

PETITIONER:
SHRI NARENDERA KUMAR AGRAWAL

Vs.

RESPONDENT:
SMT. SAROJ MALOO AND ORS.

DATE OF JUDGMENT 20/09/1995

BENCH:
NANAVATI G.T. (J)
BENCH:
NANAVATI G.T. (J)
ANAND, A.S. (J)

CITATION:
1995 SCC (6) 114 JT 1995 (7) 369
1995 SCALE (5) 519

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVATI, J.

Leave granted

These two appeals are filed against the judgment and order dated 28.4.92 passed in Company Appeal No.1 of 1991 and the order dated 4.8.92 passed in Civil Review No.55 of 1992 by the High Court of Patna.

The Maghadh Stock Exchange Association (hereinafter referred to as 'MSEA') is registered as a company under Section 25 of the Companies Act (hereinafter referred to as the 'Act'). It is a company limited by guarantee and not having a share capital. Appellant, Narendera Kumar Agarwal, lodged with MSEA on 9th February, 1989 an instrument of transfer/nomination for transferring his interest as a member in the Company in favour of Respondent No.1, Smt. Saroj Maloo. On 10.8.89 she was informed by MSEA that transfer of membership by nomination in her favour was not possible in absence of any provision to that effect in its Articles of Association. Aggrieved by the refusal Smt. Saroj Maloo filed an appeal under Section 111 of the Act to the Company Law Board (hereinafter referred to as the Board). The stand taken by MSEA before the Board was that in the Articles of Association there was no provision regarding nomination of membership leading to transfer of the same in favour of nominee, prior to June 1989 and that in case of a company limited by guarantee without share capital like MSEA membership cannot be transferred by nomination until a clause providing for nomination is incorporated in its Articles of Association. It was also contended that a request for nomination could not have been received and considered till a provision in that behalf was incorporated in the Article 27A, the request to transfer could not be granted as it did not fulfil the requirements prescribed by that provision. The action of MSEA was also sought to be supported on the ground that Shri Narendera Kumar Agarwal

had subsequently cancelled his request contained in his made by a letter dated 6.2.89 to transfer his interest in favour of Smt. Saroj Maloo. The Board was of the view that if there is no provision for transfer of other interest in the Articles of Association of a company limited by guarantee and having no share capital then the member cannot transfer his interest to a third person. The Board held that in absence of such a provision and because Smt. Saroj Maloo failed to establish her case of proper lodgement of the transfer of other interest of the member as required by the amended Article 27A of the Articles of Association the action of MSEA was justified. It, therefore, dismissed her application.

She preferred an appeal before the High Court of Patna against the said order passed by the Board. The High Court held that no distinction can be made between transfer of share of a limited company limited by shares and transfer of other interest of a member in a company limited by guarantee. Following the decision of this Court in V.B. Rangaraj vs. V.B. Gopalkrishnan and others reported in 1992 (1) SCC 160 wherein it is held that the only restriction of the transfer of the shares of the company is as laid down in its Articles of Association and a restriction which is not specified in the Article is not binding either on the company or on the shareholders, the High Court held that as there was no bar of transfer by nomination of other interest in the Articles of Association of MSEA, refusal by MSEA was not justified and legal. It also held that subsequent incorporation of Article 27A in the Articles cannot justify the action of the MSEA. It, therefore, allowed the appeal and directed MSEA to transfer the interest of Narendera Kumar Agrawal in the company in favour of Smt. Saroj Maloo. While doing so, the High Court observed that it has proceeded only on the basis that there was no such bar for transfer when the application was made.

It was contended on behalf of the appellant that the High Court did not consider all the relevant aspects before directing MSEA to register the transfer. It was submitted that though other interest of member in a company like the shares is a moveable property and transferable the transfer can be made in the manner provided by the Articles of the Association. The learned counsel appearing for MSEA also submitted that if the High Court had carefully examined the Articles of Association of MSEA then it would have noticed that it does contain restrictions with respect to transfer of membership.

Section 28 provides that the Articles of Association of a company limited by shares may adopt all or any of the regulations contained in Table A in Schedule I. It further provides that in the case of any such company which is registered after the commencement of the Act if Articles are not registered or if Articles are registered in so far as Articles do not exclude or modify the regulations contained in Table A those regulations shall in so far as applicable be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered Articles. In respect of other companies Section 29 provides that the Articles of Association of such company shall be in such one of the forms in Tables C, D and E in Schedule I as may be applicable or in a form as near thereto as circumstances admit. It further provides that nothing contained in that Section shall be deemed to prevent a company from including any additional matters in its Articles in so far as they are not inconsistent with the provisions contained in the form in any of the Tables C, D

and E adopted by the company. In this case, it is not disputed that Table C will be applicable. If Tables A and C are compared it becomes apparent that there are material differences between the two. These differences and their effects have not been considered by the High Court. The High Court has also not considered who can be a member of a company limited by guarantee and of the nature and type like MSEA and whether that would make any difference in the matter of transfer of other interest of a member in such a company. It was submitted that for becoming a member of a company like MSEA certain qualifications are necessary and that would by necessary implication, even in absence of Articles of Association. But restrictions on transfer of membership by nomination.

All the relevant material is not before us and, therefore, we do not think it proper to express any opinion on the merits of the controversy raised before us. We are of the opinion that the High Court should have examined all these relevant aspects and ought not to have disposed of the matter by merely observing that no distinction can be made in the matter of transfer of share or other interest between a company limited by shares and a company limited by guarantee. We, therefore, set aside the judgment and order passed by the High Court in Company Appeal No.1 of 1991 and in Civil Review No.55 of 1992 and remit the matter back to the High Court for deciding the appeal afresh after hearing both the sides and considering all the relevant aspects. It is clarified that it will also be open to the parties to raise their contentions regarding fulfillment of the requirements of Section 108. The appeals are disposed of accordingly. There shall be no order as to costs.