BOMBAY HIGH COURT

A.S. Krishnan

Vs

M. Sundaram

(Kania, J.)

12.10.1940

JUDGMENT

Kania, J.

1. The South Indian Education Society was registered in 1932 under the Societies Registration Act XXI of 1860. The memorandum of association, the rules and the by-laws of the society were duly registered in accordance with the Act. The memorandum defines the objects. The society was founded mainly to promote the education of the boys and girls of Southern India and with that object in view it thought of erecting a building to house the school. Not having sufficient funds on hand schemes were suggested to borrow money. It was suggested that debentures should be issued. To find out if that scheme would be workable several persons were approached and they expressed their willingness to subscribe. When it came to payment, however, the response on the whole being unsatisfactory, there occurred a divergence of opinion. The plaintiff who was a member of the society and who took part in getting promises to subscribe the debentures resigned in January, 1936. On July 26, 1936, a general meeting of the society was called at which a managing 'Committee was elected. In the plaint the proceedings of this meeting are challenged. This election was for the years 1936-37-38. The next general meeting of the society was called on December 4, 1938. At that meeting eight persons were elected to the managing committee. They co-opted one member in April, 1939. The managing committee, on a consideration of the situation, resolved to borrow money from certain other parties and entered into an agreement with them for that purpose. The plaintiff started correspondence in which he challenged the advisability and legality of those acts. He challenged the constitution of the managing committee also. A requisition signed by eighteen members and dated September 24, 1939, was forwarded to the then existing managing committee which called a general meeting of the members on October 15, 1939. The requisition signed by the eighteen members showed a desire to pass four resolutions mentioned therein. They were to validate the election of the managing committee which had been functioning till then and their acts. A notice containing the

four resolutions which were intended to be passed at the meeting was sent to each member on the register of the society. The meeting was held on October 15, 1939, at which twenty-four persons were present. The four resolutions mentioned in the notice and requisition were duly proposed and passed unanimously. The plaintiff then filed this suit on behalf of himself and the other members of the society except the defendants. The defendants are the nine members whose appointment to the managing committee was confirmed by the general meeting held on October 15, 1939. The following reliefs are asked for: that it may be declared that the defendants were not the duly elected members of the managing committee elected on July 26, 1936; that it may be declared that the loans raised by the defendants in their capacity as members of the managing committee of the society were unauthorised; that the agreement of mortgage entered into] by the defendants with Hirji Laxmidas was not binding and that the defendants may be restrained from completing the mortgage.. The plaintiff further prayed that a managing committee be constituted for the society by and under the direction of this honourable Court, and for that purpose all necessary directions may be given for enrolment of members and framing a proper register of members of the society.

2. The defendants filed a written statement in which they denied that the meetings of 1936 and 1938 were improperly convened. According to them the managing committees elected at those meetings were properly elected. They further contended that the meeting of October 15, 1939, was properly convened and the resolutions passed at that meeting in any event validated the resolutions passed by the managing committee at the previous meetings and their acts. It was also contended in the written statement that the suit as framed was not maintainable.

3. Several issues were raised. At the commencement of the hearing it was pointed out to the plaintiff that if he persisted in challenging the election of the managing1 committee at the meeting of July 26, 1936, the suit must fail, because he was re-elected a member by the same managing committee. If therefore the plaintliff's contention was accepted, and there was no validly elected managing committee, the plaintiff could not be a member of the society and therefore he will have no right "to maintain the suit. On considering this contention Mr, Amin intimated to the Court that the plaintiff did not challenge the proceedings of the general meeting of the society held on July 26, 1936, and gave up his contentions in respect of the same. He also did not dispute that the defendants were duly elected members of the managing committee for the years. 1936-37-38. On that, issues Nos. 3, 5 and 6 must be answered against the plaintiff. The third issue was raised because two of the defendants were not elected at the meeting of July 26, 1936, and that issue became unnecessary.

