

**SUPREME COURT OF INDIA**

ST.Mary's Hotel Pvt. Ltd.& Ors.

Vs.

T.O.Aleyas & Ors.

SLP.(Civil)No.30483 of 2015

(Ranjan Gogoi and Prafulla C.Pant,JJ.,)

27.09.2016

**JUDGMENT**

**Ranjan Gogoi,J.,**

1. In view of the elaborate hearing that has taken place we are of the view that our eventual decision to dismiss both the special leave petitions should be supported by the brief reasons therefor.

2. The petitioners could be conveniently described as the 'Abraham Group' and the respondents as the 'Aleyas Group'. Both are branches of the same family. The dispute relates to the shareholding of the two groups in St. Mary's Hotel Private Limited (hereinafter for short 'the Company'), which inter alia owns two hotel properties in the State of Kerala.

3. The Company was incorporated in the year 1996 and with the passage of time while the Abraham Group consisting of T.O. Abraham and Binu Zacharia held 8,00,000 shares, the Aleyas Group consisting of T.O. Aleyas and Bobby Kuriakose held 7,00,000 shares. There was a Resolution of the Board dated 17.04.2002 which is claimed by the Aleyas Group to be pursuant to an earlier decision that all the 5 branches of the family should hold equal shares in the company. Consequently, there were some transfers made by the said Resolution. It appears that in the said Board meeting dated 17.04.2002 it was also resolved that 2,20,000 shares would be transferred by Bobby Kuriakose to T.O. Abraham. The aforesaid decision alone i.e. transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham alongwith decisions taken in the Extraordinary General Meeting dated 25.04.2003; Notice of Board Meeting dated 03.06.2003 and Notice of Extraordinary General Meeting dated 03.06.2003 and the decisions taken in the said meetings were challenged. The aforesaid decisions pertain to induction and removal of Directors pursuant to the transfer of shares as per the Resolution dated 17.04.2002. The Company Law Board (for short 'the CLB') by its judgment and order dated 5.2.2013 in Company Petition No. 30/2003[CHE] while granting the other reliefs sought, disposed of the said company petition filed by the Aleyas Group upholding the validity of transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham. Aggrieved, the Aleyas Group moved the High Court of Kerala by way of an appeal under Section 10F of

the Companies Act, 1956. The High Court, notwithstanding the fact that the challenge before it pertained only to the transfer of 2,20,000 shares, (all other directions of the CLB were in favour of the Aleyas Group) set aside the entire of the Resolution dated 17.04.2002, the effect of which was that the decisions with regard to transfer of shares to members of other branches of the family, which were not questioned before the CLB and hence the High Court, were also set aside. This was by judgment dated 31.03.2015 passed in Company Appeal No.4 of 2013.

4. The findings of the High Court as recorded in paragraphs 40, 41 and 43 of its judgment dated 31.03.2015 may conveniently be reproduced herein to appreciate the reasons for the conclusions recorded in the said judgment dated 31.03.2015.

“40. The CLB, at the earlier point, found that there was no material to find that one fifth of the shares should be allotted to each families of the sons of Kuruvila Onnittan nor was there evidence with respect to the decisions taken on 17.4.2002. The situation remains as such even now. Presently, the CLB found that the fact that Bobby Kuriakose did not take proceedings against the transfer of shares, even after a sufficiently long period of time of its registration and intimation to the ROC, stands against his plea of the transfer being bad. It was also found that, despite T.O. Abraham having not proved the consideration, that was of no consequence and that alone cannot lead to a conclusion that, no such transfer took place. After noticing the admission of Bobby Kuriakose, that share certificates and blank transfer forms were handed over to T.O. Abraham, the Tribunal finds that “it must have been done with some understanding between the parties”. Theory of parity amongst the five branches, appears to be a figment of imagination of the petitioners and hence the transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham, could not be declared null and void, is the finding of the CLB.

41. We cannot, but say that, the said finding has been entered on mere surmises and conjectures and the Tribunal has not looked into the evidence of such transfer, as per the provisions of the Companies Act or otherwise. No presumption could have been raised under Section 195, since the minutes book was absent. Neither of the parties substantiated their conflicting contentions of parity and transfer to the Managing Director with any other evidence. Even after the remand, specifically directing the Tribunal to conduct an enquiry, the parties rested contend, slinging mud on each other. No evidence at all was let into substantiate the conflicting contentions and they remained in the realm of statements and assertions. We would not elaborate on the decisions placed under Section 111 since the delay was projected to contest the parity sought by Abraham group and the rectification of the register conferring 20% on each family. Having found against parity, delay aspect would be inconsequential.

43. We feel that the CLB’s findings upholding the transfer and the decision on 17.04.2002 is based on no evidence. We are unable to agree with the CLB that the transfer effected and affirmed by the Board on 17.04.2002 was valid. We are unable to agree with either of the conflicting contentions of the parties for absolute lack of

evidence. Neither can the contention of parity, allegedly decided on 28.11.2001, be upheld nor can the contention of the majority being validly transferred to the Abraham group on 17.4.2002 be countenanced. Both the decisions remain in the realm of hypothesis. The transfer effected to the Managing Director himself is found to be oppressive, insofar as there being absolutely no explanation or evidence as to how a shareholder, having substantial interest in the company, transferred majority shares to the Managing Director, thus rendering himself a rank minority. There were also considerable amounts, more than 57 lakhs outstanding as loans to be repaid by the company to Bobby Kuriakose. The decisions taken are not properly taken at the Board Meeting as per the provisions of the Companies Act. The decision in toto on 17.4.2002 would have to go. In such circumstance we restore the parties to the position that existed on 19.10.2001 with T.O. Abraham and T.O. Aleyas holding 3 lakh shares each and Binu Zacharia and Bobby Kuriakose holding 5 and 4 lakh shares respectively.”

5. In the aforesaid circumstances, the Aleyas Group filed Review Petition No. 434 of 2015 before the High Court seeking review of the order dated 31.03.2015. By the impugned order dated 09.10.2015 passed in the Review Petition (subject matter of challenge in SLP(C) No. 30589 of 2015) the order dated 31.03.2015 was reviewed and interference made by the said order with the entire of the Resolution dated 17.04.2002 was corrected and confined to the issue of transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham alone.

6. Having considered the grounds on which the High Court had thought it proper to reverse the decision of the CLB, details of which have been set out herein above, we are of the view that the exercise of jurisdiction under Section 10F of the Companies Act, 1956 by the High Court to interfere with the order of the CLB cannot be faulted. If the subject matter of the appeal before the High Court was limited to the validity of the transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham, the interference made with the entire of the Resolution dated 17.04.2002 thereby invalidating the other share transfers, not under challenge before the High Court, was clearly an error apparent on the face of the record. The correction made in the exercise of the review jurisdiction was, therefore, justified and will not call for any interference.

7. Consequently and for the reasons aforesaid both the special leave petitions will have to be dismissed, which we hereby do.