

The Rampur Distillery Co. Ltd.

Vs

The Company Law Board and Another

Civil Appeal Nos. 488 and 489 of 1969

(J. C. Shah, V. Ramaswami-I, A.N. Grover JJ)

02.09.1969

JUDGMENT

SHAH, J. –

1. The Rampur Distillery Company Ltd. - hereinafter called 'the Rampur Company' - is a manufacturer of industrial alcohol. In 1943 the Rampur Company appointed Govan Brothers its managing agent for 20 years. In July 1946 a group of persons who may be referred to as the 'Dalmia Group' assumed control over Govan Brothers. V. H. Dalmia who became Managing Director of Govan Brothers, besides being a director of a number of other companies, held important position in several trade associations. On March 19, 1953, information was lodged by the Registrar of Joint Stock Companies, Delhi, that V. H. Dalmia and others had committed offences of criminal breach of trust.

2. By virtue of Section 330 of the Companies Act, 1956, the Managing agency of the Rampur Company was to expire on August 15, 1960, unless before that date the managing agent was re-appointed for a fresh term in accordance with the provisions of the Companies Act. On December 10, 1959, the Rampur Company re-appointed Govan Brothers, Managing Agent for ten years with effect from August 15, 1960, and applied to the Central Government that the extension of the managing agency of Govan Brothers be approved. The Central Government granted extension for five years under Section 326 of the Companies Act with effect from August 15, 1960.

3. In the report of the Commission headed by Mr. Justice Vivian Bose appointed to enquire into and report on the working of the 'Dalmia Jain Group of Industries', the dealings of V. H. Dalmia in relation to the financial affairs of some of the companies of which he was a director was severely criticized. In the view of the Commission, V. H. Dalmia was in the year 1946-47 guilty of grossly improper conduct in relation to several companies of which he was a director.

4. In May 1964 the police lodged criminal proceedings against V. H. Dalmia and 23 others in the Court of the District Magistrate, Delhi, charging them with being parties to a "Criminal conspiracy having for its objects the commission of criminal breach of trust of the assets of the Dalmia Jain Airways Ltd., and committing offences of forgery and falsification of accounts", and that criminal breach of trust was committed by them in respect of amounts "running into crores of rupees". The proceedings so instituted are still pending.

5. On September 23, 1964, the Rampur Company passed another resolution appointing Govan Brothers Managing Agent for five years with effect from August 15, 1965, and applied to the Central Government to accord approval to the appointment. This application was referred by the

Central Government to the Company Law Board which was constituted under Section 10-E of the Companies Act, 1956, with authority to exercise the powers of the Central Government among others to deal with applications under Section 326 of the Companies Act, 1956. The Company Law Board extended the tenure of Govan Brothers till March 31, 1967. Another application by the Rampur Company, dated August 25, 1966, for extension of the term of the managing agency up to August 14, 1970, was rejected by the Board.

6. The Rampur Company then moved a petition in the High Court of Delhi on June 10, 1967, for an order quashing the decision of the Board and for an order extending the term of the managing agency till March 31, 1970. A single Judge of the High Court granted the petition holding that the managing agent was a private limited company and the reasons for failure to extend the managing agency agreement of Govan Brothers being "entirely personal to V. H. Dalmia" were "completely irrelevant in so far as the affairs of the Managing Agent company or of the petitioner Company (Rampur Company) were concerned". In appeal against that order a Division Bench of the High Court observed that where a Managing Agent is a corporate body, the acts and conduct of the Directors of that body become the object of scrutiny in determining whether such a corporate body may be considered to be a fit and proper person for appointment or re-appointment as Managing Agent, and that the enquiry must cover all relevant activities and actions of the Directors of the corporate body. The High Court accordingly set aside the order and remitted the case for a fresh decision.

