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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8973 OF 2010

DR. BAIS SURGICAL AND MEDICAL INSTITUTE PVT. LTD. & ORS. ...APPELLANT(S)

VERSUS

DHANANJAY PANDE …RESPONDENT(S)

WITH

CIVIL APPEAL NO. 9456 OF 2010

J U D G M E N T

1. The present appeals arise from the judgments of the High Court[1], whereby the appeals preferred by the appellants against the orders of the Company Law Board[2] came to be dismissed. The principal question which arises for consideration in these appeals is whether, in the absence of a formal entry of the respondent no. 1's name in the register of members, he could nonetheless be regarded as a "member" of the company so as to

[1] Vide judgement dated 08.06.2009 in Company Appeal No. 7 of 2004 and judgement dated 21.04.2010 in Company Appeal No. 9 of 2008.
[2] Vide order dated 02.12.2004 in Company Petition No. 9 of 2001 and order dated 14.03.2008 in Company Petition No. 1 of 2005.

invoke the jurisdiction of the Company Law Board under Sections 397 and 398 of the Companies Act, 1956. The facts necessary for the adjudication of the present controversy are set out hereunder.

2. Appellant no. 1 is a company incorporated on 14.11.1994. Appellants no. 3 and 4 are its shareholders and directors. Appellant no. 2, along with his wife, established and constructed a hospital intended to be operated by appellant no. 1. The hospital commenced its operations but, within a short span, encountered financial constraints. At that juncture, respondent no.1 approached the appellants with a proposal to infuse funds into the company, subject to the condition that he be appointed as Managing Director and that the hospital be converted into a specialized cardiac facility. Acting upon the said proposal, respondent no.1 was appointed as Managing Director with effect from 01.01.1998 for a period of five years, and the hospital was thereafter converted into a heart institute.

3. It is the case of respondent no. 1, though disputed by the appellants, that at a meeting of the Board of Directors held on 15.07.1999, 14,75,998 shares were allotted to him against the share application money paid by him to the company. Subsequently, disputes arose between the parties, culminating in a decision of the Board of Directors to suspend respondent no. 1, inter alia, on account of mounting liabilities of the company. In an

attempt to resolve the disputes, the parties participated in conciliation proceedings held between 27.05.2000 and 29.05.2000. Upon conclusion of the conciliation proceedings, the order of suspension was withdrawn, and respondent no. 1, in turn, withdrew from the day-to-day affairs of the company.

4. In January 2001, respondent no.1 instituted the first company petition under Sections 397 and 398 of the Companies Act, 1956, alleging acts of oppression and mismanagement on part of the appellants. The principal grievance urged therein pertained to the failure of the appellants to issue share certificates despite the receipt of share application money by the company. At the threshold, the appellants raised an objection to the locus standi of respondent no. 1 under Section 399 of the Act, contending that he did not qualify as a “member” so as to maintain a petition under Sections 397 and 398.

5. During the pendency of the above petition, respondent no. 1 withdrew his offer to acquire shares of the appellant company owing to inordinate delay in allotment. Furthermore, he instituted civil suits seeking recovery of the share application money along with interest thereon and recovery of money spent on supplying consumables to the appellant company.

6. By order dated 02.12.2004, the Company Law Board allowed the company petition, proceeding on the footing that respondent no. 1 was a member of the company, and directed the appellant company either to allot shares corresponding to respondent no.1's investment or, in the alternative, to refund the invested amount together with interest. Aggrieved by the treatment of respondent no. 1 as a member, the appellants preferred an appeal on 13.12.2004. At this stage, it may be noted, without disturbing the chronological narration, that the said appeal came to be dismissed by the High Court vide the impugned judgment dated 08.06.2009, wherein the preliminary objection raised by the appellants regarding maintainability was rejected. The reasoning adopted by the High Court will be adverted to at a later stage, after setting out the relevant facts pertaining to the connected proceedings.

