

(2013) 08 DEL CK 0382**Delhi High Court****Case No:** CCP (CO.) 25 of 2005 and Co. Application 1545 of 2005

Col.(Retd.) Dalip Singh Sachar

APPELLANT

Vs

Maa Karni Coal Carriers (P) Ltd.
and Another

RESPONDENT

Date of Decision: Aug. 21, 2013**Acts Referred:**

- Companies Act, 1956 - Section 283(1)(g), 290, 397, 398

Hon'ble Judges: R.V. Easwar, J**Bench:** Single Bench**Advocate:** Arvind Sharma, for the Respondent**Final Decision:** Dismissed**Judgement**

R.V. Easwar, J.

This contempt petition has been filed by Col.(Retd.) Dalip Singh Sachar complaining of violation by the respondents of the directions issued by the Company Judge in his order dated 31.5.2005 passed in Company Appeal (SB) Nos. 2 & 6 of 2005. The brief facts leading up to the filing of the present petition are these. The petitioner and the respondent No. 2 were directors of the respondent No. 1 company. The petitioner filed a petition before the Company Law Board under sections 397 and 398 of the Companies Act, 1956 complaining of acts of oppression and mismanagement. The CLB disposed of the petition by order dated 28.12.2004. Both the parties were aggrieved by the order of the CLB and filed cross appeals before this Court in Company Appeal (SB) Nos. 2 and 6 of 2005.

2. So far as Company Appeal (SB) 2 of 2005 is concerned, it was filed by the respondent against that part of the order of the CLB in which it was held that the provisions of section 283(1)(g) would not come into play and it cannot therefore be said that the petitioner had vacated the office of Director. So far as Company Appeal (SB) No. 6 of 2005 is concerned, the following directions were issued by the

Company Judge (A.K. Sikri, J., as he then was):-

(i) the decision of the Board of Directors to induct Satish K. Thapar, a civilian, as the Additional Director and issuance of further shares was erroneous and contradictory.

(ii) the decision taken to the above effect in the meetings held on 27.6.1996, 4.7.1996 and 29.8.1996 was invalid. The issuance of further share capital was also invalid.

(iii) however, it would be open to the company to pass the necessary resolution for allotment of the shares and the manner in which they should be allotted.

3. The SLP filed by the respondents against the judgment dated 31.5.2005 was dismissed on 13.7.2005.

4. On 5.10.2005, the respondent-company filed Form No. 32 with the Registrar of Companies, showing the petitioner to be appointed as a director by order of this Court dated 31.5.2005/13.7.2005 and Satish Thapar as resigned from directorship by the aforesaid orders.

5. The petitioner has filed the present contempt petition on the ground that the respondents have failed to carry out the aforesaid directions of this Court. On 22nd April, 2009, the respondent entered appearance and filed a reply including a copy of Form 32 submitted with the ROC on 5.10.2005 in compliance with the directions of this Court. According to this Form, the respondents informed the ROC that Col. Sachar (the petitioner herein) was appointed as director w.e.f. 13th July, 2005 and the Additional Director, Satish Kumar Thapar, resigned from directorship on 13th July, 2005. This Court noticed that the aforesaid compliance was not proper and in conformity with the judgment of Sikri, J. rendered on 31.5.2005. It was observed by this Court that since the removal of the petitioner was itself held illegal, he would continue to be a director on all relevant dates, including the dates on which the respondents claimed to have removed him, and for the same reason, the appointment of Satish Thapar having been found to be null and void, he ceased to be a director from the very date on which he was appointed to the Board.

6. When this was pointed out by this Court to the respondents, one more opportunity was prayed for to effect remedial measures to comply with the directions issued by this Court on 31.5.2005. Four weeks time was allowed by this Court for compliance. It was also pointed out by the respondent that the company ceased to be an ex-servicemen company. But this Court observed that this aspect shall be considered later.

7. On 19.1.2011 this Court (Manmohan, J.) observed that both sides were in agreement at least on the aspect that a fresh Form 32 needs to be filed with the ROC to inform that Col. (Retd.) Dalip Singh Sachar continued as director from 23.9.1996 to 13.11.2005. This Court directed both the sides to find out what steps have to be taken by the respondent company to achieve this objective.

