

LEX/BDHC/0133/2005

Equivalent Citation: 2005 25 BLD 142, 57 DLR (2005) 148

**IN THE SUPREME COURT OF BANGLADESH  
(HIGH COURT DIVISION)**

Matter No. 105 of 2004

Decided On: 08.02.2005

Appellants: **Abdur Rashid Chowdhury**  
**Vs.**  
Respondent: **C.A. Hamid and Co. Ltd. & ors.**

**Hon'ble Judges:**

*Md. Abdur Rashid, J.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Muhammad Nawshad Zamir with Fatema Anwar, Idris Khan, A.H.M. Kamruzzaman and Sathika Hossain*

*For Respondents/Defendant: Shamim Khaled Ahmed with Shah Monjurul Hoque, for respondent No. 3 to 7*

**JUDGMENT**

**Md. Abdur Rashid, J.**

**1.** This application at the instance of one Abdur Rashid Chowdhury is made under Section 43 of the Companies Act, 1994, in brief, the Act for rectification of the register of members of a company. The company is a private limited company; and was incorporated under the previous Companies Act, 1913 on 20.06.69. It was comprised of two brothers, namely, Abdur Rashid Chowdhury, the petitioner and his elder brother, Abdul Hamid Chowdhury, respondent no. 3.

**2.** It is stated that at a tip-off. on 22.06.04 the petitioner found through search by an advocate that as per annual summary of share capita] and list of shareholder directors dated 31.12.99 that on 18.11.99 said Abdul Hamid Chowdhury transferred 15,000 shares to Rehan Hamid Chowdhury which was registered on 28.11.99; on 07.12.99 transferred further 15,000 shares each to Omar Hamid Chowdhury, Reswan Hamid Chowdhury and Akbar Hamid Chowdhury out of his 100,000 shares, and retained to himself 40,000 shares only. The petitioner was shown to have retained 100,000 shares in the company. It further shows that Abdul Hamid Chowdhury, Rehan Hamid Chowdhury and Omar Hamid Chowdhury as the directors of the company.

**3.** In the return dated 19.10.2000 in form XII submitted by said Abdul Hamid Chowdhury that the petitioner was shown to have vacated the office of directorship under section 108(1)(f) of the Act with effect from 21.10.99. Same date in another Form XII Rehan Hamid Chowdhury was shown to be appointed director under Regulation 90 of Schedule 1 of the Act with effect from 18.11.99 in place of the petitioner and another Form-XII filed on 03.05.2000 Omar Hamid Chowdhury was shown to be third director of the company with effect from 07.12.99.

**4.** It is further stated that constitution of the company had never been amended since 1969 and Article 47 of the articles of association of the company shows that the

petitioner is one of the two permanent directors of the company. Under articles 30-35, the petitioner as one of the two directors was entitled to notice but Abdul Hamid Chowdhury transferred the shares without issue of any such notice.

**5.** In the circumstances, it is claimed that reconstitution of the Board of directors by removal of the petitioner and transfer of shares by said Abdul Hamid Chowdhury to his four sons were all mala fide and in violation of the articles as well as law.

**6.** Respondent No. 3 to 7 however opposed the application by filing an affidavit-in-opposition.

**7.** In the affidavit, it is stated that the company was brought into existence after taking over the business and assets of the partnership firm, 'M/s. C.A. Hamid and Company'. Respondent No. 3 and the petitioner were the promoters and subscribers of the memorandum of association of the company. At the incorporation of the company, each of the promoters and subscribers was allotted 100,000 shares of the company.

**8.** It is further stated that directorship of the petitioner stood vacated under Section 108(1)(f) of the Act with effect from 21.10.99 as he was absent from attending three consecutive meetings of the board of directors scheduled to be held on 19.07.99, 19.08.99 and 21.10.99 without leave of absence notwithstanding the fact that he was described in the articles of association as a permanent director.

**9.** Such absence of the petitioner necessitated appointment of at least one director to comply with requirements of the Act. The sole surviving director accordingly called a meeting of the board of directors on 18.11.99 for the purpose of induction of a new director under Regulation 90 of Schedule-1 of the Act. At the meeting Rehan Hamid Chowdhury, respondent No. 4 was appointed a director of the company. Respondent No. 3 transferred 15,000 shares out of his 100,000 shares to his son Rehan Hamid Chowdhury, respondent No. 4. Then, in another meeting of the board of directors held on 07.12.99 respondent No. 3 further transferred 15,000 shares each to his other three sons, namely, Omar Hamid Chowdhury, Reswan Hamid Chowdhury and Akbar Hamid Chowdhury, respondent No. 5 to 7.