7. The second tranche of proceedings arose from a meeting of the Board of Directors held on 25.12.2004, wherein the Board of the appellant company allotted 14,75,998 shares to respondent no. 1 and also allotted shares to appellants nos. 2, 5, 6 and 7 against their earlier investments. On the same day, appellant no. 2 was further allotted 60,00,000 shares as consideration for the transfer of the land and building in which the hospital was functioning, such transfer being a pre-condition for execution of a Management

Agreement with Wockhardt Hospitals Ltd. The said allotment of 60,00,000 shares to appellant no. 2 was challenged by respondent no. 1 by instituting a second company petition under Sections 397 and 398 of the Companies Act, 1956, dated 07.01.2005, inter alia, on the ground that the allotment was intended to dilute his shareholding from 49% to 15%. It was further alleged that the appellant company was in the process of handing over complete control to Wockhardt Hospitals Ltd., contrary to the interests of respondent no. 1 as well as the company. By order dated 10.01.2005, the Company Law Board directed the parties to maintain status quo with respect to the property and shareholding of the company. During the pendency of the proceedings, the appellants and Wockhardt Hospitals Ltd. executed a Management Agreement on 02.03.2005, whereby the management of the hospital was handed over to Wockhardt.

8. Subsequently, by order dated 14.03.2008, the Company Law Board held that the allotment of shares to appellant no. 2 against the transfer of property was oppressive in nature and that such allotment had been affected with a view to deprive respondent no. 1 of the benefit of the earlier order directing allotment of shares in his favour. The Board further found that the manner in which the appellant company entered into the Management Agreement with Wockhardt Hospitals Ltd. was not proper. In view thereof,

the second company petition was disposed of with a direction to the appellants or Wockhardt Hospitals Ltd. to purchase the shares allotted to respondent no. 1, together with interest at the rate of 6% per annum from the date of investment until the date of payment, on or before 31.07.2008, so as to bring an end to the disputes between the parties. The said order was assailed by the appellants in appeal, which came to be dismissed by the High Court vide the impugned judgment dated 21.04.2010, upon holding that no substantial question of law arose for consideration. The High Court observed that although shares had been allotted to respondent no. 1, the failure to issue share certificates indicated an intention on the part of the appellants to keep respondent no. 1 out of effective participation in the company until the situation was altered through third-party intervention.

9. When the Special Leave Petition against said judgment came up for hearing before this Court on 16.07.2010, it was directed to be listed along with the main appeal. Subsequently, by order dated 02.08.2010, this Court directed the appellants to deposit Rs. 2,59,18,525/- which included interest at the rate of 6% up to 01.08.2009.

10. By order dated 18.10.2010, this Court admitted both the petitions and they have now surfaced before us for final hearing.

11. We have heard Mr. Shyam Mehta, learned senior counsel appearing on behalf of the appellants, and Mr. Shailesh Mandiyal and Mrs. Haripriya Gopal Shankar, learned senior counsels appearing on behalf of the respondent no. 1.

A. Submissions on behalf of the appellants:

12. Mr. Shyam Mehta, learned senior counsel, argued with sobriety and persuasion. He has confined his submission to a neat question of law relating to the scope and ambit of the expression 'member' appearing in Sections 397 and 398 of the Act, 1956, and even we have confined our enquiry to that extent. Hence, the principal controversy in the present case revolves around whether respondent no. 1 could claim the status and entitlements of a member without fulfilling the statutory requirements prescribed under the Act, 1956, particularly Section 41 thereof.

12.1 Respondent no. 1 was never a member of the company within the meaning of Section 41 of the Act, 1956. Learned senior counsel submitted that it is the consistent position of law that unless a person's name is entered in the register of members, such person can neither be treated as a member of the company, nor can he exercise statutory rights available exclusively to members.

12.2 Existence of membership constitutes a jurisdictional fact for invoking the provisions relating to oppression and mismanagement under Sections 397 and 398 of the Act, 1956. Unless such jurisdictional fact is established, the Company Law Board could not have assumed jurisdiction to entertain the petition. According to the appellants, respondent no. 1 approached the Company Law Board on the assertion that shares had been allotted to him; however, he failed to produce any documentary material evidencing such allotment or entry of his name in the register of members.

