

BOMBAY HIGH COURT

Walchandnagar Industries Ltd

Vs

Ratanchand Khimchand Motishaw

(Chagla, C.J. Shah, J.)

22.09.1952

JUDGMENT

Chagla, C.J.

(1) This appeal raises a very interesting and important question as to the construction of Section 86F, Companies Act. The facts are proved and not disputed. The respondent was a director of the Walchandnagar Industries, Ltd. In June 1951 he entered into a contract with the company for the supply of one tin of ghee, and the question that arises is whether by reason of the respondent entering into this contract he has ceased to be a director of the company. Section 86F imposes a personal disability upon a director of the company and the disability is that a director of the company, or the firm of which he is a partner or any partner of such firm, or the private company of which he is a member or director is precluded from entering into any contracts for the sale, purchase or supply of goods and materials with the company. The disqualification is not absolute, because the section provides that with the consent of the directors, a director can enter into contracts which are prohibited under this section. It is clear that in enacting this provision, which is a novel provision and finds no place in the English Companies Act, the Legislature wanted to suppress a particular mischief had a particular object in mind. A director of a company occupies a responsible position and the Legislature wanted that while occupying that position he should not be placed in a situation where there would be a conflict between his interest and his duty. His duty would be to his company of which he is director. His interest would be to enter into a profitable contract with the company. It is also clear that a director holding the position that he does can obtain undue benefit by entering into profitable contracts with the company, and in order to suppress that mischief and to achieve the object which the Legislature had in mind, Section 86F was enacted. It is a well settled

canon

of construction that when we are considering a remedial measure, we must give to the provision of law as wide an interpretation as possible, of course consistently with the language used by the

Legislature, and if Section 36F is remedial in its nature, which it undoubtedly is, then it would be wrong to give it a restricted construction. On the contrary we should try and give it as wide an interpretation as possible.

(2) Now, the very short- question that arises on this appeal is whether the consent contemplated, by Section 86F is a general consent or a consent which is referable to a particular or specific contract or contracts. The contention of Mr. Mody on behalf of the respondent is that the language used by the Legislature is general and there is no reason why we should limit the expression "consent" by adding to it the adjective "specific". Mr. Mody says that if we were to construe the section in that light, we would really be re-writing Section 86F. Now, if Section 86F imposes a personal disability upon the directors, then to construe Section 86F in the manner suggested by Mr. Mody, viz. that by a general resolution the board of directors can remove the personal disability imposed upon the directors of the company under Section 86F, would be in effect to give the power to the board of directors to repeal Section 86F if they were so minded. They could write off Section 86F from the Companies Act. That would be a construction entirely inconsistent with the object of the section and the mischief aimed at. Further, "consent" must imply a knowledge of the necessary facts and materials which leads to the consent. Consent cannot be given in the abstract or in vacuo. It can only be given in reference to the particular contract which a director intends to enter into. Therefore, Section 86F requires that the board of directors should consider both the nature of the contract that the director wants to enter into and also the case of the particular director who wants to enter into that contract before the consent is given. It is only on a consideration of both these factors, viz the nature of the contract and the qualifications of the director, that a proper consent within the meaning of Section 86F can be given for entering into a contract. If Mr. Mody's contention were to be accepted, the board of directors, without considering what the nature of the contract was, without considering the value, without considering the particular material in respect of which the contract was to be entered into, in application and generally can agree to a director or directors entering into contracts with the company. In other words, power is given according to Mr. Mody under Section 86F to remove the personal disability which the Legislature has imposed upon the directors by Section 86 F. In our opinion, the Legislature having imposed a personal disability upon the directors under Section 86 F, the only power that is given to the board of directors is not to remove that personal disability generally, but to remove the personal disability with regard to a particular contract or contracts with regard to which the board of directors has applied its mind.

