

A

LUXMI TEA COMPANY LIMITED

v.

PRADIP KUMAR SARKAR

NOVEMBER 7, 1989

B

[M.N. VENKATACHALIAH, N.D. OJHA AND
J.S. VERMA, JJ.]

C

Companies Act, 1956: Section 108—Share Transfer—Consideration—Power of Company to examine correctness—Company—Whether can refuse registration of transfer of shares if transfer deeds are not properly stamped.

Section 111(2)/Article 42 of Articles of Association—Expression “Or otherwise”—Scope of—Whether recognises existence of inherent power to refuse registration of shares.

D

Company Law—Share Transfer—Board of Directors—Whether has inherent power to refuse registration of transfer of shares—Residuary, implied or incidental power of corporate existence—Whether include power of refusal to register transfer of shares.

E

Section 155—Share Register—Application for rectification of—Transferor—Whether a necessary party.

F

The respondent lodged certain fully paid-up shares with the appellant company for transfer in his name. The Board of Directors of the Appellant company disapproved the registration of the shares. The respondent filed an application under section 155 of the Companies Act, 1956 for rectification of the share register i.e. for inserting his name in the share register as a registered share-holder which was allowed by a single judge of the High Court. The Company preferred an appeal which was dismissed by the Division Bench of the High Court.

G

In appeal to this Court it was contended on behalf of the company that (i) the Company had residuary inherent power to refuse the registration of the transfer of shares; (ii) the words “or otherwise” in Article 42 of the Articles of Association and section 111(2) of the Companies Act recognise the existence of an inherent power to refuse registration of the transfer of shares; (iii) the application under section 155 was not maintainable as the transferor had not been made parties therein; and (iv)

H

the company was entitled to examine the correctness of transfer consi-

deration shown in the transfer deeds and refuse registration of the transfer of shares if the transfer deeds were not duly stamped.

Dismissing the appeal, this Court,

HELD: 1. Unless there is any impediment in the transfer of a share of a public limited company, a shareholder has the right to transfer his share. Correspondingly, in the absence of any impediment in this behalf the transferee of a share is entitled to have a rectification of the share register of the company by inserting his name therein as a registered shareholder of the share transferred to him. To have such rectification carried out is the right of the transferee and can be defeated by the company or its Directors only in pursuance of some power vested in them in this behalf. Such power has to be specified and provided for. It may even be residuary but in that case too it should be provided for and traceable either in the Act or the Articles of Association. Even if the power of refusal is so specified and provided for the registration of a transferred share cannot be refused arbitrarily or for any collateral purpose, and can be refused only for a *bona fide* reason in the interest of the company and the general interest of the shareholders. If neither a specific nor residuary power of refusal has been so provided, such power cannot be exercised on the basis of the so-called undeclared inherent power to refuse registration on the ground that the company or its Directors take the view that in the interest of the Company and the general interest of the shareholders, registration of the transfer of shares should be refused. Indeed making a provision in the Act or the Articles of Association etc. conferring power of refusal would become futile if existence of an inherent power is assumed, for the simple reason that the amplitude of the so-called undeclared inherent power would itself take care of every refusal to register the transfer of share. Assumption of such a power would result in leaving the matter of transfer of share and its registration at the mercy and sweet will of the company or its Directors, as the case may be. [86E-H; 87A-B]

2. The objects or purposes for which a company is created should be distinguished from the powers which it can exercise. So far as refusal to register the transfer of a share is concerned the power has to be specified and within the framework of the said specification. There is no inherent power in this behalf. [90B]

In re Smith Knight & Co., IV Chancery Appeal Cases 20; *In re National Provincial Marine Insurance Company*, V Chancery Appeal Cases 559; *Moffatt v. Parqunar*, VII Chancery Division 591; *In re*

- A *Cawley & Co., XLII Chancery Division 209; In re Discoverers Finance Corporation Ltd., [1910] 1 Chancery Division 312 and Sadashiv v. Gandhi Sewa Samaj, AIR 1958 Bom. 247 followed.*

Palmer's Company Law 24th Edn. p. 121 referred to.