12.3 Respondent no. 1 had, at an earlier stage, instituted a civil suit seeking recovery of the amount allegedly invested by him in the appellant company. Such conduct demonstrated that respondent no. 1 himself did not consider his investment as share capital, but treated the same as a recoverable debt. It was contended that having once sought recovery of the amount, respondent no. 1 could not have subsequently asserted rights flowing from alleged membership.

12.4 Learned senior counsel emphasised that any conduct on the part of the company or any form of recognition extended to respondent no. 1 could not override the express statutory requirements governing membership. In the absence of entry of the respondent's name in the register of members, it

was submitted that he unequivocally lacked the locus standi to maintain a petition under Sections 397 and 398 of the Act 1956.

12.5 In support of his submissions, Mr. Mehta relied on the decisions of this Court, particularly *Balkrishan Gupta and Ors. v. Swadeshi Polytex Ltd. and Anr.*[3], *Nanalal Zaver and Anr. v. Bombay Life Assurance Co. Ltd. and Ors.*[4], *Severn Trent Water Purification Inc. v. Chloro Controls (India) Private Ltd. and Anr.*[5] to the effect that respondent no. 1 shall not be held to be a member due to non-mentioning of his name in register of members.

B. Submissions on behalf of the respondent(s):

13. Per contra, learned senior counsels appearing on behalf of respondent no. 1 supported the reasoning adopted by the Company Law Board as affirmed by the High Court.

13.1 Entry of a person's name in the register of members is a statutory obligation cast upon the company, which the appellant company had failed to discharge despite receiving substantial investment from respondent no. 1 and repeated requests made by him for allotment of shares.

[3] (1985) 2 SCC 167.
[4] 1950 SCR 391.
[5] (2008) 4 SCC 380.

13.2 Appellants could not be permitted to take advantage of their own failure to comply with statutory requirements by relying upon a hyper-technical interpretation of the expression “member”.

13.3 Respondent no. 1 had invested substantial amounts in the company and such investment had been accepted and utilised by the company in its business operations. In these circumstances, it was urged that the company could not deny respondent no.1’s entitlement to membership merely on account of its own omission to complete the formal entry in the register of members.

13.4 Accordingly, it was submitted that the findings recorded by the Company Law Board and affirmed by the High Court were justified both on facts and on law, and that no interference was warranted.

13.5 In support of his submissions, reliance has been placed on *Shri Balaji Textile Mills Pvt. Ltd. and Anr. v. Ashok Kavle and Ors.* [6], *M/s World Wide Agencies Pvt. Ltd. and Anr. v. Margarat T. Desor and Ors.*[7], *Umesh Kumar Baveja and Ors. v. IL and FS Transportation Network Ltd. and Ors.* [8] and other precedents.

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[6] 1988 SCC OnLine Kar 80.
[7] (1990) 1 SCC 536.
[8] 2013 SCC OnLine Del 6436.

Analysis:

14. By the impugned judgement dated 08.06.2009, the High Court dismissed the appeal by observing that the cumulative facts and circumstances of the case regarding treatment of respondent no. 1 and his investment by the appellant company, strongly favours the conclusion that respondent no. 1 is entitled to be treated as a member. The state of affairs that prevailed on the High Court and the Company Law Board alike to uphold respondent no. 1 as a deemed member of the company, entitled to maintain a petition under sections 397 and 398, are as follows -

14.1 Letter dated 13.02.1998 by appellant no.2 addressed to Dr. Naresh Trehan, describing respondent no. 1 as the “co-owner”.

14.2 Minutes of conciliation proceedings dated 29.05.2000, which indicate admittance of respondent’s entitlement to allotment of shares. Additionally, letter by the Conciliator, dated 23.07.2000, shows that respondent no. 1 was the owner of 30% of the hospital.