7. The learned Judge who heard the petition after remand proceeded to dismiss the writ petition. In appeal against the order, the High Court observed that in determining whether a person was fit and proper to be appointed a managing agent his "acts and activities" in the past cannot be ignored altogether, and coupled with other circumstances, may provide a valid ground for not approving an appointment, but since under Section 326(2)(b) the Board has to consider the fitness and propriety of a managing agent at the date of the proposal the Board has also "to take into consideration the subsequent conduct, acts and activities of the person", and the Board having failed to consider the entirety of the "acts and activities" of V. H. Dalmia the opinion formed by the Board was "incomplete" and not "in accordance with the provisions of Section 326(2)(b) of the Companies Act". The High Court accordingly set aside the order and directed the Board to take into consideration material circumstances, namely, the "acts and activities" of V. H. Dalmia during the years subsequent to 1947 in forming the requisite opinion under Section 326(2)(b). Against that order two appeals have been preferred - one by the Company Law Board and the other the Rampur Company - with special leave.

8. Section 326 of the Companies Act, 1956, provides :

"(1) In respect of any company to which neither the prohibition specified in Section 324 nor x x x applies, a managing agent shall not be appointed or re-appointed, -

(a) except by the company in general meeting; and

(b) unless the approval of the Central Government has been obtained for such appointment or re-appointment.

(2) The Central Government shall not accord its approval under sub-section (1) in any case, unless it is satisfied -

(a) that it is not against the public interest to allow the company to have a managing agent;

(b) that the managing agent proposed is, in its opinion, a fit and proper person to be appointed or re-appointed as such, and that the conditions of the managing agency agreement proposed are fair and reasonable; and

(c) that the managing agent proposed has fulfilled any conditions which the Central Government require him to fulfil."

9. The Rampur Company in a general meeting resolved that the managing agency of Govan Brothers be continued till August 14, 1970, and applied for the approval of the Company Law Board. By sub-section (2) of Section 326 the Board is enjoined not to accord its approval unless it is satisfied that it is not against the public interest to allow the Company to have a managing agent, that the managing agent proposed is, in its opinion, a fit and proper person to be appointed or re-appointed as such, and that the conditions of the managing agency agreement proposed are fair and reasonable. The section uses the present tense. The satisfaction must be with reference to the three conditions existing in present, but in adjudging whether a person is fit and proper to be appointed past actings and conduct cannot be ignored. In considering whether a person is fit to be appointed a managing agent the Board is not restricted to a consideration of his acts, conduct and activities proximate to the date of the application : the Board has to consider his acts and activities past and present, the interest of the shareholders and the general interests of the public in allowing the management to be continued by the Directors of the Company and other circumstances which have a bearing on the question.

10. The Board apparently restricted itself to the findings recorded by the Commission headed by Mr. Justice Vivian Bose relating to the dealings of V. H. Dalmia with the companies of which he was a Director between the years 1945 and 1947. The criticism by the Commission of the conduct of V. H. Dalmia, suggested that there were serious grounds for complaint against him, but these observations related to acts and omissions many years before the date on which the application was made. The Board had to consider "whether Govan Brothers is a fit and proper person to be appointed managing agent" on a review of all the relevant circumstances, the criticism by the Commission, the progress made by the Rampur Company while under the management of V. H. Dalmia and others since 1946-47, the interests of the shareholders, the creditors and of the public generally, and also that a complaint was pending in a Criminal Court against V. H. Dalmia and others charging them with committing serious offences.

11. The Solicitor-General appearing for the Union of India contended that by the use of the expression "in its opinion" occurring in Section 326(2)(b) of the Companies Act, it is meant that the subjective satisfaction of the Central Government is determinative of the question whether the proposed person is fit and proper to be appointed managing agent, and if the Board reached the conclusion (as it has done in the present case on considerations which are not irrelevant) that Govan Brothers is not a fit and proper person to be appointed managing agent, the decision based on the satisfaction cannot be challenged before the High Court. The argument is that the existence of the satisfaction as well as the decision reached on that satisfaction are immune from the scrutiny of the Court. We are unable to agree. By sub-section (2) of Section 326 of the Companies Act, the Central Government, is invested with power to decide whether it is against the public interest to allow the Company to have a managing agent, whether the person proposed is fit and proper to be appointed or re-appointed managing agent, whether the conditions of the managing agency agreement