8. On 13.7.2011 the respondent submitted an affidavit, a copy of which was directed to be given to the petitioner.

9. On 19.7.2012 this Court noticed that the directions given on 19.1.2011 have not been complied with and therefore the respondent was directed to file Form 32 (in physical form) before the Registrar of Companies evidencing the fact that Col. Dalip Singh Sachchar continued as director from 23.9.1996 to 13.11.2005 and also the fact that the civilian director Satish Kumar Thapar was not connected with the company in the aforesaid period. Directions were issued for the needful to be done and for filing affidavit of compliance.

10. On 1.11.2012 an affidavit from respondent No. 2 was filed which was taken on record and a copy was also given to the petitioner. He took time to examine the affidavit. Thereafter, the petitioner filed an affidavit in response to the respondent's affidavit and a prayer was made that the matter may be decided on the basis of the written arguments on record.

11. On 1.5.2013 the application of the respondent for condonation of delay in uploading the digital version of form No. 21 was allowed and the ROC was directed to accept the uploading of the digital version.

12. In support of the contempt petition, the petitioner who appeared in person, submitted that the respondents have disobeyed not only the directions contained in the judgment of Sikri, J.(as he then was) rendered on 31.5.2005 but have also flouted the directions issued by Manmohan, J. on 19.1.2011 and by Indermeet Kaur, J. on 19.7.2012. It was vehemently contended that the long delay was wholly unjustified and was intentional, inviting action for contempt. My attention was also drawn to the written submissions dated 6th August, 2007 filed by the counsel for the petitioner.

13. On behalf of the respondents, my attention was drawn to the written submissions dated 25.4.2007. It was pointed out further that the directions issued on 19.7.2012 by this Court were complied with and an affidavit to that effect was filed before this Court on 1.11.2012. It is also submitted that the annual general meeting of the company was called and conducted on 14.11.2005. It is submitted that in the above circumstances there was no deliberate defiance of the directions of this Court. Even the delay in submitting the prescribed Form to the ROC was on account of the change in the practice of accepting the physical Form, to the filing of digital Form, due to which the respondents had to face some difficulty. An application for condonation of delay was filed before this Court and this Court had, by order dated 1.5.2013, condoned the delay and directed the ROC to accept the uploading of the digital version of the Form. It is submitted that in the above circumstances, there was no disobedience or flouting of the orders of this Court.

14. I have considered the rival contentions and I have also perused the written submissions filed by both the sides.

15. On 5.10.2005, the respondents filed Form No. 32 with the ROC (Annexure R-I). Therein the petitioner was stated to have been appointed as director by order of Delhi High Court dated 31.5.2005/13.7.2005. These are the dates on which this Court rendered the judgment and the date on which the SLP was dismissed, respectively. In the column "date of appointment or change", the date given was 13.7.2005. Satish K Thapar, the civilian director was shown to have resigned from directorship by order of Delhi High Court dated 31.5.2005/13.7.2005. In his case also, the date of appointment or change was shown as 13.7.2005. It may be noted that this Form was filed within 3 months from the date on which the SLP was dismissed. However, this Court by order passed on 22.4.2009 pointed out that *prima facie* since the removal of the petitioner was itself illegal, he would continue to be a director on all relevant dates including the dates on which the respondents claimed to have removed him and for the same reason the appointment of the civilian director would cease to have effect from the date of his appointment itself. Apparently, when this was pointed out, the respondents realised that the particulars given in Form 32 were inaccurate and sought 4 weeks time for compliance. Time was granted. Thereafter, both sides were in agreement that a fresh form should be filed with the ROC to show that the petitioner continued as Director from 23.9.1996 to 13.11.2005 and accordingly, this Court, by order dated 19.1.2011, suggested that both the sides should find out as to what steps have to be taken by the respondent company to achieve this objective. It is necessary to mention here the significance of the date 13.11.2005. This is because the annual general meeting of the company was called on 14.11.2005 and notices for the same were sent to everyone concerned, including the petitioner. The company had earlier received two notices from its shareholders proposing a resolution for the removal of the petitioner from the office of the director. Copies of these notices and the proposed resolutions were also sent to the petitioner on 31.10.2005. The petitioner however did not attend the annual general meeting, in which the resolutions were unanimously passed and the petitioner was removed from the office of director of the company w.e.f. 14.11.2005. This fact was also communicated to the petitioner by the respondents by letter dated 26.11.2005 (Annexure P-19). It was because of this development, which was made known to the Court, that the Court on 19.1.2011 observed that a fresh Form had to be filed with the ROC showing that the petitioner continued as director from 23.9.1996 to 13.11.2005, as he had been removed from 14.11.2005. Immediately thereafter an affidavit was filed on behalf of the respondent dated 13.7.2011, a copy of which was given to the petitioner. On 19.7.2012 this Court noticed that the earlier directions given on 19.1.2011 had not been complied with; it accordingly directed the respondent to file the Form 32 (in physical form) with the ROC. An affidavit of compliance was directed to be filed within two weeks. An affidavit of compliance was filed which was taken on record on 1.11.2012 to which the petitioner wanted to respond. His response was also taken on board. Eventually, on 1.5.2013, the delay in filing the prescribed form with the ROC was condoned and the ROC was directed to accept the uploading of the digital version of Form 21.

