

BOMBAY HIGH COURT

T.H. Vakil

Vs.

Bombay Presidency Radio Club Ltd

O.C.J. Suit No. 922 of 1944

(Blagden, J.)

11.08.1944

JUDGMENT

Blagden, J.

1. This is a suit and motion brought by a member of the Bombay Presidency Radio Club, Ltd., against the club asking for a declaration that a ruling given by the chairman of the club at its last annual general meeting was invalid and for consequential relief. The material facts are not in dispute and it has been agreed that the hearing of the motion may be treated as the trial of the suit.

2. What happened was this. The general meeting was held on the 19th of last month at 6 p.m. pursuant to a notice dated June 14. One item on the agenda contained in the notice was : "to receive the report of the Managing Committee and the audited balance sheet as at December 31, 1943, and the Income and Expenditure Account for the year ended December 31, 1943, and to approve and adopt the same". At the meeting, the Chairman moved, himself, "that the report of the Managing Committee and the audited balance sheet as at December 31, 1943, and the Income and Expenditure Account for the year ended December 31, 1943, be received and adopted." That proposition was duly seconded, and thereupon a Mr. P.D. Shamdasani moved an amendment in terms which were identical with the motion of the proposition moved by the Chairman up to and including the words "be received." Mr. Shamdasani's amendment, however, then proceeded "but not adopted and that a Committee consisting of the following namely" (then follows a list of the names of five gentlemen, first and foremost of whom was that of Mr. P.D. Shamdasani himself) "be and is hereby appointed to look into them and the Accounts and to report thereon within one month from this date." The seconder of the chairman's resolution then raised a point of order and after some discussion the chairman ruled the amendment out of order. Now the question before me is whether his ruling was right or not, and (if it was wrong), what ought to be done about it. The subsequent proceedings of the meeting took, as far as I can see, a

perfectly logical course because the Chairman's resolution was eventually put to the meeting and lost. This would seem to indicate that the majority of the members present were dissatisfied with the accounts and presumably would have voted in favour of Mr. Shamdasani's amendment had it been allowed to be put to the meeting. Curiously enough there is no decided authority directly bearing on the present question. But one very often finds that the more simple a question, the more difficult it is to find an authority about it. I understand the general rule on the point to be this : first, that amendments must be germane to the subject-matter of the proposition and, secondly, that they must not be, in substance, a direct negative of it. If, for example, a resolution were that a particular piece of business be now considered, it would be in substance a direct negative to move that it be considered 999 years hence. One thing that has been suggested about this amendment is that it is a direct negative. I do not think this is correct. Instead of saying "be not received" it expressly proposed that the accounts shall be received, but that instead of adopting the same the company should appoint a committee to go into them and to report thereon. I do not think that it can be said to be a direct negative of the proposition originally made. The report of the proposed committee might be that the accounts were perfectly in order and that, to use a popular phrase, "everything in the garden was lovely." If that had been the report, no doubt the club would have willingly adopted the accounts. Then can it be said that the amendment is not reasonably germane to the original proposition? On that point a very interesting opinion is expressed in the last edition of Palmer's Company Precedents at p. 647. Though it is not a judicial pronouncement, it is the opinion of a father and son both of whom have had a great deal of experience in company work and the senior of whom is now a County Court Judge It therefore has some degree of authority. This is the statement which the learned authors make:

No amendment can be moved which goes beyond the notice convening the meeting or, in the case of an ordinary meeting, beyond the scope of the ordinary business which by the articles may be transacted thereat without special notice. Thus, in the case of an ordinary meeting, where a motion is submitted that the report and accounts be received and adopted, an amendment that the directors be removed from office, or that the articles be altered, would be irregular ; but an amendment to the effect that the accounts and balance sheet be received, hut not adopted, and that a committee of shareholders be appointed to look into them and. report would be competent.

