

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
CHENNAI

Arguments heard on 11.11.2016

Orders passed on 21.11.2016

C.A.No.1/2013

in

C.P. No.75/2010

(Under Sections 397, 398, 402 & 403 of Companies Act, 1956)

Applicant : Nair Service Society Karayogam, Kodal Nadakkavu  
represented by Shri B.Dhanaraj, Advocate

-- Vs --

Respondents : V.C.Velayutham Nair and others  
represented by Ms. Preeti Mohan, Advocate

CORUM

ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ, MEMBERS (JUDICIAL)

**ORDER**

CH MOHD SHARIEF TARIQ, MEMBER(JUDICIAL) :- (ORAL)

1. Under adjudication is C.A.No.1 of 2013 that came to be filed in C.P.No.75 of 2010 before the Company Law Board, now transferred to NCLT and renumbered as T.C.P.No.55 of 2016. The application has been filed by M/s.Nair Service Society Karayogam, Kodal Nadakkavu [for short "NSS Karayogam"]

2. R1, in the Company Application is the Respondent/Petitioner in the company petition and R2 to R7 are respondents both in the C.A. and C.P. The Application *inter alia* states that the applicant still holds 520 equity shares of Rs.100/- each in the R2 company. It has been stated that the company petition deals with shareholding and alleged share transfers of the applicant and therefore the applicant is a just and necessary party to the company petition, because the applicant's shares are falsely

claimed to be transferred and the applicant would be a necessary party to testify the same. The applicant has raised an issue that R1/petitioner did not fulfil the requirements under Section 399 and so, the company petition is not maintainable.

3. The R1/Petitioner has filed counter to the C.A. wherein he denied all the contentions raised by the applicant. The Respondent/petitioner specifically pointed out that the applicant through its committee passed a resolution to divest the 520 shares held by NSS Karayogam in R2 company in favour of other persons. The share transfers were actually effected on 22.10.2008 and they were rectified in the General Body Meeting of NSS Karayogam held on 14.12.2008. Besides this, the R1/petitioner has specifically stated that this tribunal is not deciding any *lis* pertaining to such shares as is made merely on the basis of documents filed before it but it is deciding the question as to whether the R1/petitioner is entitled to maintain the C.P. under Section 397 and 398 alleging oppression and mismanagement. It has also been stated that the issue of share transfer is not involved in the C.P. and therefore, the applicant cannot be said to be necessary or proper party because no relief is claimed in any manner against the applicant. A query has been raised to the counsel for R1/petitioner during the course of hearing in relation to the present status of shares with regard to which the applicant stated that the same has not been transferred. The counsel for respondent/applicant has drawn our attention to the share certificates [at Page 6 & 7 of typed set of the C.P.] which indicate that two denominations, one with 150 shares and another with 100 shares held by NSS Karayogam stood transferred in favour of Shri K.Purushothaman and Shri P.Krishnan Kutty respectively w.e.f. 22.10.2008. Annual General Meeting has been convened on 30.09.2009. The Annual Return for the year 2009 [at Page 41] supports the fact that the said shares have been transferred by NSS Karayogam to the persons mentioned above.

4. For the purpose of determining as to whether or not the applicant is a necessary or proper party it is necessary to know the nature of the Company petition that has been filed under Sections 397 and 398 of the Companies Act, 1956 and the prayer made therein, it may briefly be stated that the challenge made in the C.P. is with regard to holding of Extraordinary General Meeting on 6.2.2010 which is stated to have been called on behalf of the requisitionists as envisaged under Section 169 of the Companies Act, 1956. The said requisition has not been referred to R1 Company and a meeting has been convened straight away whereas the requisitionists did not have 1/10<sup>th</sup> of the paid up share capital of R1 Company in which Madhavan Kutty Nair got himself appointed as director along with three more persons as directors. Apart from this, he has removed the petitioner/R1, Shyam Prasad and Manish kumar from the directorship of the company. For intimating the businesses transacted in EGM, he has filed Form 32 (2 Nos.) on 6.2.2010 that have been approved by the ROC on 7.2.2010.