4. The first question is whether the suit as framed is maintainable. It was argued on behalf of the defendants that the society was not a party to the suit. The allegations contained in the plaint

amounted to an alleged irregularity in the internal management of the society. Taking them all together they did not amount to an allegation that the 'acts were ultra vires the society. They were all acts within the powers of the society. The only dispute raised by the plaint was whether, within the powers of the society, the managing body had acted according to its rules and by-laws. It was further argued on behalf of the defendants that as the society itself did not challenge the acts the question was one of the internal management of the affairs of the society and the Court had no jurisdiction to try the suit. If the society complained that the acts of the defendants were irregular and the society was not bound by the same, the posiition may be different. In such a case the Court can call a meeting of the members of the society and inquire whether the society as a body approved of the challenged acts of the defendants or even if they were outside the powers of the defendants, but being within the scope of the society's affairs, it ratified the same. Such a situation cannot arise in this suit because the society was not a party to the litigation. The plaintiff relied on *Nariman v. Municipal Corporation of Bombay*[1] *and Pmder v. Lushingtoti*[2] to support his contention that the plaintiff alone was entitled to maintain the suit. In the former case the plaintiff alleged that an amendment to a certain proposition was moved and was declared lost by the casting vote of the chairman. The plaintiff contended that some of the councillors who voted at the aforesaid meeting were disqualified from voting by reason of Section 36 read with Section 16 of the City of Bombay Municipal Act (Bom. Ill of 1888) and the decision of the chairman therefore that the aforesaid amendment was lost was incorrect. The Court held "that the plaintiff had a right to file the suit and challenge the capacity of named councillors to vote at the meeting. It held that the decision of the chairman was not conclusive and it was the function of the Court to decide whether it was conclusive or not. In my opinion that decision does not help the plaintiff at all. The existence of the Municipal Corporation is recognised by a, statute and the working of it is controlled by the different sections of the Act. Section 36 lays down how a meeting of the Corporation has to transact its business. If therefore there was any irregularity and non-observance of the provisions of the section, it was not within the competence of anybody to validate the irregularity or ratify the action irregularly done. Because there were imperative provisions in the Municipal Act for working the Corporation, any omission to act according to those provisions made the transaction ultra vires the corporation. In the present case it is not even suggested that the disputed acts are ultra vires the society.

5. Pender v. Lushirigton also does not help the plaintiff. In that case a shareholder of the company was prevented from voting at a meeting. He filed a suit and applied for an injunction. The facts showed that the company was a party to the litigation. That was clearly a case where the plaintiff's individual right was denied and his status as a member of the company was in dispute. That gives rise to an individual grievance and a remedy for that can be obtained in a Court of law. In the present case it is not suggested that the plaintiff was prevented from doing

anything as a member of the society.

6. The position of a society registered under the Societies Registration Act is more like that of a club or a joint stock company. The position of members of a company in respect of the acts of the directors or managers is stated by Lord Davey in Burland v. Earle [1902] A.C. 83, as follows (p. 93):--Again, it is clear law that in order to redress a wrong done to the company or to recover moneys or damages alleged to be due to the company, the action should prima facie be brought by the company itself. These cardinal principles are laid down in the wellknown cases *of Foss v. Harbottle*[3] *and Mozley v. Alston*[4] and in numerous later cases which it is unncessary to cite. But an exception is made to the second rule, where the persons against whom the relief is sought themselves hold and control the majority of the shares in the company, and will not permit an action to be brought in the name of the company. In that case the Courts allow the shareholders complaining to bring an action in their own names. This, however, is mere matter of procedure in order to give a remedy for a wrong which would otherwise escape redress, and it is obvious that in such an action the plaintiff cannot have a larger right to relief than the company itself would have if it were plaintiff, and cannot complain of acts which are valid if done with the approval of the majority of the shareholders, or are capable of being confirmed by the majority. The casea in which the minority can maintain such an action are, therefore, confined to those in which the acts complained of are of a fraudulent character or beyond the powers of the company. In my opinion as the position of the members of this society is similar to that of the shareholders of the company and as the acts of the defendants which are challenged are in respect of the society, it is necessary that the society should be a party to this litigation. I do not think it is competent to the plaintiff either alone or representing himself and the other members of the society other than the defendants to bring a suit. The only grievance in respect of the disputed acts can be of the society. It is not open to the plaintiff, without ascertaining the wishes of the society, to file a suit on behalf of himself and all others except the defendants. The reason for that conclusion is obvious. Even if the Court decides in favour of the plaintiff, the society can call' a meeting of its members tomorrow, confirm the acts of the defendants and confirm their position as members of the managing committee, thus rendering the decision of the Court a nullity. As I have pointed out, there is no suggestion here of an infringement of the individual right of the plaintiff. The suggestion is only in respect of the alleged wrong done to the society as a body. In the absence of the society as a, party to this litigation, I am of opinion that the suit as framed is not maintainable and the Court has no jurisdiction to try the suit in the absence of the society.