(3) The facts in this particular case are extremely striking and significant. The respondent wrote to the company on 30-4-1941, giving a list of the companies of which he was a director and also a list of the firms of which he was a partner for the purpose of giving particulars under Section 87(1). Further, he gave a general notification under Section 91 A that he should be considered

interested in any subsequent transactions with the companies and firms whose names he had mentioned. It should be noted that the respondent never applied for any consent under Section 86 F and yet at the meeting of the board of directors of 27-5-1941. It was resolved that as required by Section 86 F, Companies Act the directors should give their consent to various directors including the respondent to enter into a contract for sale, purchase or supply of goods and materials with the company. Therefore, this is a striking instance which goes to show that the board of directors never applied their mind to the requirements of Section 86 P, that they gave a consent when the consent was not asked for by the respondent, and high theartedly, without proper thought or consideration, a grave personal disability imposed upon the directors by the Legislature was removed by a stroke of the pen by the board of directors. If we were to accept Mr. Mody's contention, the result would be that the board of directors of all the companies in India can pass general resolutions of this character removing the disability from all the directors and permitting directors to enter into as many contracts with the company as they liked and any control over such transactions would be removed as far as the directors are concerned, (4) On the construction Mr. Mody has strongly relied on the fact that the Legislature has used the plural and not the singular. The Legislature has prohibited the entering into of any contracts and not any contract, and Mr. Mody says that the use of the plural was advised and the reason why the plural was used was to permit the board of directors to give consent with regard to the entering into of contracts. Now, there is no particular significance attached to the use of the plural in this context. The plural would undoubtedly include the singular and the prohibition is with regard to the entering into of any contracts or contract, and having used the plural, Section 86 P goes on to exempt from the class of prohibited contracts any contract or agreement for the sale, purchase or supply entered into before the commencement of the Companies (Amendment) Act, 1936, Therefore, the reason for this particular form of drafting seems to be that the plural was used in contrast to the singular which is used in the proviso which follows and which proviso exempts from the class indicated in the main section the contract or contracts entered into prior to the Companies (Amendment) Act, 1936.

(5) Then Mr. Mody says that If we were to place this construction on Section 86 F, it would lead to conflict with Section 91A. Section 91A deals with entirely, a different subject-matter. The subject-matter of Section 91A is disclosure of interest by directors, and it provides that every director who is directly or indirectly concerned or Interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement, and the consequence of contravention is that the director is liable to a fine. The consequence of a contravention of Section 86 F is much more drastic

because under Section 86-T (h) the office of the director becomes vacant if he acts in contravention of Section 86 F. What Mr. Mody says is that if a contract is not determined on at the meeting of the directors, but is subsequently entered into, then the director can disclose his interest at the first meeting of the directors after the contract has been entered into and that disclosure would be sufficient disclosure for the purpose of Section 91A. But Mr. Mody says how would that be possible if the director were not to take the consent of the board of directors and entered into a contract which contract falls under Section 86P. Mr. Mody says it might not have been possible for him to take a specific consent with regard to that particular contract, and if a general consent is not permissible then although Section 91A makes it possible for him to disclose his interest subsequently he would not be able to disclose that interest or the disclosure of the interest would be Immaterial and irrelevant because before that he would cease to be a director under Section 86 F. Section 91A itself does present certain difficulties with regard to interpretation. For instance, there is a proviso by which a general notice can be given that a director is a director or a member of any specified company or that he is a member of a specified firm, and such a general notice does not require the director to give any special notice relating to any particular transaction with such firm or company. But the proviso does not refer to a case where the contract is with the director personally or when the director is personally interested and not as a director or a member of a specified company or a member of any specified firm, and it seems on the construction of Section 91 A that perhaps a general notice will not be sufficient when a director is personally interested in a contract. I am only pointing out one difficulty with regard to the interpretation of Section 91A. But we are not called upon in this appeal to construe Section 91A. Sections 91A and 86F deal with different- subject matters & the consequences of contravention of these two sections are different and the penalties indicated by the Legislature are also different. Contravention of Section 86 P results in the office of the director becoming vacant. The failure to disclose interest under Section 91 A does not result in the office of the director becoming vacant, but he makes himself liable to the payment of a penalty. Therefore, there may be a case where as a result of consent not being taken under Section 86 F the director ceases to hold office, although if he had taken the consent he could have made the disclosure with regard to his interest at a subsequent meeting under Section 91 A. Therefore there is no such conflict between Sections 86P and 91A which would require at our hands a construction of Section 86 F which will reconcile it with Section 91 A.