**10.** In support of the application Mr. Muhammad Nawshad Zamir, learned advocate for the petitioner submits that the petitioner did not receive any notice of so-called meetings of the Board of Directors scheduled to be held on 19.07.99, 19.08.99 and 21.10.99.

**11.** He further submitted that removal of the petitioner from the board of directors; reconstitution of the board of directors by induction of a new director, namely, respondent no. 4 Rehan Hamid Chowdhury under Regulation 90 of Schedule-I and ultimate approval of the transfer of shares to respondent no. 4 to 7 by such reconstituted board were all, without jurisdiction, illegal and void.

**12.** In support, first, he read paragraph 307 and 308 of Halsburys Laws of England, Fourth Addition and then, relief upon Mohibul Ahsan v. Ittefaq Group of Publications, (1998) 50 DLR(AD)138; Ittefaq Group of Publications, (1998) 50 DLR(AD)138; Ittefaq Group of Publications Limited v Arab Bangladesh Bank, (1998): 50 DLR597; Dr. Monjurul Islam V. Al-Rajhi Hospital (Pvt.) Limited and others, (2004) 1 LG46; In re Homer District Consolidated Gold Mines, Ex parte Smith (1888) Vol. XXXIX, Ct 546 and in re Sly Spink & Co. (1911)2Ch. 430.

**13.** Mr. Shamim Khaled Ahmed, learned Advocate on behalf of said respondent no. 4 to 7 on the other hand submitted that when the petitioner failed to attend three

consecutive meetings of the board, respondent no. 3 as surviving director had no option but to invoke Regulation 90 of Schedule-I to induct a new director to run the company. Respondent no. 3 transferred 60,000 shares out of his own 100,000 shares to his four sons, respondent nos. 4 to 7 giving each of them 15,000 shares, which the petitioner has got no right to challenge.

**14.** He further submitted that when the meetings held on 18.11.99 and 07.12.99 do not suffer from any illegality or infirmity the petitioner is not entitled to raise any question about legality or otherwise of the transactions of such meetings.

**15.** He submitted that in considering the merit of the application the Company court cannot go behind the proceedings of the company held before the meetings dated 18.11.99 and 07.12.99.

**16.** He lastly submitted that the grievance of the petitioner does not come within the clause, 'without sufficient cause'. He relied upon the Company Law Digest and the Company Law by Shaukat Mahmood and Nadeem Shaukat.

**17.** Facts which are not disputed are that the company C.A. Hamid and Company Limited was incorporated on 20.06.69 under the previous Companies Act, 1913. Under article 47 of the articles of association, the petitioner and respondent no. 3 who are full brothers, were permanent directors of the company.

**18.** It appears from the registry of notice and minutes of the meetings of the board of directors that on 19.06.99 both brothers sat together for the last time in a meeting of the board. In the meeting, the minutes of the last meeting was read and confirmed. Abdul Hamid Chowdhury resigned as managing director of the Company and then, was reelected for another period of five years from date. No other business was transacted.

**19.** Then, it appears from said registry that by a notice dated 4.07.99 Abdul Hamid Chowdhury called a meeting of the board on 19.07.99 to confirm the minutes of the last board meeting and consider future plan of business of the company.

**20.** In the minutes of the meeting, it was recorded that the meeting noted that under article 53 of the articles of association of the company the presence of two directors was required to form a quorum for the meeting. As only director Abul Hamid Chowdhury, respondent no. 3 was present, there was no quorum of the meeting and the meeting could not be held and no business could be considered in accordance with the agenda.

**21.** Then, by notice dated 03.08.99 and 05.10.99 said respondent no. 3 called meetings of the board on 19.08.99 and 21.10.99 for transaction of the same business. On both occasions, respondent no. 3 recorded same minutes in the registry as he did on 19.07.99.

**22.** In the affidavit-in-opposition, respondent no. 3 has claimed to have sent the notices dated 04.07.99; 03.08.99 and 05.10.99 to the petitioner in ordinary mail. The petitioner has denied to have received any of such notices.

**23.** Regulation 113 of Schedule I requires such notice should be given either personally or sent by registered post. When it could not be disputed that none of the above notices was tendered personally or sent by any registered post, it would be difficult to hold that the petitioner received any of the notices. So, the notices claimed to be sent by respondent no. 3 by ordinary post must be held to be no notice in the eye of law.

