts Referred: Companies Act, 1956 " Section 173, 188, 237, 257, 257(1)(A)

Citation: AIR 1990 Cal 45 : (1989) 2 CALLT 200 : (1990) 68 CompCas 516

Hon'ble Judges: Padma Khastgir, J; Mahitosh Majumdar, J

Bench: Division Bench

Judgement

Padma Khastgir, J.

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 Order 1 Rule 8 of the Civil Procedure Code. 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 u/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 u/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 Section 188 of the Companies Act.

4. There has been many proceedings so far this company is concealed, 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. 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-section (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) give 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 without that meeting.

(2) The number of members necessary for a requisition under subsection (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 resolution 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;

(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 costs, 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 u/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 100 shareholder members or by 1/10th strength of the members. The

provision of Section 257 is an independent Section. It is not subject to the provision of Section 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 u/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 u/s 257 does not

provide that the implementation of such right will have to be in accordance with the procedure as laid down u/s 188 of the Companies Act. In fact

the provisions of Sections 188 and 257 of the Companies Act cover two different fields. From a comparative perusal of the provisions of the two

Sections indicate that u/s 257 any person can apply by giving the requisite notice whereas u/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. u/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 given 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 u/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 u/s 257 of the Companies Act. Whereas under sub-sections (3) and (4) of Section 188 different times has been. provided. The

condition for such application u/s 257 are different from the conditions as provided u/s 188 inasmuch as under the previous provision of Section

257 the member was not required to deposit any sum whereas u/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. u/s 257 it has been specifically

provided that notice of such requisition u/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 u/s 188. The provision of Section 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 Section 188 is concerned. u/s 257 as soon as the notice complying the provision of Section 257 is served, the Company has no discretion in the

matter inasmuch as it has been provided u/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 Section 173 of the Companies Act does not seem to be necessary in the instant case inasmuch as Section 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 and the Manager, if any:

Provided 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 shareholding 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 share holding 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-clause (1)(a). Moreover, Section 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-clauses (i), (ii), (iii) and (iv) and under sub-clause (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-clause (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. u/s 237 any member is entitled to take advantage of such provisions as contained in

Section 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 interlocutory 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 Section 140 of the Companies Act of 1947. There Section 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 u/s 140 sub-sections (4) and (5). Thus it was the Company's duty u/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 or removal of a director or for

appointment is required for any resolution of removal of a director or for appointment is removed. But there is to corresponding provision given in

the English Act as provided u/s 257 of the Indian Companies Act. Under the special facts and circumstances of this case, the case reported in

1977(1) AER 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 Indian Cable Company Limited Vs. 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 AIR 1986 SC 370 L.I.C. of vs. Escorts

Ltd. & Ors. indicate 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 shareholders to form a judgement on the business before them. It does not require the shareholders 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 refrained 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 Section 257 are subject to the provision of Section 188 will,

render the provisions of Section 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.