- B *The Conservators of the River Tone v. Ash, 109 English Reports 479; Attorney-General v. The Lord Mayor etc. of the City of Leeds, [1929] 2 Chancery Division 291; E.M. Muthappa Chettiar v. Salem Rajendra Mills Ltd., XXV Company Cases 283; Life Insurance Corporation of India v. Escorts Ltd. & Ors., [1985] Suppl. 3 S.C.R. 909 and Bajaj Auto Ltd. v. N.K. Firodia and Anr., 41 Comp. Cases 1, distinguished.*
- C

3. In the context in which the words "or otherwise" have been used in sub-section (2) of section 111, they only purport to cast a duty or impose an obligation of giving notice of refusal to register the transfer of a share irrespective of the fact whether such refusal is under the Articles of Association of the Company or de hors the Articles, which would include even a case where such refusal has been made arbitrarily or for any collateral purpose. A fortiori, this would be the interpretation of even Article 42 of the Articles of Association of the Company inasmuch as on its plain language which, except for the provision for punishment, is in pari materia with sub-section (2) of Section 111 of the Act. The purpose of this Article is the same as of the said sub-section (2). To introduce a concept of either conferment or recognition of a right to refuse registration of the transfer of a share in sub-section (2) militates against and runs counter to the very texture and purpose of this sub-section. [88A-C; 87E]
- D
- E

- F 4. The transferor is not a necessary party to an application under section 155 of the Act unless the transfer was disputed by him. [92B-C]

5. In the instant case, it has been found as a fact by the High Court that it had not been proved that the respondent had paid higher prices for the shares than those stated in the transfer deeds. Therefore, there is no justification for interfering with the said finding of fact. On this finding the transfer deeds could not be termed as unduly stamped and power to refuse the registration of the transfer of shares contemplated by section 108 of the Act could not be invoked. [92D-E]
- G

From the Judgment and Order dated 4.5.1988 of the Calcutta High Court in Appeal No. 806 of 1987

A.K. Sen, P.L. Sen, Bhaskar Sen, D.K. Sinha, A.N. Chatterjee, N.D.B. Raju and V.K. Jain for the Appellant.

F.S. Nariman, R.C. Nag, S.B. Mukharjee, R.F. Nariman, Kusum Agarwal, O.C. Mathur and D.N. Misra for the Respondent.

The Judgment of the Court was delivered by

OJHA, J. Special leave granted.

This appeal by special leave has been preferred against the judgment dated May 4, 1988 of a Division Bench of the Calcutta High Court in Appeal No. 806 of 1987. Facts in brief necessary for consideration of the submissions made by learned counsel for the parties are that the respondent, Pradip Kumar Sarkar made an application under section 155 of the Companies Act, 1956 (hereinafter referred to as the Act) for rectification of the share register of the appellant-company by inserting his name therein as a registered shareholder of certain shares transferred in his favour. These shares were fully paid up and the company had no lien over them. According to the respondent, notwithstanding the shares being duly lodged with the Company along with the transfer deeds and requisite fees for registration being paid the Board of Directors of the Company disapproved of the registration of the said shares. This disapproval led the respondent to make the application under section 155 of the Act for rectification of the share register. The case of the respondent was that the shares in question being fully paid up and the company having no lien over them the registration of the transfer of the shares in his favour could not be refused under Article 39 of the Articles of Association of the Company which was the article relevant for the purpose.

The application aforesaid was contested by the Company on various grounds. Overruling the objections raised by the Company a learned single judge allowed the application. Aggrieved, the Company preferred the appeal aforesaid before a Division Bench of the High Court which has been dismissed by the judgment appealed against.

It has been urged by learned counsel for the appellant that even if the Articles of Association do not make any specific provision in this behalf the Company had residuary inherent power to refuse registra-

- A tion of the transfer of the shares for the benefit of the Company and its existing shareholders. Power of refusal to register the transfer of shares was also sought to be derived from the words "or otherwise" used in Article 42 of the Articles of Association and section 111(2) of the Act. The transferor not being made a party to the application under section 155 of the Act was also pleaded in justification of the
- B submission that the said application deserved to be dismissed. It was also urged that in view of section 108 of the Act the Company was entitled to go into the question as to whether the consideration for transfer of shares as shown in the transfer deeds was real consideration for purposes of finding out as to whether the transfer deeds were duly stamped and refuse registration of the transfer of the shares if the
- C Company was of the view that the transfer deeds were not duly stamped. For the respondent on the other hand it was urged by his learned counsel that in view of the specific provision contained in this behalf in Article 39 of the Articles of Association and no residuary power whatsoever having been conferred on the Company or its
- D Directors to refuse registration of the transfer of shares it did not have the power claimed by it in aid of refusal of registration of the shares transferred to the respondent.

