

PETITIONER:
R. RANGACHARI

Vs.

RESPONDENT:
S.SUPPIAH & ORS.

DATE OF JUDGMENT 15/09/1975

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
ALAGIRISWAMI, A.
GOSWAMI, P.K.

CITATION:
1976 AIR 73 1976 SCR (2) 210
1975 SCC (2) 605

ACT:
Indian Companies Act, 1956, s. 186-Scope of

HEADNOTE:

Under s. 186(1)(a) of the Companies Act, if for any reason it is impracticable to call a meeting of the company, other than an annual general meeting, or to hold, or conduct it in the manner prescribed by the Act or the articles of the company, the Court may order the meeting to be called, held and conducted in such manner as the Court thinks fit; and s. 186(2) provides that such a meeting should be deemed to be a meeting of the company duly called, held and conducted.

The Board of Directors of a company called an extraordinary general meeting of the company for the purpose of considering petitions filed by shareholders regarding the managing directors. Apprehending trouble in the holding and conducting of the meeting two share-holders filed a petition in the High Court under s. 186 of the Companies Act praying for the appointment of an advocate Commissioner as Chairman of the meeting, which was called. The High Court, in letters Patent appeal, granted the prayer.

In appeal to this Court it was contended, inter alia that the power under s. 186 of the Act could not be exercised until it was found that it was impracticable to call the meeting and to hold and conduct it in the manner prescribed by the Act or articles of association, and that the High Court had not jurisdiction merely to appoint a Chairman of the meeting already called.

Allowing the appeal to this Court,

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HELD: Under s. 186 the Court may order a meeting of the Company to be called, held and conducted, in such manner, as the Court thinks fit in any one or more of the contingencies, namely, if for any reason it is impracticable (1) to call a meeting of the company other than an annual general meeting. (ii) to hold the meeting in the manner prescribed by the Act or the Articles of Association; and (iii) to conduct the meeting of the company in the same manner. The use of the word 'or' in the first part of sub-s. (1) (a), may, therefore, be disjunctive or conjunctive as

interpreted above but the use of the word and between the words 'held and conducted' in the same clause shows that the order under cl. (a) has got to be made for all the three purposes of calling, holding and conducting and not merely for holding or conducting the meeting. Therefore, the Court has no power to make any order regarding the holding and conducting of any meeting which has already been called, without ordering a meeting of the company to be called, in place of the meeting already called. The language of sub-s. (2) also fortifies the above interpretation.

Since there was no prayer for an order of calling a meeting the application to the Court under s. 186 was not maintainable. [802A-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1136 of 1975.

Appeal by Special Leave from the Judgment and order dated the 11th day of March, 1975 of the Madras High Court in C.S.A. No. 64 of 1974.

S. V. Gupte, Mrs. S. Bhandare for the appellant.

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S. Govinda Swaminath. Raghavan, R. Chandrasekhar and Jayaram for respondent Nos. 1 to 2.

M. C. Bhandare, A. T. M. Sampath and M. M. L. Srivastva for respondent No. 3.

The Judgment of the Court was delivered by UNTWALIA, J. The question which falls for our determination in this appeal by special leave is as to what is the meaning and scope of s. 186 of the Companies Act, 1956 hereinafter called the Act. For the determination of the said question it will suffice to state only a few facts from the judgments of the Madras High Court. There were two Managing Directors of Century Flour Mills Ltd. respondent no. 3. Their names are S/Shri P. Govindaswamy and S. P. Sithambaram. Both of them had been duly appointed as such in the year 1972. They subsequently fell out. In August, 1974 certain shareholders of the company including respondents 1 and 2 lodged a requisition under section 169 of the Act for the calling of an extraordinary In general meeting of the company for removal of Govindaswamy. Certain other shareholders lodged a similar requisition for removal of Sithambaram from the post of Managing Director. Both the requisitions were considered by the Board of Directors in their meeting held on 19-8-1974. As per the requisitions, they called an extraordinary general meeting of the company to be held on 14-9-1974. The meeting was directed to be held at the residence of one of the shareholders of the company instead of its registered office. The shareholders were divided into two factions belonging to the two groups of the Managing Directors. Apprehending very many difficulties and troubles in the holding and the conduct of the meeting on 14-9-1974, respondents 1 and 2 filed an application under section 186 of the Act, Company Petition No. 85/1974 in the Madras High Court. They prayed to the Court to appoint an Advocate-Commissioner as Chairman of the meeting to be held on 14-9-1974 so that the proceedings may be conducted in a regular manner. The only respondent impleaded in the said petition was the company which filed a counter-affidavit to resist the prayer of respondents 1 and 2. A learned single Judge of the High Court took the view that power under section 186 of the Act could be exercised even where a meeting had already been called, but it was impracticable to

hold or conduct the meeting. In other words, the learned Judge was of the opinion that the Court even without ordering a meeting of the company to be called could appoint a person to be the Chairman of the meeting. But on appreciation of the facts of the case in the light of certain decisions of the High Courts, he came to the conclusion that it was not impracticable to hold or conduct the meeting and hence dismissed the application filed by respondents 1 and 2.

