(1922) 12 BOM CK 0026

Bombay High Court

Case No: Second Appeal No. 21 of 1922

Nilkanth Devrao Nadkarni		APPELLANT
	Vs	
Murari Govind Mhale		RESPONDENT

Date of Decision: Dec. 8, 1922

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 92
- Companies Act, 1913 - Section 52

Citation: AIR 1923 Bom 272 : (1923) 25 BOMLR 315 : 73 Ind. Cas. 178

Hon'ble Judges: Marten, J; Fawcett, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Marten, J.

The question on this appeal is whether defendants Nos. 1 to 4 have been properly appointed trustees of the suit temple. That in its turn depends on whether they were validly appointed trustees on November 15, 1913, by the Temple Committee. This Temple Committee is one appointed under the Religious Endowments Act 1863, and at the date in question it consisted of some ten or eleven members. A notice, Exhibit 39, is alleged to have been given for this Committee to meet at eight o''clock in the morning on November 15, 1913. At that hour only two members of the Committee were present, and according to the minutes, Exhibit 34, as there was not present a sufficient number of members to form a quorum for the commencement of the business of the Committee, it was decided that the work of the Committee be deferred and that the Committee should meet at 3 P.M. that day. Then at three o''clock that day, three members were present. They then proceeded to transact certain business, and incidentally to elect the defendants I have mentioned.

2. Now the real point of the dispute is this: that away back in 1884 or thereabouts the Collector had settled a dispute between the Vaishnavs and the other branch the

Smarth sect as to the proportions in which their respective sects should be appointed Muktesars of various temples. As set out in para 3 of the plaint, it was decided that the Muktesars of the first three temples there mentioned should be in the hands of the Smarths only, and that of the other three temples should be in the hands of the Vaishnavs. The plaintiffs allege that by means of the 1913 election the Vaishnavs have got their nominees elected Muktesars of the suit temple, which under the 1884 agreement was to be in the hands of the Smarths. That is what is at the bottom of this dispute.

3. It will be seen, therefore, that the question of the appointment is no mere technical matter. In the first place, the appointment of trustees is, generally speaking, a matter in which the terms of the appointment have to be properly complied with. In the second place, particularly when religious feelings are aroused, it is to my mind important that any election should be properly conducted. The learned trial Judge found that the elections were invalid. On appeal, the lower appellate Court set aside this judgment and dismissed the suit holding that the whole suit was bad, because it was within Section 92 of the Civil Procedure Code, and the requisite consent of the Collector had not been obtained. That decision was reversed by the High Court, and the case remanded.

4. On remand, the learned appellate Judge''s judgment really comes to this that the meeting was continuous from 8 A.M. to 3 P.M., and that there was really no adjournment or postponement. What he says is: "In strictness of speech it should be said that there was no postponement; there was a waiting for the third member to come. The meeting was convoked at 8. The members were late. Business did not begin till 3. This is easy going. But there are many committees which must go easily if they are to go at all." On the facts here, I do not think the Judge could fairly infer that the members waited at the place of meeting from 8 to 3. The minutes do not say so, and the evidence of the recorder Santaya does not say so. What he pays is: "The time fixed for the meeting was 8 A.M. Defendants Nos. 8 and 10 were present at that time. So we, waited for the arrival of the other members. But as nobody turned up, the meeting was adjourned till the afternoon of that day.

5. So that brings one to this point, Admittedly there was no quorum, for the quorum is three. Could then the two members adjourn the meeting either to a later hour that day or to some subsequent day, and in any event would such an adjournment be valid unless notice of the adjournment was given to all the members? Now there are no special rules of this Committee which have been framed, or at any rate which have been brought to our attention, and we must therefore decide the case on general principles. There being no quorum, I fail to see what power the two members had to adjourn the meeting to three o''clock that day or to three o''clock say two days afterwards, unless at any rate notice of the adjournment was given to all the members. Ex hypothesi no such notice of the adjournment was given, and it seems to me, therefore, that the adjourned meeting at three o''clock was invalid.

6. This seems to me to be no mere technicality. If, for instance, some member had come at nine o''clock and found nobody present, he would naturally assume that either the meeting had been held and was over: or that it had failed for want of a quorum, and that in any event he had come too late, and might go away. He would not necessarily know without some express notice that the meeting was to be held at three o''clock. I do not say that that happened in the present case. But one has to consider the matter on general principles.