- Having heard learned counsel for the parties we are of the opinion that unless there is any impediment in the transfer of a share of a public limited company, such as the appellant, a shareholder has
- E the right to transfer his share. Correspondingly, in the absence of any impediment in this behalf the transferee of a share, in order to enable him to exercise the rights of a shareholder as against the Company and third parties, which is not possible until the transfer is registered in the company's register, is entitled to have a rectification of the share register of the company by inserting his name therein as a registered
- F shareholder of the share transferred to him. To have such rectification carried out is the right of the transferee and can be defeated by the company or its Directors only in pursuance of some power vested in them in this behalf. Such power has to be specified and provided for. It may even be residuary but in that case too it should be provided for and traceable either in the Act or the Articles of Association. Even if
- G the power of refusal is so specified and provided for the registration of a transferred share cannot be refused arbitrarily or for any collateral purpose, and can be refused only for a *bona fide* reason in the interest of the company and the general interest of the shareholders. If neither a specific nor residuary power of refusal has been so provided, such power cannot be exercised on the basis of the so-called unde-
- Hclared inherent power to refuse registration on the ground that the

company or its Directors take the view that in the interest of the company and the general interest of the shareholders, registration of the transfer of shares should be refused. Indeed making a provision in the Act or the Articles of Association etc. conferring power of refusal would become futile if existence of an inherent power such as claimed by the company in the instant case is assumed, for the simple reason that the amplitude of the so-called underclared inherent power would itself take care of every refusal to register the transfer of share. Assumption of such a power would result in leaving the matter of transfer of share and its registration at the mercy and sweet will of the company or its Directors, as the case may be. In the absence of any valid and compelling reason it is difficult to comprehend such a proposition.

Even the submission based on the words “or otherwise” in sub-section (2) of Section 111 of the Act and in Article 42 of the Articles of Association to the effect that these words recognise the existence of an inherent power to refuse registration of the transfer of the share does not commend itself to us. The words “or otherwise” were inserted in sub-section (2) of Section 111 of the Act in 1960 and it is this sub-section so amended which is applicable to the facts of the instant case. Sub-section (2) of Section 111 does not confer any right but only casts a duty to give notice of refusal to register the transfer of a share and provides for punishment in case of default in doing so. Giving of notice is necessary, *inter alia*, to facilitate the exercise of the right of appeal conferred by sub-section (3) and (4) of Section 111. To introduce a concept of either conferment or recognition of a right to refuse registration of the transfer of a share in sub-section (2) militates against and runs counter to the very texture and purpose of this sub-section. Such an interpretation would have the effect of imputing to the legislature an intention of making an effort to fix a square peg in a round hole, when the purpose, if it was to confer or recognise any inherent power to refuse registration of the transfer of a share, could plainly be achieved by inserting the words “or otherwise” after the words “under its articles” and before the words “to refuse to register” in sub-section (1) of Section 111 which is the sub-section relevant for such purpose.

The words “or otherwise” take colour from the context in which they are used. In our opinion, the words “under its articles” in sub-section (2) of Section 111 of the Act have been used in the same sense as is expressed in legal terminology by the familiar words “conferred by law”. Consequently, if the opening part of sub-section (2) is read as “If a Company refuses, whether in pursuance of any power conferred by

- A law or otherwise" it would be incongruous to suggest that the legislature in using the words "or otherwise" intended to give recognition to a power to refuse registration of the transfer of a share even otherwise than in accordance with law. This would be tantamount to putting a premium on taking the law into one's own hands. The legislature cannot be imputed with any such intention. For these reasons, we are of the view that in the context in which the words "or otherwise" have been used in sub-section (2) of Section 111, they only purport to cast a duty or impose an obligation of giving notice of refusal to register the transfer of a share irrespective of the fact whether such refusal is under the Articles of Association of the Company or *de hors* the Articles, which would include even a case where such refusal has been made arbitrarily or for any collateral purpose. A fortiori, this would be the interpretation of even Article 42 of the Articles of Association of the Company inasmuch as on its plain language which, except for the provision for punishment, is in *pari materia* with sub-section (2) of Section 111 of the Act, the purpose of this Article is the same as of the said sub-section (2). Even the marginal note of Article 42 lends support to this interpretation.

At this place, we may point out that it has not been disputed before us by learned counsel for the appellant that the shares in question having been fully paid up and the Company having no lien over them, Article 39 of the Articles of Association could not be invoked to refuse registration of the transfer of these shares.