14.3 The respondent no. 1 was made the Managing Director and upon receiving investment from him, the name of the hospital was changed to Ekvira Heart Institute, “Ekvira” representing respondent’s trading concern.

14.4 Respondent's investment led to increased profits and authorised share capital. There was, therefore, utilisation of share application money brought in by the respondent.

14.5 The inconsistency between the Chartered Accountant's Certificate dated 30.08.1998 and the Balance Sheet dated 31.03.2000 suggested that it was possible to concluded that respondent no. 1 was allotted shares on 15.07.1999, as asserted by him.

14.6 Proceedings before the civil court, in the suit filed by the respondent, indicate that the appellants had taken allotment of shares to the respondent no. 1 as an admitted fact.

14.7 Conduct of business over the years points towards appellant no. 2 and respondent no. 1 as being the real stakeholders and the brains dominating the affairs of the company.

15. On the basis of the above factual background, the High Court placed reliance on the judgement in *Shri Balaji Textile* (supra) to state that the meaning of the word "member" under Sections 397 and 398 is to be understood in light of definition in Section 2(27) and not with reference to Section 41. Explaining the scope of Section 41, it was held that this provision needs to be restricted to fact situations that necessitated its introduction, that is, to protect interest of a company from a busy body claiming to be a

subsequent purchaser of shares as well as to protect shareholders/persons from false claims of unscrupulous companies. In all other cases, the broader definition in Section 2(27) would apply. In view of the above position of law, it was held that a person becomes a shareholder of the company either by his name being entered in the register of members or by him being treated as a member, as evidenced by subsequent conduct.

16. To support its conclusion that respondent no. 1 is to be treated as a member of the appellant company, the High Court placed reliance on Buckley on Companies Acts, 2000 edition, wherein it is stated that allotment results if applicant's offer is accepted by the company or even if a mere application is made in cases where a pre-existing right exists in favour of the applicant. Thus, the High Court concluded that even though there is deficiency of documentary evidence pointing towards respondent no. 1 applying to be a member or being treated as a member by the company, but preponderance of probabilities supports allotment of shares in his favour. It is in this light that the High Court affirmed the judgement of the Company Law Board.

17. Having examined the reasoning adopted by the High Court in affirming the orders of the Company Law Board, the issue that now falls for determination before this Court is whether the respondent no. 1 could be

regarded as a “member” of the appellant company so as to maintain a petition under Sections 397 and 398 of the Companies Act, 1956, despite the absence of formal entry of his name in the register of members at the relevant point of time. The resolution of this issue necessarily requires an examination of the statutory scheme governing membership under the Act, particularly the interplay between the inclusive definition of “member” under Section 2(27) and the provisions contained in Section 41 dealing with acquisition of membership.

18. “Member” has been defined under Section 2(27) as:

> *“(27) "member", in relation to a company, does not include a bearer of a share-warrant of the company issued in pursuance of section 114.”*

19. On the other hand, Section 41, appearing in Part II of the Act, 1956 dealing with “Incorporation of Company and Matters Incidental Thereto” provides as under:

> “*41. DEFINITION OF "MEMBER"*
> *(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as members in its register of members.*
> *(2) Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members, shall be a member of the company.*
> *(3) Every person holding equity share capital of company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.*”

20. The question, hence, is whether the expression “member” as appearing under Sections 397 and 398 is to be construed strictly in accordance with Section 41 of the Act, 1956, or whether it must be understood in the broader sense contemplated under Section 2(27). It would also be necessary to consider whether Parliament intended that membership of a company could arise only upon entry in the register of members, or whether the Act contemplates other legally recognised modes by which membership may be established, including deemed membership, proof of agreement to become a member, and recognition of proprietary interest evidenced through conduct. It is in this backdrop that the legal position governing the meaning and scope of the expression “member”, as occurring in Sections 397, 398 and 399 of the Act, must now be analysed before applying the same to the facts of the present case.