**24.** It further appears from the registry that by notice dated 24.10.99 respondent no. 3 called the meeting of the board of directors on 31.10.99 for consideration mainly of the cessation of directorship of the petitioner on account of his failure in attending three consecutive meetings held on 19.07.99, 19.08.99 and 21.01.99. The notice was admittedly not sent to the petitioner.

**25.** On 31.10.99 respondent no. 3 noted in the registry that the petitioner absented himself from three consecutive meetings which were called for on 19.07.99, 19.08.99 and 21.10.99 and the absence of the petitioner fell within clause (f) of subsection 1 of section 108 of the Act and therefore the petitioner vacated the office of director of the company with effect from 21.10.99. Then, it was funnily recorded that the meeting could not discuss the agenda for want of quorum.

**26.** Then, by notice dated 04.11.99 respondent no. 3 called a meeting of the board on 18.11.99 purportedly to fulfill requirement of article 46 of the Articles of Association by induction of a new director of the company. On 18.11.99 Rehan Hamid Chowdhury, respondent no. 4 was co-opted in the board of directors to fill in the casual vacancy created upon cessation of directorship of the petitioner and said respondent to continue to act as director till next annual general meeting of the company.

**27.** In the meeting of such newly constituted board of directors comprising of respondent no. 3 and 4, father and son, held on 28.11.99 the minutes of so-called meetings dated 19.07.99, 19.08.99 and 21.10.99 were confirmed and transfer of 15,000 shares by respondent 3 was approved. In the annual summary of share capital and shareholder-directors dated 31.12.99 (Annexure-B to the application) filed by respondent no. 3 with respondent no. 2, Registrar the name of Omar Hamid Chowdhury, respondent no. 5 was mentioned as another director of the company but no minutes of such meeting is available in the registry of the board meetings supplied.

**28.** Be that as it may, in this application transfer of 60,000 shares by respondent no. 3 to respondent no. 4 to 7 in the meetings of the 146 board held on 28.11.99 and 07.12.99 is challenged. Precise issue therefore before the Court is that whether the reconstitution of the board of directors omitting the name of the petitioner and approval of transfers of the shares by such reconstituted board could be considered in disposing the application for rectification of share register under section 43 of the Act.

**29.** In order to appreciate the conflicting submissions of the learned advocates on the issue, I must first refer to section 43 of the Act.

**30.** Section 43 of the Act empowers the Court to rectify the register if the name of any person is entered in or omitted from the register of members of the company 'without any sufficient cause' or where there is default or unnecessary delay in entering on the register the fact of any person having become or ceased to be a member. Any person aggrieved or any member of the company or even the company may make the application for rectification of such register upon any of such grounds.

**31.** The grounds for rectification of the share registered in the section appear to be of universal nature and available in all jurisdictions. Earlier under section 38 of the Companies Act, 1913, such application could be filed even on the ground of 'fraudulently' entering in or omitting the name of a person from the register. In the present act, the word 'fraudulently' is omitted. The phrase, 'without any sufficient cause' has not been defined in the Act nor was defined in the earlier Act.

**32.** The section gives the Court wide discretion to decide any matter relating to the rectification of a register of members of a company but such power would not mean to empower the Court to consider and decide each and every difference or dispute between the members of a company. The jurisdiction of the Court is no doubt of summary in nature but unlimited for the sole purpose of rectification of the register. The jurisdiction is of general nature and not confined to cases where there has been error, mistake or default on the part of the company and only limited by the provisions of the Act. The Court may generally decide any question necessary or expedient to be decided for rectification of the register and may also decide any issue involving any question of law. If the name of a person is 'fraudulently' entered in or removed from the register or where the directors acted mala fide in entering in or removing name of a person from the register the Court will not be powerless to exercise its discretion upon any of such grounds even after omission of the word 'fraudulently'. I am of the view that what is done 'fraudulently' cannot be said to have not been done 'without any sufficient cause'. And omission of the ground of 'fraudulently' in the present Act, therefore, does not make any real difference in the exercise of jurisdiction of the Court under the section; Of: Dr. Manjurul Islam v Al-Rajhi Hospital (Pvt) Ltd. and others. (2004) 1 Lg 46.

**33.** Further, where the Court entertains an application for rectification of the share register, it is bound to go into all circumstances of the case, and consider what the equity the applicant has to call for its interposition; Of: paragraph 308 of the Halsburys Laws of England, 4th edition.