7. Even if this view was incorrect, I think on the evidence the plaintiff's case must fail, I shall first consider the meeting of December 4, 1938. It was admitted by both parties that on that day there were only six members of the society who had paid their subscription or whose subscription was not in arrears for a period exceeding three months. At that meeting seven persons were present,

four of whom were out of the above-mentioned six. The plaintiff contended that the resolutions passed at that meeting were illegal and not binding on the society because there was no necessary" quorum at the meeting. In para. 6 of the plaint it is alleged that on December 4, 1938, there were twenty-eight persons on the role of the society according to the original register and sixty-seven according to the revised register. It was contended that under the circumstances the quorum for the general meeting would be either ten or twenty-three while only seven persons were present, out of whom three were disqualified to vote under Section 15 of the Act.Section 15 runs as follows:--For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription or shall have signed the role or list of members thereof, and shall not have resigned in accordance with such rules and regulations; but in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrears for a period exceeding three months, The facts as now ascertained show that although several persons may have been shown to have joined the society as members on December 4, there were only six: members who had paid their subscription so as to be eligible to vote at the meeting. In my opinion therefore it is improper to take into consideration the names of the persons who were on: the role but who had not paid their subscription or were in arrears for over three months. In order to determine the quorum it is necessary to find out who were the persons eligible to attend the meeting; the latter part of Section 15 quoted above shows that in all proceedings under the Act a member whose subscription had been in arrear for over three months should not be counted as a member. If there were six members only who are to be treated as members and four of these were present at the meeting, it is clear that it cannot be contended that there was no proper quorum for the meeting.

8. It was next argued that in that event the election of eight members at the meeting was irregular because that included persons who were not members, and under rule 5 the managing committee must consist of not more than fourteen and not less than five members of the society. On behalf of the plaintiff it was contended that this election of persons, whose subscription was in arrears for over three months, was therefore invalid. This point is not free from doubt. However it is not necessary to consider this aspect of the case in view of the meeting of October, 1939.

9. In that connection the admitted facts are that on September 24, 1939, there were sixty-seven persons on the register of the society. Out of these ten had paid their subscription or were not in arrears for a period exceeding three months. A' requisition for the meeting was signed by eighteen persons which included five of the above-mentioned ten. Under the orders of the then functioning managing committee a notice was issued by the Secretary to all persons on the register of the society calling a meeting on October 15, 1939. Before that date twenty-eight members had paid their subscription. At that meeting twenty-four persons, all of whom had paid

all their arrears of subscription, were present and the four resolutions mentioned in the notice convening the meeting were passed. The plaintiff has challenged that this meeting was irregularly convened. In para. 9 of the plaint it is contended that the proceedings of this meeting were of a special or extraordinary nature. The requisition was signed by eighteen members of whom thirteen were disqualified by reason of Section 15 of the Act. The requisition was therefore improper or illegal. It is not disputed that if the proceedings of this meeting are held to be binding the plaintiff has no1 case.