21. The statutory framework under the Act, 1956 draws a clear distinction between the inclusive definition of the term “member” contained in Section 2(27) and the provisions governing acquisition of membership set out in Section 41. Section 2(27) employs language of wide amplitude and, in relation to a company, embraces every category of member, subject only to the limited exclusion of a bearer of a share-warrant issued under Section 114 of the Act. Section 41, on the other hand, operates in a different sphere and

prescribes the recognised modes by which membership may arise. It contemplates, first, deemed membership in the case of subscribers to the memorandum; secondly, persons who agree in writing to become members; thirdly, entry of a person's name in the register of members, which ordinarily constitutes conclusive evidence of membership; and lastly, persons reflected as beneficial owners in the records of a depository. The requirement that an agreement to become a member be "in writing", introduced by the Amendment Act of 1960, was intended to ensure reliable proof of consent and to prevent fraudulent inclusion of names in the register, and not to impose entry in the register as the sole or exclusive mode of acquiring membership.

22. A more fundamental consideration arises from the nature of jurisdiction conferred under Sections 397 and 398 of the Act, which has consistently been recognised as equitable in character by this Court.[9] These provisions, situated in Chapter VI, are designed to afford *remedies* to minority shareholders against acts of oppression and mismanagement. The entitlement to invoke such jurisdiction is regulated by Section 399, which prescribes the eligibility criteria for maintaining an application under Sections 397 and 398. Accordingly, the relevant enquiry, while determining

[9] Needle Industries (India) Ltd. & Ors vs Needle Industries Newey (India) Holdings Ltd. and Ors., (1981) 3 SCC 333.

maintainability, must center on whether the applicant satisfies the conditions prescribed under Section 399, rather than on a mechanical application of the procedural requirements found in Section 41(2). The equitable foundation of Sections 397 and 398 must be a guiding factor to not construe the expression "member" in an unduly restrictive or technical manner confined solely to formal entry in the register, thereby frustrating the remedial purpose underlying the legislative scheme.

23. A conjoint reading of Sections 397, 398 and 399 indicates that the expression "member" cannot be construed in isolation or confined to the technical formulation contained in Section 41(2). Rather, the broader definition embodied in Section 2(27) assumes significance in determining whether a person is entitled to invoke the remedies contemplated under the Act. It would be contrary to settled principles of interpretation to attribute to the Legislature an intention to create conflicting meanings of the same expression within the statute. The expression "member", when employed in the context of remedies under Sections 397 and 398, must therefore be construed with reference to the wider definitional framework provided in Section 2(27) and allied provisions governing the rights of members.

24. The Karnataka High Court in *Shri Balaji Textile* (supra) adopting a similar construct by analysing Sections 2(27) and 41 observed that while

Section 2(27) defines the expression “member” in comprehensive terms, Section 41 merely lays down the procedural requirements governing acquisition of membership. It was further held that the meaning of the word “member” occurring in Sections 397 and 398 must be understood in the context of those provisions and cannot be rigidly controlled by the procedural requirements contained in Section 41(2). The Court emphasised that the legislative amendment introducing the words “in writing” in Section 41(2) was intended to remedy a specific mischief, namely, the insertion of names in the register of members without consent, particularly in circumstances wherein the company is approaching liquidation. It was therefore concluded that Section 41(2) was not designed to curtail substantive rights of genuine shareholders.

25. In *Shri Gulabrai Kalidas Naik and Ors. v. Shri Laxmidas Lallubhai Patel of Baroda and Ors.*[10], the Gujarat High Court observed that although entry of a person’s name in the register of members ordinarily confers the status of membership, it would be incorrect to treat such entry as an inflexible or absolute requirement. The Court recognised an important exception to the general rule, holding that where a person demonstrates an indisputable and unchallengeable title to membership, the absence of formal entry in the

[10] 1977 SCC OnLine Guj 47.

register would not preclude the Court from entertaining a petition under Sections 397 and 398.