7. It seems to me, therefore, with all deference to the learned appellate Judge, that the view he took cannot be sustained. One argument was addressed to us to the effect, that in India and in particular in the Districts, the various communities are easy-going people, especially as regards time, and that accordingly it would be a hardship to lay down any hard and fast rules about time. I am not laying down any such hard and fast rules. It is open to the Committee to frame any special rules they like within reason for the conduct of their own business. But it seems to me on the whole that the evils of allowing an indefinite delay in business are likely to outweigh the alleged hardships of reasonable punctuality, and to lead possibly to irregularities of a kind which it is very desirable to avoid. There is one other point, and that is, that the notice convening the meeting did not specifically state that the meeting was called for the election of new trustees, nor was the notice given to all the members. The notice, Exhibit 39, does say that one member of the Committee had died. So possibly one might infer that his place on the Committee was to be filled up. But that is different from the trusteeship of the suit temple. And the mere fact that the notice states that some very important matters were to be transacted does not give one an express notice that appointments of new trustees of the suit Temple were to be made. It would also seem from the judgment of the lower appellate Court that notice was not served on one member of the Committee, Dewan Bahadur Yennemadi, and that the notice on one other man was doubtful, for only word was left at his house, he being away from home.

8. Having regard to the view I take on the other part of the case, I do not think it necessary to decide this point about the sufficiency of the notice, nor as to whether it was properly served. But as the point has been raised, I may refer to Young v. Ladies'' Imperial Club (1920) 2 K.B. 523 where Lord Sterndale M. R. lays down some general principles governing meetings for special purposes. He says: "I cannot entertain any doubt that, with certain very limited exceptions where a special meeting of a Committee or any other body has to be specially convened for a particular purpose, every member of that body ought to have notice of and a summons to the meeting." Then he refers to a case of Smyth v. Darley (1849) 2 H.L.C. 789 which was the case of an election and not as in Young v. Ladies'' Imperial Club of an expulsion from a club, and quotes Lord Campbell as saying: "The election being by a definite body on a day of which, till summons, the electors had no notice, they were all entitled to be specially summoned, and, if there was any omission to summon any of them, unless they all happened to be present, or unless those not

summoned were beyond summoning distance-as, for instance, abroad-there could not be a good electoral assembly." Then he cites another case of In re Portuguese Consolidated Copper Mines, Limited (1889) 42 Ch. D. 160 and quotes Lord Esher as saying; "All the directors should have had notice of the meeting of the 24th." Then Lord Sterndale proceeds. "That was on general principles I think, and not any special provision in the articles that notice should be sent to every member." Next he again quotes Lord Esher-"If they had not, then the meeting of the 24th was no valid meeting, and being an invalid meeting could not adjourn itself to the 26th." Then Lord Sterndale continues "therefore as to the general principle, I think, there can be no question," and he points out that there are or may be exceptions where it is physically impossible for a member to attend, he being abroad, or possibly dangerously ill; but that ha does not know of any other exception.

9. As I have said, I do not propose to decide whether in this particular case the notice sent was sufficient, or whether it ought to have stated expressly that new trustees were to be appointed. I have no doubt that the latter course is far preferable, but whether its omission would invalidate the appointment is a question that I leave open.

10. There is one further point. It is said that even if the election of 1913 was invalid, it was ratified by a subsequent resolution in 1916. It appears that the custom was for the persons who had been elected Muktesars to be entered in a particular book belonging, I gather, to the Collector. Some hitch arose about this, and consequently the Collector suggested that the matter should be reconsidered by the Temple Committee. Accordingly they purported to meet again and to re-elect these particular persons.

11. This point is not dealt with by the lower appellate Court. But the learned trial Judge points out that the persons who purported to make these new elections were only three, of whom one was defendant No. 11, who quite clearly had not been validly appointed a member of the Committee. He had only been co-opted by the members of the Temple Committee, which is clearly invalid under the Act regulating the appointments of new members of the Committee.

