

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 5th August, 2013

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RFA 247/2004

HTA EMPLOYEES UNION (REGD.)

..... Appellant

Through: Mr. Arun Francis & Mr. C.V. Francis,
Advs.

versus

**HINDUSTAN THOMPSON ASSOCIATES
LTD. & ORS.**

..... Respondents

Through: Mr. U.A. Rana & Ms. Mrinal
Mazumdar, Advs.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appeal impugns the judgment and decree dated 25th March, 2004 of the learned Addl. District Judge, Delhi, of dismissal of suit No.222/2003 filed by the appellant/plaintiff. The appeal was admitted for hearing. Though it was thereafter dismissed in default of appearance of the appellant/plaintiff but was on application of the appellant/plaintiff restored to its original position. The Trial Court record was requisitioned and the counsels were heard on 22nd July, 2013, 23rd July, 2013 and the hearing has been concluded today.

2. The appellant/plaintiff instituted the suit from which this appeal arises pleading:-

- (a). that the respondent no.1/defendant no.1 Company is a Public Limited Company carrying on business as an Advertising Agency; that earlier the Company was a foreign Company but in the year 1968 there was a change in the equity shareholding, making way for Indian participation in the Management of the Company; the defendants/respondents no.2 to 5 are the persons at the helm of the affairs and managing the affairs of the Company;
- (b). that in 1973 the Company suffered a financial crises and was on the verge of liquidation; that the members of the staff of the Company, both management and non-management, decided to salvage the Company and to make it a 100% staff owned Company and took steps in the said direction and bought all the equity share capital of the Company and all the employees of the Company from top to bottom became employee shareholders under a joint venture of management staff and non-management staff of the Company;
- (c). that a Memorandum of Settlement dated 10th June, 1974 was entered into, whereunder the equity shares of the Company were to be held by the management and the non-management staff in the ratio of 65:35;
- (d). that the understanding was also duly incorporated in the Articles of Association of the Company and the shares held by

the employee, on death, promotion, resignation or retirement of the employee, were transferred to maintain the said ratio:

- (e). that the Company continued to function and prosper from 1974 till 1998;
- (f). that on account of economic reforms programme of India, the management of the Company decided to invite the foreign company J. Walter Thompson Holdings Ltd. which had left the Company in the year 1974 and offered 49% of the equity of the Company to the said foreign company;
- (g). that with the transfer of 49% of the shares of the Company to the foreign Company, the remaining 51% equity capital of the Company was to be held by the employees of the Company in the same ratio of 65:35 between the management and the non-management staff;
- (h). that subsequently the foreign Company acquired 11% more equity shares in the Company and it was simultaneously proposed by the Board of Directors of the Company that the remaining 40% equity shares held by the employees of the Company be transferred to a separate new holding Company to consolidate those shares in one common entity;
- (i). that the appellant/plaintiff being a Union of non-management staff of the Company subsequently learnt that as on 30th April, 1998 the shares of many employees who had retired or resigned

were available for transfer to the non-management staff in accordance with the legal obligation to maintain the ratio of 65:35 and though written assurances had been given by the respondents/defendants to the appellant/plaintiff in this regard but the same was not done; that in fact the said shares were allocated to the management staff and thereafter sold to the foreign company; and,

- (j). thus the respondents/defendants had breached the obligation to maintain the ratio of 65:35 in the remaining 40% equity capital of the Company held by its employees.

3. The suit was filed claiming the reliefs:-

- A. of declaration that the equity shares to be held by the employees of the Company were to be shared between the management and the non-management staff in the ratio of 65:35 and the said ratio is to be retained at all times including till the time of transfer of the shares to the foreign company;
- B. for rendition of accounts qua the said shares;
- C. for direction that if the shares are not available to maintain the said ratio, to allot shares as and when available to the non-management staff;
- D. for declaration that the allocation above 65% of the employees' equity to the management staff before 8th October, 1998 and the