proposed are fair and reasonable, and whether the managing agent proposed has fulfilled the conditions which the Central Government has required him to fulfil. Investment of that power carries with it a duty to act judicially : i.e., to hold an enquiry in a manner consistent with rules of natural justice, to consider all relevant matters, to ignore irrelevant matters, and to reach a conclusion without bias, without predilection and without prejudice. The satisfaction contemplated by Section 326 must, therefore, be the result of an objective appraisal of the relevant materials. The reason is clear. By Section 326 several restrictions upon the power of the Companies and individuals to carry on business, are imposed in the interest of the shareholders, the creditors, and in the larger interests of the public. The order made by the Central Government under Section 326 may result in serious detriment of the Company and the proposed managing agent, but in the larger public interest, if it is valid, they have to suffer it. Exercise of the power conferred upon the Central Government is restrictive of valuable rights of the Company and of the proposed managing agent, and severely restricts the liberty of contract.

12. The scheme of the section implies investigation and a decision on the matters set out therein. Section 326 lays down conditions by sub-section (1)(a) in which the Central Government may override the resolution of the general body of shareholders in certain specified conditions. Upon the Central Government is imposed a duty not to accord approval to the appointment or re-appointment of a proposed managing agent in the light of clauses (a), (b) and (c) of sub-section (2). Though the sub-section is enacted in form negative, in substance it confers power upon the Government subject to the restrictions imposed by clauses (a), (b) and (c), to refuse to accord approval. Sub-section (2) imposes upon the Central Government the duty not to accord approval to appointment or re-appointment of a proposed managing agent unless the Government is satisfied that the managing agent is a fit and proper person to be appointed, that the conditions of the managing agency agreement are fair and reasonable and that the managing agent has fulfilled the conditions which the Central Government required him to fulfil. Thereby the Central Government is not made the final arbiter of the existence of the grounds on which the satisfaction may be founded. The satisfaction of the Government which is determinative is satisfaction as to the existence of certain objective facts. The recital about satisfaction may be displaced by showing that the conditions did not exist, or that no reasonable body of persons properly versed in law could have reached the decision that they did.

13. The Courts, however, are not concerned with the sufficiency of the grounds on which the satisfaction is reached. What is relevant is the satisfaction of the Central Government about the existence of the conditions in clauses (a), (b) and (c) of sub-section (2) of Section 326. The enquiry before the Court, therefore, is whether the Central Government was satisfied as to the existence of the conditions. The existence of the satisfaction cannot be challenged except probably on the ground that the authority acted mala fide. But if in reaching its satisfaction the Central Government misapprehended the nature of the conditions, or proceeded upon irrelevant materials, or ignores relevant materials, the jurisdiction of the Courts to examine the satisfaction is not excluded.

14. The power, in our judgment, is a quasi-judicial power and not administrative; it necessarily implies a duty arising from the nature of the act empowered to be done, the object for which it is to be done, the conditions in which it is to be done, and its repercussion upon the power of the Company, the shareholders, the creditors and the general public for whose benefit the power is to be exercised.

15. The Solicitor-General appearing for the Board invited our attention to the judgment in *The Barium Chemicals Ltd. and Another v. The Company Law Board and Others.* ((1966) Supp SCR 311). But in that case *Hidayatullah and Shelat, JJ.*, held that the action of the Board under Section

237(b) was administrative. Shelat, J., with whom Hidayatullah, J., agreed, observed at p. 362 :

"There is no doubt that the formation of opinion by the Central Government is a purely subjective process. There can also be no doubt that since the Legislature has provided for the opinion of the Government and not of the court such an opinion is not subject to a challenge on the ground of propriety, reasonableness or sufficiency. But the Authority is required to arrive at such an opinion from circumstances suggesting what is set out in sub-clauses (i), (ii) or (iii). If these circumstances were not to exist, can the Government still say that in its opinion they exist or can the Government say the same thing where the circumstances relevant to the clause do not exist ? x x x x But the expression "circumstances suggesting" cannot support the construction that even the existences of circumstances is a matter of subjective opinion. That expression points out that there must exist circumstances from which the Authority forms an opinion that they are suggestive of the crucial matters set out in the three sub-clauses."