26. The principle that equitable considerations must inform the interpretation of Sections 397 and 398 has also received approval in judicial precedent concerning analogous situations. In *World Wide Agencies Pvt. Ltd.* (supra), this Court held that the legal representatives of a deceased shareholder, whose names had not yet been entered in the register of members, could nonetheless maintain a petition under Sections 397 and 398. The Court reasoned that such an interpretation was necessary to advance the purpose of the statute and to avoid defeating substantive rights through technicalities.

27. The Madras High Court in *S.V.T. Spinning Mills P. Ltd. and Ors. v. M. Palanisami and Ors.*[11] after referring to the aforesaid decisions, reiterated that the jurisdiction under Sections 397 and 398 is equitable in nature and that the meaning of the expression “member” must be construed in a manner consistent with the object of protecting minority shareholders.

28. Further guidance on this aspect may be drawn from the decision of the Delhi High Court in *Umesh Kumar Baveja* (supra), wherein the Court held that the absence of formal allotment of shares or entry in the register of

[11] 2009 SCC OnLine Mad 3260.

members is not, by itself, determinative of the status of membership for the purposes of proceedings under Sections 397 and 398 of the Act, 1956. The Court observed that where substantial funds invested specifically towards acquisition of equity, are accepted and reflected in the financial records of the company as share application money pending allotment, and are utilised for the company's business purposes, such conduct constitutes strong evidence of recognition of the investor's proprietary stake. It has been relevantly held as follows –

> *"22. It seems to me in light of the authorities cited above that the interpretation to be placed on section 41(2) vis-a-vis petitions filed seeking relief from oppression and mismanagement should be governed not strictly by the requirements of the sub-section, so long as in substance and effect the person complaining of acts of oppression and mismanagement has been recognised or* ***treated*** *as shareholder/member by the conduct of the company, and that in giving effect to the remedies against the grievance, considerations of equity and justice should be allowed to prevail."*

29. Having carefully examined the record, relevant statutory provisions, competing submissions, judicial pronouncements and the reasoning adopted by the High Court, this Court finds that the conclusion **treating** respondent no. 1 as a member was founded upon a consistent and cumulative chain of factual circumstances demonstrating recognition of his proprietary interest in the appellant company. The High Court placed reliance on contemporaneous correspondence, including the letter dated 13.02.1998 issued by appellant No. 2 describing respondent no. 1 as a "co-owner", as

well as the conciliation proceedings dated 29.05.2000 and the subsequent communication of the Conciliator dated 23.07.2000 acknowledging the respondent's entitlement to a substantial shareholding. These materials, when read alongside the admitted fact that respondent no. 1 was inducted as Managing Director and that the hospital was rebranded as *Ekvira Heart Institute*, reflecting the identity of the respondent's trading concern, demonstrate that respondent no. 1 was consistently treated as a stakeholder having interest in the appellant company rather than as a mere investor or creditor.

30. The High Court further relied upon the financial and operational conduct of the company, which showed that respondent no.1's investment was accepted and utilised for the expansion of the company's business, resulting in increased authorised share capital and profitability. The cumulative effect of these circumstances persuaded the High Court to conclude that respondent no. 1 had, in substance, acquired the status of a shareholder whose interest stood recognised by the company over a considerable period.

31. We find no reason to take a view different from that adopted by the High Court and the Company Law Board in their appreciation of the factual material on record. In view of the foregoing discussion and cumulative factual

circumstances, this Court is satisfied that the High Court was justified in affirming the finding that respondent no. 1 was entitled to be treated as a member for the purposes of maintaining proceedings under Sections 397 and 398 of the Companies Act, 1956.

32. Consequently, the appeals are devoid of merit and are accordingly dismissed. The amount deposited before this Court along with accrued interest shall be released in favour of respondent no. 1 – Dhananjay Pande. Pending applications, if any, stand disposed of. There shall be no order as to costs.

.....J.
[**PAMIDIGHANTAM SRI NARASIMHA**]

.....J.
[**ALOK ARADHE**]

NEW DELHI;
MAY 04, 2026.