**34.** In re Homer District Consolidated Gold Mines, Ex parte Smith, [1888] XXXIX Ct 546, when the notice for meeting of the board of directors was found to be irregular both in respect of business to be transacted and time to enable other directors to be present, allotment of shares was held void and Mr. North J allowed the application of the allottee shareholders to have their names removed off the register on the following view:

I come to the conclusion that what was done on that occasion was not the act of the board of directors, and did not bind the company, and had not the effect of getting rid of the resolutions previously passed by the board. Under these circumstances I come to conclusion that the Applicants were never properly put on the list of members, and were entitled to have their names removed.

**35.** In re Sly, Spink & Co, (1911) 2 Ch 430, under the articles of association of the company, the minimum number of directors which could constitute a board of directors of the company was four and three of them could form the quorum. At the relevant time of meeting of the board, there were three directors only in the board and they made the impugned allotment of shares. Such allotment of shares was declared to be invalid on the following reasoning:

It is quite clear to my mind that the provision that a quorum of the board of four may act does not make legitimate acts by a board consisting of less than four members: you must have a board of four before there can be quorum.

I hold that the allotments, which as I have already held were made under circumstances which were fully known both to Mr. Macdonald and to Mr. Hertslet, were invalid, inasmuch as the allotments purported to be made by a board of three and the regulations of the company provided for a board of not less than four.

**36.** In exercising the jurisdiction under the section, the company Court is required to



decide the validity of the approval of impugned allotment of shares by the board of directors of the company. In doing so, the Court could not be denied power to decide questions relating to reconstitution of the board of directors under the Articles of Association and validity of the meeting (s) of such reconstituted board approving transfer. It is needless to say that the very exercise of the jurisdiction for the purpose of rectification of register of members is dependent upon such considerations. If the name of a person is entered in or omitted from the register of members of a company by a board not duly constituted or by a resolution of an invalid meeting of the board either for want of proper notice or otherwise, the Court is left with no option but to allow the application for rectification.

**37.** In the case at hand, I have already found from the registry of the board meetings that respondent No. 3 noted that on 19.07.99, 19.08.99 and 21.10.99 no meeting could be held for want of quorum. So, when there were no meetings held on 19.07.99, 19.08.99 and 21.10.99 there was no scope for assumption of the consequence under clause (f) of subsection 1 of section 108 of the Act and the petitioner could not be thought to have ceased to be a director of the company. Under Section 108(1)(f) of the Act, a director could only be said to have vacated the office of director if he was absent from attending three consecutive valid meetings of the board.

**38.** But in the meeting shown to be held on 18.11.99 invoking Regulation 90 of Schedule I of the Act respondent No. 4 was inducted in the board as a director in place of the petitioner. Regulation 90 empowers the continuing (surviving) directors to act notwithstanding any vacancy for the purpose of increasing the number of directors to make quorum of directors or of summoning a general meeting only. Besides, under article 47 of the Articles of Association, the petitioner along with respondent no. 3 were two permanent directors of the company. When the petitioner did not cease to be a director of the company, respondent no. 3 had no authority to invoke Regulation 90 and call a meeting of the board on 18.11.99 to induct a new director in place of the petitioner in the board. Result being that reconstitution of the board of directors with respondent no. 4 and omitting the petitioner was not a board of directors of the company in law. Consequently, the approval of transfers of 60,000 shares by respondent no. 3 to respondent no. 4 to 7 in so-called meetings of the newly constituted board held on 28.11.99 and 07.12.99 was not the act of the board of directors, and did not bind the company and would not have the effect of transfer of the shares in question of the company. Under such circumstances, there is no escape from the conclusion that the names of respondent no. 4 to 7 were 'without any sufficient cause' put on the list of members of the company and now, the names must be removed from the register.

**39.** I must also note that respondent no. 3 no doubt acted most illegally in removing the petitioner from the board behind his back in order to establish his own family in the control of the management of the company. Such acts of respondent no. 3 are neither sanctioned by the articles of association nor the Act. I find therefore good reasons for application to succeed.

**40.** In the result, the application is allowed, the transfers of 60,000 shares by respondent no. 3 to respondent no. 4 to 7 are declared void and the register must be rectified by striking the names of Rehan Hamid Chowdhury, Omar Hamid Chowdhury, Reswan Hamid Chowdhury and Akbar Hamid Chowdhury off the register of members of the company. Respondent no. 2, Registrar is directed to rectify the share register of the company, accordingly.

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