(6) Then Mr. Mody has drawn our attention to certain difficulties and anomalous consequences that would result by reason of the construction we are placing upon Section 86 F. Mr. Mody says that there are many petty contracts which a director may have to enter into with his company and with regard to which it would be impossible for him to take specific consent from time to time, and yet If the construction of Section 36 F be what we are proposing to put upon it, it would

either make it impossible for the director to enter into these petty contracts or, if he did enter into them, would result in his vacating his office. It is never a safe guide for a construction of a section merely to look at certain anomalies that may result from a particular interpretation being put upon the section. It is true that a Court must, if it can possibly do so, give an interpretation to a section which would not result in difficulties in the working of that section. But, on the other hand, many legislations, and specially modern legislations, have been so framed and so drafted that some anomaly or other is inevitable, and when such anomalies present themselves to the Court, the duty of the Court is to draw the attention of the Legislature to the removal of these anomalies and not to remove them itself by giving a construction contrary to the intention of the Legislature. It is perfectly true that the fact that no limit is placed by the Legislature upon the extent or value of the contract under Section 86 F may result in serious difficulties and it would have been much advisable for the Legislature to have provided that all contracts are not prohibited under Section 86 F, but contracts exceeding a certain value and extent, and if that had been done there would have been no difficulty with regard to Section 83 F. But we are not prepared at the instance of Mr. Mody, in order to remove this anomaly, to give a carte-blancs to the board of directors to remove the personal disability upon the directors and in effect to repeal Section 88 P by passing a general resolution giving consent to a particular director to enter into any and all contracts for sale, purchase or supply of goods, whatever the value, the nature or the extent of the contract may be.

(7) The final argument of Mr. Mody is that we should not speculate as to the intention or the object of the Legislature and we must construe Section 86F, as we find it. It is perfectly true that the object of the Legislature must be gathered from the language used by it and that it is not open to the Court to alter or amend that language in order to make it consistent with what the Court thinks might be the object of the Legislature in passing 3 particular measure. But when the Court is called upon to give a wide or limited interpretation to a particular expression & when that expression is capable of both those interpretations, sure-fly it is open to the court to consider what was the Object of the Legislature and what was the mischief aimed at, and the Court must try and give that construction to a particular expression which will be more consistent with the suppression of the mischief rather than that mischief being allowed to continue uncontrolled. In this particular case the Legislature has not clearly indicated whether the consent referred to in Section 86 P is a general consent unrelated to the contract to be entered into by the director or the consent is with reference to a specific contract or contracts, and in the absence of any clear Indication by the Legislature we must try and give a construction more in accordance with the object intended by framing Section 86F rather than a construction which would defeat that object.

(8) Mr. Mody has relied on an English case reported in -- "*Tyler v. Ferris*',. The English Appeal

Court was called upon to construe Section 14, Weights and Measures Act and that section provided:

"An inspector of weights and measures may with the consent of the local authority, prosecute before a Court of summary Jurisdiction or justices any information, complaint or proceeding arising under the Weights and Measures Act or in the discharge of his duties as such Inspector";

and the question that arose was whether a separate consent had to be given in each case or whether the Inspector could be authorised by the local authority to conduct all prosecutions, and the English Court of appeal held that the section did not provide that a separate consent was to be given in each case and if that was the Intention of the Legislature a very much clearer expression of that intention would have been given in that section. Mr. Mody strongly relies on this Judgment which according to him establishes that when the word "consent" is used without any further indication by the Legislature, "consent" must be construed to mean general consent. Section 14, Weights and Measures Act and Section 86 P, Companies Act are not in 'pari materia'. Section 14, Weights and Measures Act deals with the authority to be conferred upon a particular officer to launch a prosecution. There is no question of any disability being imposed by the Legislature nor is there any particular object to be achieved or any mischief to be suppressed, and when it was merely a question of sanctioning a prosecution, the Court of appeal in that particular context held that it was not necessary that the local authority should give a specific and separate consent with regard to each prosecution. It is difficult to contend that in the light of this decision we must hold that the expression "consent" has the same connotation in Section 86 F although Section 83 F is dealing with entirely a different subject-matter.

(9) The court below held in the suit filed by the plaintiff for a declaration that he had not ceased to be a director of the first defendant company, in favour of the plaintiff, and gave to the plaintiff the declaration that he sought. It is from that decision that the company has come in appeal before us, and although it may be unfortunate that the plaintiff should be disqualified by reason of a very small and petty contract which he entered into, in allowing the appeal we are enforcing the section, although realising that it may cause hardship in this particular case to the plaintiff, in the larger and wider interest which the Legislature had in mind and in order to prevent directors from using their responsible office to their own advantage. If companies are to be properly administered in this country, the Board of Directors must apply their minds to the specific instances where directors require their consent for entering into contracts with the company.

(10) The appeal will, therefore, be allowed with costs. Suit dismissed with costs.

(11) Appeal allowed.

Cases Referred.

1(1906) I K B 94 (A)