5. Thus, it is clear that the company petition did not contain the issue of transfer of shares of the applicant in favour of the persons mentioned above. Now, it is also necessary to see the reliefs claimed in the company petition. The reliefs that have been claimed under para 8 at Page 7 of the main C.P. are reproduced as follows :-

- (a) to declare that the acts of the respondent No.2 to 5 are oppressive and prejudicial to the interest of the company and members
- (b) to declare that the EGM held on 06.02.2010 is illegal and *void ab initio*.
- (c) To declare that the removal of the petitioner from the directorship of the company is illegal and *void ab initio*.
- (d) To declare that the appointment of Shri Madhavan Kutty Nair and three others as directors of the company is illegal and *void ab initio*.
- (e) To declare that Form No.32 filed by Shri Madhavan Kutty Nair for appointment of himself and three other persons as directors are *null and void*.



(f) To declare that Form No.32 filed for the removal of the petitioner from the directorship of the company is *null and void*.

(g) To pass an order directing the ROC to delete the said Form No.32 filed for the purpose of appointing Shri Madhavan Kutty Nair and three others as directors of the company

(h) To pass an order directing the ROC to delete the said Form No.32 filed for the purpose of removing the petitioner as director of the company.


6. It is inferred from the nature of the petition and the prayers made therein that the issue involved is about oppression and mismanagement. It is not established that the applicant is either necessary party or proper party in the petition. The company petition has been filed on 9.9.2010 whereas the C.A.No.1/2013 has been filed on 29.1.2013. The affidavit that has been filed in support of the application has been notarised on 9.10.2012 which indicates that the applicant himself has not been sure about his being the representative of NSS Karayogam as Secretary. Besides this, the counsel for petitioner, during the course of arguments, has placed on record a judgment that came to be passed in O.S.No.590 of 2009 by the Subordinate Judge of Kozhikode wherein the applicant was plaintiff representing NSS Karayogam. The judgment dated 28.6.2012 makes it clear that the applicant has never been appointed as Secretary in NSS Karayogam. The issue of being representing NSS Karayogam has been decided against him. This is also supported by the reply which has been filed by Respondent/Petitioner. It may not be out of place to mention that the petitioner who claims to be representative of NSS Karayogam is also arrayed as R5 in the main C.P. in the capacity of director of the company i.e.R2 in the application.

7. The General Rule with regard to impleading of the parties is that the petitioner in a petition being *dominus litis* may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief.

Therefore, a person who is not a party has no right to get impleaded against the wishes of the petitioner. However, this is subject to Order 1, Rule 10 of the Civil Procedure Code, 1908 under which there is a reference to the necessary or proper party. It is a settled legal position that the Respondent against whom the relief claimed is either a necessary party or proper party. The necessary party is such without whom no order can be effectively made. Whereas the proper party is that in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the issues involved in the proceedings. In this connection, reliance is placed on the judgment of the Apex Court given in State of Assam Vs Union of India [2010]10 SCC 408 which has been reaffirmed in Vidur Impex and Traders Pvt. Ltd. & Ors. Vs Tosh Apartments Pvt. Ltd. & Ors. reported in [2010]8 SCC 384.

8. In the facts and circumstances and in view of the legal position stated above, the applicant NSS Karayogam is neither a shareholder in R1 company, nor any relief has been claimed against the same. Moreover, the petitioner is not a secretary of NSS Karayogam as has been held by the Subordinate court, Kozhicode, dated, 28.6.2012. He is neither a necessary party nor a proper party in the matter relating to C.P. filed under Sections 397 and 398 of the Companies Act, 1956, because no relief is claimed against the applicant, nor any transfer of shares pertaining to NSS Karayogam is under challenge. There is no concern whatsoever of NSS Karayogam with the Company petition. Therefore, the C.A.No.1/2013 filed in the company petition is devoid of merits and stands rejected. There is no order as to costs. The pleadings in the company petition are complete and case is posted for final arguments on 16.12.2016.

  
(Anantha Padmanabha Swamy)  
Member (Judicial)

  
(Mohd Sharief Tariq)  
Member (Judicial)