10. By-laws 8, 9 and 10 were relied upon in this respect. They run as follows:--

8. Ordinary business meetings may be called from time to time at the instance' of the managing committee as the business of the society demands. The Hon. Secretary shall give at'least ten days notice of such meeting.

9. Extraordinary business meeting may be called by the managing committee to deal with emergent work. The Hon. Secretary] shall give not less than two days notice of such meeting.

10. Ordinary business meetings may also be called' on the requisition in writing of not less than one-quarter of the members of the society, the meeting to be called withini a month of the receipt of the requisition.

11. It was argued that this meeting was called on a requisition submitted under by-law 10 and acting under the powers given under by-law 8. It was argued that at such a meeting extraordinary business could not be transacted. It was further argued that the four resolutions contained in the notice convening the meeting indicated that the business was of an extraordinary nature and could not be transacted at an ordinary business meeting convened under by-law 8. In my opinion this argument is unsound. The words used, in framing by-laws 8, 9 and 10 are not happy, and it is evident that there is considerable confusion of thought in framing those by-laws and in the arguments based thereon. By-laws 8 and 10 are in respect of ordinary meetings. By-law 8 deals with the meetings called by the managing committee itself and by-law 110 deals with meetings called on requisitions of members. There is no provision for calling an extraordinary meeting. By-law 9 provides for an extraordinary business meeting to deal with emergent work. It is, therefore, clear that there is no distinction between ordinary business and extraordinary business or the meeting being ordinary meeting or extraordinary meeting. Apart from these three by-laws there are no other rules or by-laws in respect of calling general meetings of the society. The term extraordinary meeting; is understood in a different way under the Indian Companies Act. There an extraordinary general meeting is called for the purpose of passing a special; resolution. At an ordinary general meeting also business other than of sanctioning dividends, consideration of accounts, balance sheets and reports of the directors and auditors, election of directors and other

officers in place of those retiring by rotation, and fixing the remuneration of the auditors can be transacted. But all that business is not ordinary business of the meeting but may be described as extraordinary or special business. Under the circumstances the meeting when called in the present case was called as a result of the requisition submitted under by-law 10 by the managing committee under by-law 8. That meeting was called for the purposes mentioned in the notice, The members were therefore not taken by surprise and they were informed definitely what matters were going to be discussed at the meeting. The resolutions passed at the meeting, although they were not of a routine nature, could be validly passed and in my opinion it is not proper to contend that it was outside the scope of by-law 8.

12. The next contention was that this meeting was improperly convened. In my opinion that argument is unsound. On the admitted facts on September 24, 1939, ten persons had paid,their subscriptions and were not in arrears for a period exceeding three months. According to Section 15 those were the members therefore who could send a requisition. Under by-law 10 one quarter of the members of the society had to send a requisition. It was sent by eighteen members which included five out of those ten. If the requisition were sent by those five persons alone, there could be no objection to the requisition. Because it was signed by some more who were on the role of the society but Who were not entitled, to vote at the meeting, the requisition did not become bad. There is no dispute about the proceedings of this meeting. The plaintiff has challenged only the requisition. On the admitted facts it is clear that the plaintiff will be unable to challenge the voting that took place at that meeting, and the resolutions passed thereat. If, therefore, this meeting was properly convened, there could be no doubt that the actions of the defendants as members of the managing committee were duly ratified and the society as such had at that meeting taken the necessary steps to do so. The election of the defendants as members of the managing committee was also ratified by one of the resolutions duly passed at that meeting. In view of that resolution therefore it is clear that the plaintiff's contentions must fail.

13. [After recording findings on the issues the judgment concluded.]

14. I have recorded these findings which are directed against the society on the footing that the society has challenged the same. As I have already pointed out, the society is not a party to this litigation and in fact has not challenged them. It is the plaintiff alone who has purported to challenge the acts as not binding on the Society. The result is that the plaintiff's suit is dismissed with costs.

Cases Referred.

1(1923) 25 Bom. L.R. 689
2(1877) 6 Ch. D. 70
3[1902] A.C. 83

4(1847) 1 Ph. 790