- We may now advert to the text books and the decided cases on which reliance has been placed by learned counsel for the appellant in support of the submission that the Company had an inherent power to refuse registration of the transfer of the shares. It was pointed out that the board of directors is now the principal organ of a company. The management of the affairs of the company is vested in the board of directors and all powers excepting those which are specifically reserved for the general meeting by the act or the articles or memorandum of association or otherwise must now be done by the board of directors vide section 291 of the Act (The New Frontiers of Company Law by S.C. Sen 1971 Edition Page 51). Whatever may fairly be regarded as incidental to the objects for which the Corporation was created is not to be taken as prohibited. The incidental power is one that is directly and immediately appropriate to the execution of the specific power created and not one that has a slight or remote relation to it. Furthermore, the want of an express enumeration of powers does not exclude such incidental powers as are reasonably

necessary to accomplish the corporate purpose. The mere creation of a corporation was alone sufficient, in the absence of prohibition, to confer upon such corporation all those powers which are regarded as incident to corporate existence. (Thomsons' Commentaries on the Law of Corporation 3rd Edition Vol. 3 Pages 820 to 822) As to the relationship between the general meeting and the directors to some extent a more exact analogy would be with the division of powers between the Federal and State Legislatures under a Federal Constitution and the residual powers are in this case with the directors (Gower's Principles of Modern Company Law 4th Edition Page 147). Corporate authority (powers) are determined by reference to (1) charter, (2) incorporation law or act, (3) general and special corporation statutes relevant, (4) other applicable statutes, (5) case decisions (6) customary practices, and (7) treatises and other discussions. They include (1) general powers usually recognized in all corporations, (2) general powers usually recognized in corporations of the particular type, (3) powers inherent in or limited by the purposes or business as stated in the charter, and (4) implied powers to do all things reasonably and properly incidental to the specified purpose and business. (Modern Corporation Law by Howard L. Oleck Vol. 1 Page 865) It is a well-recognised rule that a Corporation is not restricted to the exercise of the powers expressly conferred upon it by its charter but has the implied or incidental power to do whatever is reasonably necessary to effectuate the powers expressly granted and to accomplish the purposes for which it was conferred unless a particular act sought to be done is prohibited by the law or its charter. (American Jurisprudence 2nd Edition Vol. 19 Page 431) Every corporation is of course created with certain express powers but in addition to those every corporation has also certain powers which attach to it as an incident to its corporate existence. The powers which are incidental to corporate existence and which are always implied in the absence of express restrictions are: (1) The power to have perpetual succession, or succession during the period for which the corporation is created which includes the power to elect members in the place of those who are removed by death or otherwise, (2) The power to have a corporate name, (3) The power to purchase and hold land and chattels for authorised corporate purposes, (4) The power to have a common seal, (5) The power to make by-laws for the government of the corporation, (6) The power to disfranchise-ment or removal of members except in the case of modern joint-stock corporations. (Corpus Juris Secundum Vol. XIX Pages 372-373)

Suffice it to say in this behalf that what has been stated above with regard to residuary, implied or incidental powers is calculated to

- A accomplish the objects, the corporate purpose or corporate existence of the corporation. Refusal to register the transfer of a share obviously does not fall in this category. As has been pointed out in *Palmer's Company Law* 24th Edition Page 121 the objects or purposes for which a company is created should be distinguished from the powers which it can exercise. So far as refusal to register the transfer of a share is
- B concerned it is almost the consistent view in decided cases that the power has to be specified and can be exercised only in the manner specified and within the framework of the said specification. There is no inherent power in this behalf. (See: *In re Smith, Knight, & Co.*, IV Chancery Appeal Cases Page 20; *In re National Provincial Marine Insurance Company*, V Chancery Appeal Cases Page 559; *Moffatt v. Parqunar*, VII Chancery Division Page 591; *In re Cawley & Co.*, XLII Chancery Division Page 209; *In re Discovers Finance Corporation, Limited*, [1910] 1 Chancery Division Page 312 and *Sadashiv v. Gandhi Sewa Samaj*, A.I.R. 1958 Bombay Page 247)
- C

- Reliance was then placed by learned counsel for the appellant on
- D *The Conservators of the River Tone v. Ash*, 109 English Reports Page 479. In that case by an Act for making and keeping the river Tone navigable, it was enacted, that the thirty persons therein named and their successors should be conservators of the river; and should have various powers referred to therein. By a subsequent Act some more powers were conferred on them. A question arose as to whether the
- E conservators were entitled to sue in their corporate name for an injury done to their real property. It was held that as it manifestly appeared from the different clauses of the Acts of Parliament that the conservators should take land by succession and not by inheritance, although they were not created a corporation by express words they were so by implication and that being so they were entitled to sue in
- F their corporate name for an injury done to their real property. In our opinion, on the basis of this decision it is difficult to cull out any power in the board of directors of the company in the instant case to refuse to register the transfer of a share by implication.