12. It, however, appears that this point was not relied on in the written statement of the defendants, nor did they make it a ground of their appeal to the lower appellate Court. That no doubt is a reason why the lower appellate Court did not deal with the point. One can understand that in any event there would be the greatest difficulty in upholding this alleged confirmation, having regard to the illegality of the appointment of defendant No. 11. Under the circumstances, 1 do not think it is open now to the respondents to rely on the validity of that confirmation.

13. In the result, therefore, I would allow this appeal, and restore the judgment of the learned Subordinate Judge.

14. As regards costs, the appellants had to amend their memo of appeal by specifically raising the points on which they eventually succeeded, and an adjournment of the appeal became necessary for their opponents to meet these points.

15. On the whole we think the justice of the case will be met by letting the judgment of the trial Judge as to the costs of the trial stand. As regards the costs of the proceedings before the District Court both on the first occasion and on remand, we will direct that each party should bear his own costs. As regards the costs of this appeal, we direct they be paid by defendants Nos. 1 to 4 including the costs of the remand Appeal No. 269 of 1920 decided by this Appellate Court on June 7, 1921.

Fawcett J.

16. I agree. I am certainly indisposed to be too technical in dealing with meetings in the mofussil of bodies like this Temple Committee, whose appointment of defendants Nos. 1 to 4 is in question. I quite agree with the learned District Judge that practice must to a large extent be considered as sufficient authority for the mode of transacting business. But at the same time, I think, it is clear that the view he has taken in treating the adjourned meeting as merely a continuation of the first meeting is one that contravenes a very necessary and reasonable principle of justice and equity, viz., that every member of a committee or other body should have due notice of the time when he may attend the "meeting, if he wants to. This is a principle which has been laid down very strongly by the Courts in England, as is shown by the cases to which my learned brother has referred. It is also, I think, recognised very plainly by the Legislature both in England and in India, for the Companies Acts of both countries contain provisions in the model articles enacted in a Schedule, under which due notice of a general meeting is to be given to all persons concerned. [8 Edw. VII, Clause 69, Schedeule I, Section 49, and Indian Companies Act, 1913; Schedule I, Article 49.]

17. It is obvious, as my learned brother has pointed out, that even in this particular instance, it might have happened that some member attended late, and not knowing of the time to which it had been adjourned, did not take part in the proceedings at the adjourned meeting. No doubt it is true that that is not alleged in this case, and that it probably did not happen. But that does not, in my opinion, affect the principles of law, on which, in dealing with a case of this kind, we must act, especially as the business which was transacted is of a very important kind, viz., the appointment of trustees, a matter concerning which the Courts are scrupulous to see that ordinary principles regulating the validity of election, &c, have been properly complied with.

18. The assumption of the District Judge that the second meeting was a mere continuation of the first is opposed to the actual facts, and I do not think that it can be properly justified by a reference to dilatory habits and easy-going ways. If we are

to accept that as a sufficient excuse for a departure from the ordinary principles regarding'' meetings of Committees, then it would be very difficult to draw the line; and I think that, as my learned brother has pointed out, it would lead to far greater confusion and injustice than the opposite view.

19. The learned Judge has cited an instance which he considers is in favour of his view, viz., that at the first session of a newly constituted House of Commons, two University Members (no one else appearing) adjourned the House until His Majesty''s pleasure be further known. But in my opinion that does not really support the view of the matter that he has taken. In that case there would necessarily be notice to all the Members of the House as to the time when they were to meet again, for His Majesty''s pleasure would be signified in a form that would reach all members concerned in due time. Then, again there is an arrangement in the House of Lords in England, by which if there is not a quorum of members at the proper time, there is automatically an adjournment to a definite hour later on. (See Encyclop&#65533;dia of the Laws of England, Vol. I, p. 129.] So also in the case of companies, there is usually a provision under which "if within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place." [8 Edw. VII, Clause 69, Schedule I, Section 52, and Indian Companies Act, 1913, Schedeule I, Section 52.] But that is quite a different case, for there is a definite time fixed for the adjourned meeting, which is known to all the members, so that they have an opportunity of attending at the proper time. In the present case no evidence was adduced that there was any similar practice in this case, and it is too late now to ask us to consider that point. In any case the time fixed, viz., 3 P.M., is not alleged to have been a time fixed according to such a practice, but it happened to be the particular time selected by the two members.

20. Therefore I agree with my learned brother that the appeal should be allowed and the order of the Subordinate Judge restored.