That correctly lays down the law as regards germanity of the amendment and as to its coming within the scope of the business of a meeting convened for the purposes for which this meeting was convened. Where the agenda proposed the reception and adoption of accounts, I do not think the meeting is bound either to reject or accept them. I think that an amendment of this kind might be moved, subject to any statutory provisions of the Indian Companies Act ; in the case of a meeting of a private association, unfettered by statute, I think that the members must expect the possibility of an amendment such as this being moved and the absent members could not complain if such an amendment were moved and carried. The one serious matter that could be urged by the company in the

endeavour to uphold the Chairman's ruling is that the amendment as proposed would, if carried, result in a resolution that the meeting was incompetent to pass. The reason why it is contended that the resolution if passed would be incompetent is this, that Section 142 of our Companies Act, which deals with the appointment by the company of committees of inspection requires the appointment by special resolution. (See Sub-section(1)). If, however, one reads the remaining sub-section one finds that inspectors so appointed, that is appointed by special resolution, shall have the same powers and duties as inspectors appointed by the Central Government, and if one looks elsewhere in the Act (Section 140) one finds the latter class of inspectors have power to examine persons on oath and to enforce production of the company's books under penalty. Moreover, it is to be, observed that the provision that the company may appoint an inspector by special resolution, and that if it does so, the person appointed shall have certain drastic powers, does not necessarily imply that it may not do so by ordinary resolution, subject to this, that the person appointed by ordinary resolution would not have those drastic powers. At all events, His Honour Judge Topham seems to be of opinion that the company could pass what would in effect be a resolution for a committee of inspection by an ordinary resolution at an ordinary meeting. Other text-writers do not take such a definite view of the matter. The well-known authority, Sir Frank Gore Browne, whose last edition was edited by His Honour Judge Haydon, seems to have been of opinion that to carry a resolution for a committee of inspection it would be necessary to give notice. The same opinion seems to be shared by Mr. Albert Crew in his book "Conduct of Meetings." In Sarkar & Sen, the question is described as "doubtful." In the articles of this particular company, the statutory form of Article 101 has been adopted as Article 92 and according to that article, the books of the club are not to be inspected by any member of the club not being a member of the committee, except as provided by law or authorized by the committee or by a resolution of the club in general meeting. It does not say that the resolution should be a special resolution nor, in terms, that the resolution should be one pursuant to notice. On the whole, I have come to the conclusion that the Chairman's view was mistaken, and that it was competent by an amendment of his proposition for the company to appoint what would in effect be an informal committee of inspection ; I say "informal" because the committee, if so appointed, would not have had the powers which are conferred on a committee appointed as contemplated by Section 142 or as conferred on Government Inspectors of Companies. Now the question is what the effect of making the declaration which I am asked to make will be. The only authority which has any bearing on that, as far as I know, is *Henderson v. Bank of Australia*¹ There an amendment by shareholders was improperly ruled out of order and subsequently the unamended proposition was put to the meeting and carried. In that respect the facts are distinct from those of this case where the unamended resolution was put to the meeting and lost. But I think this is a distinction without a difference because the principle, as I understand it, which is stated in the judgment of Lord Justice Lopes, is that the; refusal by the Chairman to put an amendment to the meeting "invalidates the proceedings" by which are meant the

subsequent proceedings as regards that particular question ; Lord Justice Lopes says "It is to my mind perfectly clear that it does." The reason is, as I take it, that the members who were present at the meeting have expressed their opinion on the substantive motion without having had an opportunity to express their opinion on the amendment and as a result of that it may well be (I do not say it is) that the real sense of the meeting has not yet been ascertained. The proper course for me is to make the declaration which I am asked to make under prayer (a) of the plaint and. make an order as asked under prayer (e). I direct a general meeting to be convened for the purpose of receiving and adopting the documents mentioned in prayer (e) at fourteen days notice to be given by the defendant company. Recirculation of audited accounts, balance sheet, and report may be dispensed with. I declare that the resolution refusing to accept or adopt the accounts etc. was

¹(1890) 45 Ch. 330

invalid. Costs against the defendant company to come out of the company's assets. Interim injunction dissolved.