Navnitlal Chabildas Vs The Scindia Steam Navigation Co. Ltd.

Court: Bombay High Court

Date of Decision: April 10, 1926

Acts Referred: Companies Act, 1913 â€" Section 20

Citation: AIR 1927 Bom 609 : (1927) 29 BOMLR 1362

Hon'ble Judges: Taraporewala, J

Bench: Single Bench

Judgement

Taraporewala, J.
In this suit the plaintiff, a shareholder in the first defendant company, sues, on behalf of himself and all the other

shareholders in the company except those who are the defendants, the company and the directors of the company, praying for a declaration that a

resolution of the company to the effect that the qualification of a director shall be the holding of the shares in the company of the nominal value of

Rs. 75,000 instead of Rs. 30,000 moved before the sixth ordinary general meeting of the company hold on December 12, 1925, and the whole

proceeding in respect thereof is ultra vires and illegal, and for other consequential reliefs.

2. The facts are shortly as follows :-

By a notice dated November 24, 1925, the agents of the first defendant company, by order of the board of directors, called the sixth ordinary

general meeting of the company, which was to be held on December 12, 1925, and the business to be transacted was notified in the said notice.

3. After the said notice was issued, notices were received by the agents and directors of the defendant company from two shareholders Ardeshir

R. Subedar and R.C. Sutaria to the effect that they intended to propose a certain resolution altering the qualification of a director as laid down in

Article 90 of the articles of association of the company. Notice of this resolution was given by the defendant company by advertisement in The

Bombay Chronicle, The Indian Daily Mad, The Jam-e Jamshed, The Bombay Samachar, and The Sanj Vartaman on December 4, 1925,

4. At the mooting held on December 12, 1925, the items of business referred to in the first notice were gone through and thereafter the resolution

of which notice had been given by the said R.C. Sutari a was proposed by him and seconded by one I.S. Mehta. The resolution was to the effect

that the qualification of a director should be the holding of shares in the company of the nominal value of Rs. 75,000 instead of Rs. 30,000 as at

present. The resolution was placed by the chairman of the meeting before the said meeting, and after taking votes on the said resolution, which

showed that a large majority, of the members of the meeting were against the said resolution, a poll was demanded and the chairman adjourned the

said meeting to January 16, 1926, for taking a poll on the said resolution. The plaintiff contends that the said resolution and the proceedings in

respect thereof is ultra vires and illegal on two grounds, first, that no proper notice of the said resolution was given as required by the articles of

association, and, secondly, that the company had no right to pass the said resolution, which was an ordinary resolution, so as to alter Article 90 of

the articles of association, which provided for the qualification of a director of the company, and that any such alteration could be made only by a

special resolution passed by the company.

5. As to the first contention of the plaintiff, I have no hesitation in rejecting it. The notice as published in the newspapers is a proper notice of the

resolution under the articles of association of the company.

6. As to the second contention, it was argued on behalf of the defendant company that the company did not in fact propose to alter any articles of

association by the passing of the said resolution, and that Article 90, which provided for the qualification of a director, was subject to and should

bo read with the provisions of Article 100, which provided that the company in general meeting might from time to time increase or reduce the

number of directors, and might alter their qualification. The argument came to this that Article 90 as to the qualification of a director read with

Article 100 would in effect be as follows, namely:--The qualification of a director shall be the holding of shares in the company of the nominal value

of Rs. 30,000 or of such value as may from time to time be determined by the company in general meeting.

7. There is an article similar to Article 100 in Palmer''s Company Precedents, (12th edition), Vol. I, page 710. It is Article 91 in Palmer''s

Precedents. Unfortunately, there is no decision on the point as to whether an article, like Article 100 of the articles of association of this company,

could be legally made and given effect to, and whether such an article could legally give a power to the company to alter the qualification of a

director as laid down in another article without a special resolution. From Palmer''s note at page 690, it appears that even he doubts whether an

article (91) similar to Article 100 of this company would have that effect.

8. In Bennett Bros. (Lim.) v. Lewis (1903) 48 S.J. 14, the Court of Appeal held that Article 85 in that case, which provided that the number of

directors should not be less than three, could not be contravened excepting by a special resolution, but on the facts of the case it was held that

there was no such contravention.

9. Palmer in his Company Precedents has, therefore, in the form of the article with regard to the number of directors, provided as follows:

81. Until otherwise determined by a general meeting, the number of the directors shall not be less than three or more than seven.

10. I am not sure that even by making a provision in the terms of Clause 81 in Palmer"s Company Precedents, the company could alter the number

of the directors excepting by special resolution.

11. Sir Chimanlal for the defendant company argued that the Indian Companies Act did not require that there should be any qualification for a

director, and that therefore the company could provide that the qualification should be the holding of shares of a particular value or any other value

as may be determined by a general meeting. That it was only where the article provided for some requirement laid down by the Indian Companies

Act or in the memorandum of the association that it could not be altered excepting by a special resolution.

12. As observed by Palmer in his Company Precedents, 12th Edn., Vol. I, pp. 610-611:

Section 13 of the (English) Act (which corresponds with Section 20 of our Act) gives to a company under the Act power by special resolution, ...

to alter or add to its articles, ... Nothing could be wider than the terms of this section. It does not say that the articles for the management or

administration of the business may be altered, or that the articles other than those which are to be regarded as constitutional, may be altered; there

is no limitation, except that the power is to be subject to the provisions of the Act and the conditions contained in the memorandum. All or any of

the articles may therefore be altered, and this statutory incident of articles is inalienable....

At an earlier period, however, in the history of the Act of 1862 a construction was placed by that very eminent judge, Kindersley, V.-t., ... What

the learned judge in effect decided was that the different articles were to be discriminated, and that there must be exempted from alterability such

portions of them as in the opinion of the Court were constitutional, and that it was only such articles as related to the management and

administration of the company which could be altered.

13. That was the decision in Button v. Scarborough-Cliff Hotel Company (Limited), B (1865) 2 Dr. & Sm. 521.

14. In British and American Trustee and Finance Corporation v. Couper [1894] A.C. 399 Lord Macnaghten dissented from the said judgment,

and thereafter it was finally overruled by the Court of Appeal in Andrews v.Gas Meter Company [1897] 1 Ch. 361.

15. In my opinion, therefore, the argument of Sir Chimanlal, that the articles for management or administration of the business may be made subject

to alteration without a special resolution, is not tenable.

16. Then the question is whether the passing of the resolution in dispute would necessitate an alteration of Article 90 of the articles of association of

the company. In my opinion it would. The Article 100 itself provides for an alteration of the qualification as laid down in Article 90. The company

cannot allow the Article 90 to remain as it is and say at the same time that that article is no longer in force by reason of a resolution passed by an

ordinary general meeting of the company providing for a different qualification under Article 1.00 of the articles of association. In my opinion, if

effect is given to Article 100 of the articles of association as contended for by the company, it would amount to getting round the provision of

Section 20 of the Indian Companies Act in an indirect manner, and reserving a power to the company to alter its powers by such resolution, It

would then mean that the company could provide by its article something which is in contravention of the express provision of the Indian

Companies Act. In my opinion it cannot be so done. The provision for alteration of an article by a special resolution is for the protection of the

minor shareholders. That protection cannot be taken away by provision in the articles in the terms of Article 100 of the articles of association of the

company.

17. I, therefore, hold that the Company cannot alter the qualification of the director as laid down in Article 90 excepting by a special resolution,

and that the plaintiff is entitled to the declaration asked for by him. The defendant company should pay the plaintiff''s costs of the suit.