Sarkar, C.J. and Mudholkar, J., did not agree with that view. Bachawat, J., expressed no opinion on the nature of the power conferred by Section 237. But in *Rohtas Industries Ltd. v. S. D. Agarwal and Another* (AIR (1969) SC 707) in dealing with an application challenging the action of the Company Law Board under Section 237(b) of the Companies Act this Court held that the opinion formed is not open to challenge, but the circumstances can. The view expressed by Sarkar, C.J. and Mudholkar, J., was disapproved.

16. Some reliance was sought to be placed upon the observations made in *Nakkuda Ali v. M.F.De.S. Jayaratna*, ((1951) AC 66) in which the Judicial Committee observed :

"After all, words such as these are commonly found when a legislature or law-making authority confers power on a minister or official. However read, they must be intended to serve in some sense as a condition limiting the exercise of an otherwise arbitrary power. But if the question whether the condition has been satisfied is to be conclusively decided by the man who wields the power the value of the intended restraint is in effect nothing. No doubt he must not exercise the power in bad faith : but the field in which this kind of question arises is such that the reservation for the case of bad faith is hardly more than a formality. Their Lordships therefore treat words in Regulation 62 "where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer" as imposing a condition that there must in fact exist such reasonable grounds known to the Controller before he can validly exercise the power of cancellation."

In *Nakkuda Ali's* case ((1951) AC 66) the Controller of Textiles in Ceylon made an order cancelling the appellant's licence to act as a dealer. The Controller acted under a Defence Regulation which authorised him to cancel a licence "when the Controller has reasonable ground to believe that any dealer is unfit to be allowed to continue as a dealer". In the view of the Judicial Committee a condition imposed "that there must in fact exist such reasonable grounds known to the Controller, before he can validly exercise the power of cancellation", but certiorari to correct the order did not lie, and there was no other means for obtaining redress. That was a case under the Defence Regulations and the Judicial Committee was of the view - in our Judgment erroneously - that the duty to act judicially arises only from an express provision to that effect. It was pointed out and we think rightly by Lord Reid in *Ridge v. Baldwin* ((1964) AC 40) that when an enactment requires an

official to have reasonable grounds for the decision, the law was not so defective that the aggrieved person cannot bring up the decision for review, however seriously he may be affected, and however obvious it may be that the official acted in breach of his statutory obligation. Again in *Padfield and Others v. Minister of Agriculture, Fisheries and Food and Others*, ((1968) 1 All ER 694) the Minister declined to refer a complaint to the Committee of Investigation established under the Agricultural Marketing Act, 1958, that the price differential worked unfairly against the south-east region of England where milk was more valuable and the cost of transport was less and the price of land was high. The Minister informed the applicants that the complaint raised wide issues and which he did not consider suitable for investigation. He claimed that he had unfettered discretion. The House of Lords remitted the case with a direction that the Minister should consider the complaint.

17. We are, therefore, unable to agree that because the exercise of the power depends upon satisfaction, its exercise cannot be subjected to judicial review the Government being the final arbiter of the conditions in which the power may be exercised.

18. But in dealing with a petition against an order made by the Board under Section 326 of the Companies Act, 1956, the High Court is not constituted a Court of Appeal over the judgment of the Board. The Court has merely to consider whether in arriving at its decision the Board has restricted itself to the enquiry contemplated to be made and has taken into consideration all the relevant circumstances and that its decision is not vitiated by irrelevant or extraneous matters.

19. The High Court was, therefore, right in holding that in determining whether Govan Brothers is person fit and proper to be re-appointed managing agent, the past conduct and actings which were relevant to the issue had to be taken into account i.e., the Board had to consider the entire conduct and actings past and present of the Directors of Govan Brothers before rejecting the petition filed by the Rampur Company.

20. The appeal filed by the Rampur Company must therefore fail. It must, however, be pointed out that the time during which the managing agency of Govan Brothers is to remain in operation is fast running out. The Solicitor-General appearing on behalf of the Company Law Board and the Union of India has assured us that with the co-operation of the Rampur Company, the Board will take steps to dispose of the application within one month from the date on which the order reaches the Company Law Board.

21. The appeals fail and are dismissed. There will be no order as to costs in this Court.

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