transfer of those shares to the holding company was null and void; and,

E. for accounts for dividend of the excess shares held by the management staff.

4. The respondents/defendants contested the suit by filing written statement *inter alia* pleading:-

- (a). that the provision contained in Article 10 of the Articles of Association of the Company requiring the ratio of 65:35 to be maintained had been dropped vide the amendment of the said Articles w.e.f. 29th June, 1998 and after 29th June, 1998 there was no obligation for maintenance of the said ratio;
- (b). that the cause of action for the suit was thus founded on an agreement or arrangement which was at the relevant time not incorporated or embodied in the Article of Associations of the Company;
- (c). that the respondents/defendants were bound by the Articles of Association and with the deletion from Article 10 of the clause requiring the maintenance of the said ratio, no such right could be claimed by the appellant/plaintiff;
- (d). that the amendment dated 29th June, 1998 to the Articles of Association was part of the single inseverable agreement/arrangement whereby the two classes of shareholders as prevalent prior thereto i.e. the management staff

and the non-management staff shareholders was done away with;

- (e). that the said amendment was carried out pursuant to a unanimous resolution passed in the Extraordinary General Meeting (EOGM) of the shareholders of the Company in which the non-management staff shareholders had also participated;
- (f). that the modifications of the Articles of Association of the Company carried out in the year 1998 extended to several other aspects also besides doing away with the maintenance of the said ratio;
- (g). that the appellant/plaintiff had concealed from the plaint the said amendment of the Articles of Association of the Company;
- (h). that the appellant/plaintiff had no right or authority to file the suit on behalf of the non-management staff shareholders merely because the said shareholders happened to be members of the appellant/plaintiff Union; and,
- (i). that the Courts at Delhi had no territorial jurisdiction.

5. No issues were framed in the suit and the parties agreed to file their evidence by way of affidavits and to disposal of the suit on the basis of the documents on record. In pursuance thereto affidavits were filed on behalf of the appellant/plaintiff as well as the respondents/defendants and arguments were addressed.

6. The learned Addl. District Judge, in the impugned judgment, has found/observed/held:-

- (I). that the grievance of the appellant/plaintiff was with respect to the shares transferred by the Company on 6th July, 1998 in favour of select members of management staff (the counsel for the appellant/plaintiff on enquiry today states that the said members were not impleaded as parties to the suit);
- (II). that the controversy in the suit boiled down to the relevant date for coming into effect of the deletion of the clause in the Articles of Association for maintenance of the ratio of 65:35; whether it was 29th June, 1998 when the Articles were amended and as contended by the respondents/defendants or it was 8th September, 1998 (*sic* 8th October, 1998) as contended by the appellant/plaintiff, being the date on which the last batch of 40% of the shareholding was to be transferred to the holding Company of the employees;
- (III). that the appellant/plaintiff in support of its case was relying upon the letter dated 6th April, 1998 of the Company;
- (IV). however the date mentioned in the letter dated 6th April, 1998 was for the limited purpose of determining the eligibility to transfer the shares and the object whereof was to protect the right of the employees who had retired, resigned and died prior to 30th April, 1998 to hold shares till 8th September, 1998 and

this date could not be confused with the date of amendment of Article 10 deleting the provision earlier in existence of maintenance of ratio 65:35;

- (V). that even if the interpretation of the appellant/plaintiff of letter dated 6th April, 1998 was to be accepted, the same being of a date prior to the amendment on 29th June, 1998 of the Articles of Association, the proposal even if any in the letter dated 6th April, 1998 stood modified in accordance with the amended Articles of Association;
- (VI). that the Supreme Court in ***V.B. Rangaraj Vs. V.B. Gopalakrishanan*** (1992) 1 SCC 160 has held that whenever there is a conflict between an agreement amongst the shareholders placing restrictions on the right of transfer and Articles of Association of a Company, the latter has to prevail;
- (VII).in accordance with the said judgment also, the Settlement of the year 1974 or the letter dated 6th April, 1998 could not prevail over the amended Articles of Association of the Company;
- (VIII).that the members of the appellant/plaintiff Union had benefited by having been permitted to transfer their shares to the foreign company and could not after having availed the said benefit challenge the other part of the transaction;

- (IX). the appellant/plaintiff Union could not take up cudgels with respect to the rights of its member employees as shareholders; and,
- (X). that even under the unamended Articles, there was no hard and fast rule that the shares surrendered by the retired/expiring shareholders had to be distributed *pro rata* amongst all the employees of non-management staff and thus no particular employee of the non-management staff or at least the appellant/plaintiff Union could come forward to make any grievance in this regard.

Accordingly the suit was dismissed.

7. The records of the suit are voluminous. After hearing the counsels for two days, vide order dated 23rd July, 2013 certain queries were raised to the counsel for the appellant/plaintiff. It was *inter alia* enquired whether the amendment of the Articles of Association of 29th June, 1998 was inconsistent with the Resolution passed in the EOGM held for approving/discussing the said amendment and if it was so, whether the remedy thereagainst was before the Civil court or before the Registrar of Companies which had given effect to the said amendment; that if it was the case of the appellant/plaintiff that the said Resolution passed at the EOGM of the shareholders of the Company did not correctly depict what has transpired at the EOGM, even then, whether remedy thereagainst was before the Civil Court or before the Company Law Board.

8. The counsel for the appellant/plaintiff has today contended that it is not his case that the amendment to the Articles of Association is not in accordance with the Resolution approving the said amendment or with the notice of the EOGM held for approving/discussing the said amendment. He has contended that his case is of the appellant/plaintiff being entitled to the maintenance of the ratio of 65:35 even after the amendment of the Articles of Association on 29th June, 1998 and till the date of transfer of last batch of 40% shareholding to the holding Company of the employees.

9. It has been enquired from the counsel for the appellant/plaintiff whether the amendment dated 29th June, 1998 to the Articles of Association of the Company, while deleting the provision for maintenance of the ratio of 65:35 between the non-management and the management staff, permits any such exception.

10. The counsel has fairly stated that it does not.

11. Once the amendment to the Articles of Association of the Company had come into effect on 29th June, 1998 and which freed the Company from the obligation to, in effecting transfer of shares maintain the ratio of 65:35, the appellant/plaintiff cannot in my view enforce any right, at least against the Company, in contravention thereof. Reliance by the learned Addl. District Judge in this regard on ***V.B. Rangaraj*** is apposite.

12. A two Judge Bench of the Supreme Court in the said judgment held that the only restriction on the transfer of the shares of a Company is as laid down in its Articles, if any and a restriction which is not specified in the Articles is therefore not binding either on the Company or on the

shareholders and that the vendee of the shares cannot be denied the registration of the shares purchased by him on a ground other than that stated in the Articles. It was further held that a private arrangement whereunder there is a restriction on transfer of shares but which is not stipulated in the Articles of Association of the Company is not binding, neither on the shareholders nor on the Company.

13. It is not in dispute that the transfer of shares of the Company to which *inter alia* challenge was made in the suit from which this appeal arises was on a date after the amendment dated 29th June, 1998 of the Articles of Association of the Company. No fault, in accordance with the judgment *supra* of the Supreme Court, can be found with the said transfer on the basis of settlement/arrangement/assurances not incorporated in the Articles of Association of the Company.

14. The counsel for the appellant/plaintiff has no answer to the said proposition.

15. Though the counsel for the appellant/plaintiff has no reply but I may notice that this Court in ***Premier Hockey Development Private Ltd. Vs. Indian Hockey Federation*** 180 (2011) DLT 530 has held that the decision in ***V.B. Rangaraj*** has been distinguished by the Supreme Court in ***M.S. Madhusoodhanan Vs. Kerala Kaumudi (P) Ltd.*** (2004) 9 SCC 204 and by this Court in ***Spectrum Technologies USA Inc. Vs. Spectrum Power Generation Company Ltd.*** 74 (1998) DLT 574 (DB) and in ***Modi Rubber Ltd. Vs. Guardian International Corporation*** 141 (2007) DLT 822. In ***M.S. Madhusoodhanan***, also a judgment of a two Judge Bench, it was held that

while it is imperative that the company should be a party to any agreement relating to the allotment of new shares, before such an agreement can be enforced, it is not necessary for the company to be a party in any agreement relating to the transfers of issued shares, for such agreement to be specifically enforced between the parties to the transfer. It was further held that in ***V.B. Rangaraj***, the agreement entered into was between the members of the family who were shareholders of a private company and the agreement was that for all times to come each of the branches of the family would always continue to hold equal number of shares and that if any member in either of the branches wish to sell his shares, he would give the first option of purchase to the members of that branch and only if the offer so made is not accepted, the share would be sold to others - this was held to be a blanket restriction on all shareholders present and future. It was held in ***M.S. Madhusoodhanan*** that where there was no such restriction on the transferability of shares in the agreement and the agreement is between particular shareholders only, ***V.B. Rangaraj*** would not apply.

16. The distinction made in ***M.S. Madhusoodhanan*** of ***V.B. Rangaraj*** does not come to the rescue of the appellant/plaintiff in as much as the facts of the present case are akin to that in ***V.B. Rangaraj***. The settlement/arrangement/agreement in the present case is also between all the shareholders of the Company and places a blanket restriction on all shareholders present and future and the present case would thus be governed by the law laid down in ***V.B. Rangaraj***.

17. The Division Bench of this Court in ***Spectrum Technologies USA Inc.*** repelled the reliance placed on ***V.B. Rangaraj*** by observing that in ***V.B.***

Rangaraj there was no agreement to which the Company was a party and which provided that the Company would amend its Articles of Association to bring them in conformity with the promoters agreement.

18. The said judgment also does not come to the rescue of the appellant/plaintiff as in the present case though the settlement/arrangement/agreement between the parties was earlier incorporated in the Articles of Association of the Company but by amendment of 29th June, 1998 the said part of the Articles of Association was deleted. The Company cannot thus be held bound by an agreement, provision in Articles in consonance whereof had expressly been deleted by amendment of the Articles of Association. Similarly in **Modi Rubber** also **V.B. Rangaraj** was distinguished as there was no absolute restriction on the transfer of shares and because the Company in that case was a party to the agreement and had undertaken to amend its Articles in consonance therewith and which it had failed to do. Thus the said judgment also is of no help to the appellant/plaintiff.

19. I may also notice that the judgment/opinion of Radhakrishnan, J concurring with the majority judgment of Chief Justice Kapadia in **Vodafone International Holdings BV Vs. Union of India** (2012) 6 SCC 613 also, in para 262 observes that he did not subscribe to the view taken in **V.B. Rangaraj** and that shareholders can enter into any agreement in the best interest of the Company with the only thing being that the provisions of the shareholders agreement shall not go contrary to the Articles of Association of the company.

20. However it is highly doubtful whether the said observations in the judgment of one of the Hon'ble Judges though concurring with the majority judgment can be said to overrule the two Judge Bench judgment in **V.B. Rangaraj**. Till **V.B. Rangaraj** is not expressly overruled by the Supreme Court, this Court remains bound by the same and as aforesaid the grounds on which **V.B. Rangaraj** has been distinguished in the judgments aforesaid are not available to the appellant/plaintiff; rather the facts of the present case are akin to **V.B. Rangaraj**.

21. There is another aspect of the matter. Even if it were to be held that **V.B. Rangaraj** stands diluted to the extent it holds an agreement between shareholders restricting transfer of shares not incorporated in the Articles of Association of a Company to be not binding amongst shareholders also, the appellant/plaintiff in the present case has claimed the relief only against the Company and no relief has been claimed against the shareholders to whom the shares have been transferred in contravention of the settlement/agreement/arrangement. The said shareholders have not even been impleaded as parties to the suit. Granting any relief in the suit would naturally affect the rights of the said shareholders and who are not before this Court. The appellant/plaintiff cannot be granted relief on this ground also.

22. I am however unable to agree with the acceptance by the learned Addl. District Judge of the contention of the respondents/defendants of the appellant/plaintiff Union having no locus to maintain the suit. A perusal of the Trial Court record shows that the settlement of the year 1974 was under Section 2 (p) r/w Section 18 of the Industrial Disputes Act, 1947 and to

which the appellant/plaintiff Union was a party and it would thus have a locus to challenge any breach/violation of the said agreement.

23. No merit is otherwise found in the appeal which is dismissed, however with no order as to costs.

24. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

AUGUST 5, 2013

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