16. A perusal of the affidavit dated 13.7.2011 filed by the second respondent (Retd. Major General P.C. Puri) shows the following chronology. After the order of this Court dated 19.1.2011 in which both sides were directed to find steps for filing a fresh Form with the ROC, there was no response from the petitioner and no suggestion came from him. Therefore, the respondent approached the ROC on 6.4.2011 and explained the entire case including the orders passed by this Court on 19.1.2011 and the problem that was faced by the company to get the order by this Court implemented due to the electronic filing system which had come into force in the meantime. The Deputy ROC suggested to the respondent that e-Form 32 may be generated again and submitted afresh. When this was attempted, the Form was generated but the system did not accept the same. Therefore, the second respondent personally handed over the Form 32 to the ROC on 13.4.2011 together with relevant documents so as to get the order implemented. The second respondent followed it up on several occasions with the ROC and on 30.6.2011, the official in the office of the ROC suggested an alternative, which was to generate an electronic Form 21 and get the order of this Court scanned. On 6.7.2011, the respondent generated e-form 21 providing the details as per the orders of this Court i.e. that the petitioner continued as a director from 23.9.1996 till 13.11.2005. A scanned copy of the order of this Court passed on 19.1.2011 was also sent along with the e-form. On 7.7.2011, the receipt of the e-form 21 was acknowledged by the ROC.

17. It was thus stated in the affidavit that it was only on account of the e-filing system that the Form No. 32 was not accepted and after considerable efforts and discussion with/guidance from the office of the ROC that the Form No. 21 was generated electronically and filed along with a scanned copy of the order of this Court dated 19.1.2011.

18. The delay in filing the Form was condoned by the order of this Court passed on 1.5.2013 and the ROC was directed to accept the uploading of the digital version of Form 21.

19. Having regard to the above circumstances, I am unable to see any wilful or intentional disobedience of the orders of this Court on the part of the respondents. Moreover, even the allotment of 3,333 shares was done in the meeting of the Board of Directors which took place on 20.8.2005 about which due notice was given to the petitioner. In its order dated 31.5.2005, the allotment was made amongst 6 shareholders of the company including the petitioner. In its order dated 31.5.2005 the Court had granted liberty to the respondent company to make allotment of these shares in accordance with law.

20. Pursuant to order dated 19.1.2011 (Manmohan, J.) the company filed digital Form 21 after discussion with the office of ROC and after taking their guidance. However, the company was directed by this Court (Indermeet Kaur, J.) on 19.7.2012 to file Form No. 32 with the ROC. This direction was complied with on 29.10.2012. I

do not therefore see any disobedience of the orders of this Court. The compliance with the orders of the court took some time on account of technical problems which were beyond the company's control. It is therefore not possible to impute any contumacious conduct on the part of the respondents. They have made all efforts, bonafide to comply with the orders of the court.

21. There are a few other allegations by the petitioner. He has objected to the appointment of Lt. Col. Rajiv Kohli. He is an ex-servicemen who was inducted as an additional director only with the permission of the Director Resettlement, Ministry of Defence. His appointment was confirmed in the annual general meeting held on 2.11.1996.

22. The petitioner's claim that all actions of the respondent company prior to the judgment of this Court on 31.5.2005 should be recalled and that inasmuch as they were not recalled there was disobedience, is without any force. There is no such direction in the judgment. Even otherwise, section 290 of the Companies Act takes care of the situation. It says that all acts done by a director shall be valid, notwithstanding that his appointment is afterwards discovered or declared to be invalid. The actions of Satish K. Thapar, civilian director, cannot therefore be held invalid. Those actions cannot therefore be recalled. For the aforesaid reasons there is no merit in the contempt petition. The same as well as the connected application are hereby dismissed with no order as to costs.