

## INDIAN CHEMICAL PRODUCTS

v.

## STATE OF ORISSA &amp; ANR.

May 5, 1966

(J. R. MUDHOLKAR, R. S. BACHAWAT AND RAGHUBAR DAYAL, JJ.)

Company Law—Difference between "transmission" and "transfer" of shares—Ownership of shares passing by operation of law—Board of directors whether can refuse amendment of share register.

Indian Companies Act, 1913, s. 38—Court's power under—Proper exercise of.

As a result of constitutional changes following the Indian Independence Act, 1947, the ownership of the public properties of the Maharaja of the Mayurbhanj including certain shares in the appellant company passed to the State of Orissa. Although the State had acquired title to these shares by operation of law, it also obtained from the Maharaja by way of abundant caution, a deed transferring these shares to it. In 1950, the State Government lodged the share scrip and transfer deed with the company and requested it to make the necessary changes in the share register. Despite repeated requests, however, the directors of the company refused to do so. In 1955 the State filed an application under s. 38 of the Indian Companies Act, 1913 in the High Court of Orissa, asking for rectification of the share register by inserting its name as the holder of the share in place of the Maharaja. The High Court allowed the application and passed a supplemental order directing the filing of the notice of rectification with the Registrar within a fortnight. The company's appeal before the Division Bench failed, whereupon it appealed to this Court by special leave.

It was urged on behalf of the appellant company, *inter alia*, that under Art. 11 of its Articles of Association as well as under cl. 22 of Table A read with art. 1-A the directors has power to refuse registration of the transfer.

HELD: (i) In Table A which was attracted by art. 1-A of the company's Articles of Association, the word 'transmission' is put in contradistinction to the word 'transfer'. One means a transfer by the act of the parties, the other a transmission by devolution of law. Art. 11 refers to transfers. A devolution of title by operation of law is not within its purview. Being a restrictive provision the article must be strictly construed. In the instant case, the title to the shares vested in the State of Orissa by operation of law and the State did not require an instrument of transfer from the Maharaja to complete its title. Article 11 does not confer upon the Board of directors a power to refuse recognition of such a devolution of title. [383G-384C].

*In re Bentham Mills Spinning Company.* (1879) 11 Ch. D. 900, referred to.

(ii) Clause 22 of the regulations in Table A read with Art. 1-A confers power on the Board of directors to decline registration of transmission of title in consequence of the death or insolvency of a

- A member. In the instant case there was no transmission of title in consequence of death or insolvency and clause 22 had, therefore no application. [384 D]
  - (iii) In so far as the claim of the State was based on the transfer deed it fell within the purview of Art. 11. But the refusal of the board of directors to register the transfer under that article was *mala fide*. The power under that article was a discretionary power. The directors must exercise that power reasonably and in good faith. The Court can control this discretion if they act capriciously or in bad faith. [384 E-F; 385 C-D]
  - (iv) The name of the State of Orissa had without sufficient reason, been omitted from the register, and there was default in not entering on the register the fact of the Maharaja having ceased to be a member. The Court's jurisdiction under s. 38 was, therefore, attracted. The High Court rightly ordered the rectification in the exercise of its summary powers under s. 38. The jurisdiction created by s. 38 is very beneficial and should be liberally exercised. [385G]
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**CIVIL APPELLATE JURISDICTION:** Civil Appeal No. 303 of 1963.

- Appeal from the judgment and order dated September 5, 1960 of the Orissa High Court in Appeal under Orissa High Court Order No. 4 of 1956.

*N. C. Chatterjee, Ramadev Chaudhuri, G. S. Chatterjee and S. C. Majumdar, for the appellant.*

*C. K. Daphtary, Attorney-General, N. D. Karkhanis and R. N. Sachthey, for respondent No. 1.*

- E The Judgment of the Court was delivered by **Bachawat, J.** On November 29, 1947, the Indian Chemical Products, Ltd., a limited company, was incorporated having its registered offices in Baripada, