

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/180/2022
CS/212/2022
IA NO.GA/1/2022
GA/2/2022
EASTERN INDIA EDUCATIONAL INSTITUTION
VERSUS
BIRLA CORPORATION LIMITED AND ORS.

APOT/181/2022
CS/213/2022
IA NO.GA/1/2022
GA/2/2022
HINDUSTAN MEDICAL INSTITUTION
VERSUS
BIRLA CORPORATION LIMITED AND ORS.

APOT/182/2022
CS/214/2022
IA NO.GA/1/2022
GA/2/2022
BELLE VUE CLINIC
VERSUS
BIRLA CORPORATION LIMITED AND ORS.

BEFORE

The Hon'ble Justice CHITTA RANJAN DASH

The Hon'ble Justice PARTHA SARATHI SEN

Date: 26th September, 2022

Appearance

Mr. Ravi Shankar Prasad Senior, Advocate (VC)

Mr. Jishnu Saha, Senior Advocate

Mr. Anirban Ray, Advocate

Mr. Rajarshi Dutta, Advocate

Mr. Sankarshan Sarkar, Advocate

Ms. Pritha Basu, Advocate

Mr. Rahul Sharma, Advocate

Mr. Debartha Chakraborty, Advocate

Ms. Ankita Agrahari, Advocate

....for the appellants

Mr. Ranjan Bachawat, Senior Advocate

Mr. Paritosh Sinha, Advocate

Mr. Sayan Roy Chowdhury, Advocate

Mr. Shaunak Mitra, Advocate
Mr. Saubhik Chowdhury, Advocate
Mr. Satyaki Mukherjee, Advocate
Mr. Tirthankar Das, Advocate
...for the respondent no.1

Mr. Abhrajit Mitra, Senior Advocate
Mr. Debanjan Mandal, Advocate
Mr. Sanjiv Trivedi, Advocate
Mr. Jishnu Chowdhury, Advocate
Mr. Soumya Ray Chowdhury, Advocate
Mr. Sarbapriya Mukherjee, Advocate
Mr. Satadeep Bhattacharyya, Advocate
Ms. Iram Hassan, Advocate
Mr. Sanket Sarawgi, Advocate
Mr. Aritra basu, Advocate
Ms. Mahima Cholera, Advocate
...for the respondent nos.7 & 10

Mr. Joy Saha, Senior Advocate
Mr. Avisekh Guha, Advocate
Mr. Rajat Gupta, Advocate
Ms. Akansha Chopra, Advocate
....for the APL Committee

The Court: As the common questions and facts are involved in these three appeals, all the appeals are clubbed together for disposal by this Court by this common order.

Heard Mr. Ravi Shankar Prasad, learned senior counsel for the appellant, Mr. Ranjan Bachawat, learned senior counsel for the respondent no.1, Mr. Abhrajit Mitra, learned senior counsel for the respondent nos.7 and 10 and Mr. Joy Saha, learned senior counsel for the APL Committee. Perused the impugned order dated 16th September, 2022 passed by the learned Single Judge passed in GA 1 of 2022 (CS No.212 of 2022), GA 1 of 2022 (CS No.213 of 2022) and GA 1 of 2022 (CS No.214 of 2022).

Submission of Mr. Ravi Shankar Prasad along with Mr. Jishnu Saha, learned senior counsel appearing for the petitioner/appellant in the three appeals is confined to the following points:-

1. The plaintiff/appellant society has right to vote in the Annual General Meeting (in short 'AGM') to be held on 27th September, 2022 and according to the by-laws of the plaintiff/appellant society in all the appeals, it is the Board of Trustees which can authorise voting in the AGM.
2. It is further submitted by plaintiff/appellant that on the last occasion, though the voting right was exercised by the plaintiff/appellant society through e-voting and the voting was closed, on the basis of a resolution by the Managing Committee, all the votes cast in contradiction to the decision of the Board of Trustees by the plaintiff/appellant society were invalidated.

On the basis of such facts, the present suit had been filed apprehending that this time also such mischief may be played and the vote cast by the plaintiff/appellant society may be invalidated.

Mr. Joy Saha, learned senior counsel appearing for the APL Committee submits that nobody can cast vote going beyond the direction of the APL Committee and shows us different paragraphs of the judgment passed by the Single Judge of this Court in probate case. However, after hearing learned counsel for all the respondents, submission made by Mr. Joy Saha does not commend to us.

So far as Mr. Bachawat, learned senior counsel for the defendant/respondent no.1 is concerned, it is submitted that irrespective of who casts the vote, the interest of the company, which is a public limited

company, should be protected. Referring to the provision of Section 20 of the Companies (Management & Administration) Rules, 2014, it is submitted by him that the scrutiniser is neither an employee of the company nor is chosen by any of the persons connected with the company and he is an independent person.

Mr. Abhrajit Mitra, learned senior counsel appearing for the respondent nos.7 and 10 supports the impugned order and submits that the plaintiff/appellant has no cause of action to file this suit and the cause of action for the suit having arisen in the month of September after invalidation of their votes, they have not approached the Court, and approaching the Court at the eleventh moment should not be encouraged. Taking us through the different paragraphs of the judgment of the probate court, it is submitted before us that Harsh Vardhan Lodha has not been debarred from taking part in the affairs of the company, rather a contempt petition filed against him has yielded no result.

After going through the impugned order, the provisions of the Companies (Management & Administration) Rules, 2014 and by-laws of the plaintiff/appellant society, we find that all the properties, movable and immovable, belonging to the society vest in the trustees and members of the Managing Committee are also appointed by the trustees. We are shown two different paragraphs from the plaint where it is found that the defendant/respondent no.7 is one of the trustees. In the suit, prayer has been made to give effect to the decision of the majority of the trustees and

in the interim application, prayer has been made to give effect to the decision of the trustees. Clause 24 of by-laws of the society read thus :

24. The trustees may regulate their meetings and proceedings and conduct of duties as they may decide. The Trustees may by a resolution direct any act, deed or thing required to be done or executed by them to be done or executed by any one or more of them, and in such cases any act, deed or thing, done or executed in pursuance of such a resolution shall be as valid and effectual as if it had been done or executed by all the Trustees, such delegation of authority may be by general or special resolution passed without any meeting of the trustees and evidenced in writing under the hands of the majority of the trustees and it shall be as valid and effectual as a resolution passed at a meeting of the trustees.”

After going through the aforesaid by-laws, so far as the delegation of authority is concerned, it can be made by majority of the trustees but taking into consideration the provision of Section 48 of the Trusts Act read with the decision of the Hon’ble Supreme Court in paragraphs 18 and 19 which reads thus:

“18. Section 48 of the Trusts Act provides that when there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides. It is thus clear that all acts which the trustees intend to take for executing the trust must be taken by all of them acting together. Therefore, there can be no doubt that if the validity of the alienations effected by the trustees falls to be considered only in the light of Section 48 the fact that out of the three trustees only two have executed the sale deeds would by itself make the transactions invalid and would not convey title to the alienees. This position is not in doubt.

19. Lewin on “Trusts” has observed that “in the case of co-trustees the office is a joint one. Where the administration of the trust is vested in co-trustees they all form as it were but one collective trustee, and therefore must execute the duties of the office in their joint capacity. It is

not uncommon to hear one of several trustees spoken of as the acting trustee but the Court knows no such distinction; all who accept the office are in the eyes of the law acting trustees. If anyone refuses or be incapable to join, it is not competent for the others to proceed without him, but the administration of the trust must in that case devolve upon the Court. However, the act of one trustee done with the sanction and approval of a co-trustee may be regarded as the act of both. But such sanction or approval must be strictly proved. If one of the trustees refuses to join in the execution of the trust, under the Indian law Section 34 of the Trusts Act provides for the remedy. The other trustee can apply to the Court as contemplated by Section 34 and the trust may accordingly be executed.”

we are of the view that all the trustees have to act in consonance and not in contradiction. We are, therefore, of the view that if any one of the trustees has also not joined in the decision, it cannot be said to be a decision of the Board of Trustees.

From the provisions of Rule 20 of the Rules, 2014, it is clear that after the e-vote is cast, the same person or entity cannot be allowed to cast the vote again and we have seen from the past that the votes cast by the plaintiff/appellant society have been invalidated upon receiving subsequent letter.

In passing the order we have invoked our plenary power under Article 226 of the Constitution of India read with Section 151 of the Code of Civil Procedure to do complete justice to all the parties concerned and especially to defendant/respondent no.1. We are also alive to the fact that the scrutiniser appointed under 2014 Rules is to count the vote cast. He has no further authority to invalidate a vote already cast on the basis of a communication posterior in time to the time of casting of vote. If anybody

or any party is aggrieved by casting of vote by the plaintiff/appellant society and raise any issue regarding validity of such vote for want of authority, he is free to raise such question of validity of such vote/votes in proper court of law. The scrutiniser, however, cannot invalidate such vote on the basis of subsequent communication by the rival party.

Taking into consideration all the aforesaid facts, without going into the merits of the case, maintainability of the suit or otherwise, we dispose of the appeals while confirming the impugned order with a caveat that the vote cast first by the plaintiff/appellant society, irrespective of he being a member of the Managing Committee or Board of Trustees, shall be taken into consideration and no subsequent communication shall be entertained by the scrutiniser to invalidate such vote. We hope and trust that the observation in the caveat shall serve the purpose of all the parties.

[CHITTA RANJAN DASH, J.]

[PARTHA SARATHI SEN, J.]