- Reliance was also placed on *Attorney-General v. The Lord Mayor Etc. of the City of Leeds*, [1929] 2 Chancery Division Page 291
- G where it was pointed out that a corporation incorporated by royal charter stands on a different footing from a statutory corporation, the difference being that the latter species of corporation can do only such acts as are authorised directly or indirectly by the statute creating it whereas the former can, speaking generally, do anything that an ordinary individual can do. If, however, the corporation by charter be a
- H

municipal corporation then it is subject to the restriction imposed by the Municipal Corporations Act, 1882. The question in connection with which the above observations were made was whether the Corporation of Leeds, a municipal corporation, was entitled to work or run certain omnibuses along any route whether within or without the boundaries of the City of Leeds. This again was obviously a question relating to the business of the corporation to work or run omnibuses and has no bearing on the question as to whether the directors of the appellant-company in the instant case had inherent power to refuse to register the transfer of shares.

In *E.M. Muthappa Chettiar v. Salem Rajendra Mills Ltd.* XXV Company Cases Page 283 it was held that if a person is of such a character as to throw their company into confusion and if he was not a desirable one, then the Board of Directors would certainly be acting in the best interests of the company in refusing to register the shares in his name and such a reason is quite a valid reason. Suffice it to say so far as this case is concerned that Article 56 which was the relevant article dealing with the refusal to register the transfer of a share itself clearly conferred power on the board of directors to refuse to register the transfer of a share *inter alia* "if the transferee of the share is not approved". It was thus a case where power had been conferred by an article and was not a case of refusal to register under any inherent power.

Lastly, reliance was placed on *Life Insurance Corporation of India v. Escorts Ltd. & Ors.*, [1985] Supp. 3 S.C.R. Page 909. In that case with reference to an earlier decision of this Court in *Bajaj Auto Ltd. v. N.K. Firodia and Another*, 41 Company Cases page 1, it was held that where the articles permitted the directors to decline to register the transfer of shares without assigning reasons the court would not necessarily draw adverse inference against the directors but will assume that they acted reasonably and *bona fide*. Here again, as is apparent from the decision in the case of *Bajaj Auto Ltd.* (supra) Article 52 of the appellant-company in that case provided that the directors might at their absolute and uncontrolled discretion decline to register any transfer of shares. This too was, therefore, a case of power being conferred by the articles of association and not a case of exercise of inherent power. We may also point out that at page 997 of the Reports of *Escorts Ltd.* (Supra) it was held that even though it was open to the company and indeed it was bound to refuse to register the transfer of shares of an Indian company in favour of a non-resident where the requisite permission under the FERA was not obtained but

- A once permission was obtained whether before or after the purchase of the shares, the company could not thereafter refuse to register the transfer of shares.

- B The third submission made by learned counsel for the appellant that the application under section 155 of the Act was not maintainable as the transferors had not been made parties therein, may now be considered. A similar submission had been made before the Division Bench of the High Court also and was repelled by holding that the transferor is not a necessary party to an application under section 155 of the Act unless the transfer was disputed by him. It was pointed out that even though in the instant case the transferors had been served with notice and in any event had knowledge of the proceedings for registration of transfer of shares they had not disputed the transfer of the shares. We do not find any infirmity in the order of the High Court on this point.

- D Likewise, we find no substance even in the submission made by learned counsel for the appellant based on section 108 of the Act for the simple reason that after taking into consideration the evidence produced by the parties it has been found as a fact by the High Court that it had not been proved that the respondent had paid higher prices for the shares than those stated in the transfer deeds. We find no justification for interfering with the said finding of fact in the present appeal. On this finding the transfer deeds could not be termed as unduly stamped and power to refuse the registration of the transfer of shares contemplated by section 108 of the Act would not be invoked.

- F In the result, we find no substance in this appeal and it is accordingly dismissed with costs assessed at Rs.2,000.

T.N.A.

Appeal dismissed.