O. S. Appeal No. 64/1974 was filed in the High Court under clause 15 of the Letters Patent against the order dated 11-9-1974 of the learned single Judge. By an order made on September 12 1974 a Bench the High Court stayed the convening of the meeting called to be held on 14-9-1974. It appears that in spite of the service of me order

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dated 12-9-1974 on September 13, the meeting was held on 14-9-1974 CMP No. 10935/1974 was taken out in the form of a Judges' summons under Rule g of the Company Code Rule, 1959 to declare the meeting held on 14-9-1974 as void and the resolutions passed therein as illegal and inoperative. The said appeal and the CMP alongwith other CMPs which are not necessary to be referred to in this judgment were heard by a Bench of the High Court presided over by the learned Chief Justice. The Bench allowed CMP 10935/1974, put back the parties in the same position as they stood immediately prior to the service of the order dated 12-9-1974 and declared that the meeting held on September 14, 1974 and the resolutions passed thereunder would have no effect whatsoever. By a separate judgment, Appeal No. 64/1974 was also allowed by the Division Bench. It agreed with the single Judge as regards the meaning and scope of section 186 of the Act but differed from him on the merits of the case. They appointed an Advocate of the Court as the Advocate-Chairman to hold and conduct the meeting and directed that the meeting would take place at the premises of the registered office of the Company.

The sole appellant in this appeal is a shareholder of the company. Feeling aggrieved by the orders of the Division Bench of the High Court in CMP No. 10935/74 and in OS Appeal No. 64/1974 he filed special leave applications in this Court seeking leave to file appeals in both the matters. By order dated 29-8-1975 a Bench of this Court dismissed as withdrawn SLP No. 1156/1975 arising from the judgment and order dated 11-3-1975 of the High Court in CMP No. 10935/1974. Special leave was granted from the judgment and order dated 17-3-1975 of the High Court passed in OS Appeal No. 64/1974.

Mr. S. V. Gupte, learned counsel for the appellant urged the following three points in support of the appeal.

- (1) That power under section 186 of the Act could not be exercised until it was found that it was impracticable to call a meeting of the Company other than an annual general meeting and to hold and conduct the meeting in the manner prescribed by the Act or the Articles of the company. The Court had no jurisdiction merely to appoint a Chairman of the meeting without an order for the calling of the meeting.
- (2) That the High Court was wrong in holding that it was impracticable to hold or conduct the meeting of the company which had already been called.

- (3) That during the pendency of the appeal in the High Court, Company Law Amendment Act of 1974 came into force on 1-2-1975. The powers and jurisdiction of court under section 186 stood transferred to Company Law Board by the said amendment. The court, therefore, had no power to make an order under section 186 on 17-3-1975.

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Since in our opinion the first point urged on behalf of the appellant is well founded and has to be accepted as correct, neither of the other two points need any determination or answer and we express no opinion in respect of them.

Section 186 of the Act as it stood at the relevant time reads as follows:

"Power of Court to order meeting to be called.(1)

If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles, the Court may, either of its own motion or on the application of any director of the company, or of any member of the company who would be entitled to vote at the meeting, -

- (a) order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit; and
- (b) give such ancillary or consequential directions as the Court thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting the operation of the provisions of this Act and of the company's articles.

Explanation-The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any such order shall, for all purposes, be deemed to be a meeting of the company duly called" held and conducted."

It corresponds with slight variation to section 79(3) of the Companies Act, 1913 and section 135 of the English Companies Act, 1948. The plain meaning of section 186 is that the court may order a meeting of the company to be called, held and conducted in such manner as the court thinks fit in any or more of the following contingencies.

- (1) If for any reason it is impracticable to call a meeting of the company other than an annual general meeting.
- (ii) If for any reason it is impracticable to hold the meeting of the company in the manner prescribed by the Act or the Articles.
- (iii) If for any reason it is impracticable to conduct the meeting of the company in the same manner.

on the occurring of any or more of the said contingencies the court has to order the calling of a meeting of the company and its holding

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and conducting in such manner as the court thinks fit. The use of the word 'and' between the words 'held' and 'conduct'

in clause (a) of sub-section (1) clearly shows that the court has no power to make any order regarding the holding and conducting of any meeting which has already been called without ordering a meeting of the company to be called in place of the meeting already called. If an order under clause (a) has been made such ancillary or consequential directions as the court thinks expedient could be given under clause (b) including a direction within the meaning of the explanation appended thereto. The language of sub-section (2) further fortifies the above interpretation of sub-section (1) and makes any meeting called, held and conducted in accordance with an order under sub-section (1) to be a meeting of the company duly called, held and conducted. The use of the word or in the first part of sub-section (1) may be disjunctive or conductive in the manner we have interpreted above. But undoubtedly the order under clause (a) has got to be for all the three purposes and not merely for holding or conducting of the meeting.

In Company Petition No. 85/1874 no prayer was made to the Court for an order for the calling of a meeting of the Company nor has any such order been made by the High Court in appeal. In our opinion, therefore, the application as presented in the Court under section 186 of the Act was not maintainable. No prayer was ever made to the Court for an order that a meeting of the company be called. A fresh application, it goes without saying, if necessary, can be made under section 186 of the Act. But then it will have to be made to the authority mentioned in the amended section.

For the reasons stated above, we allow this appeal set aside the judgment and order of the High Court passed in OS Appeal No 64/1974 and dismiss Company Petition No. 85/1974 as being not maintainable. We shall direct the parties to bear their own costs throughout.

P.B.R.

Appeal allowed.

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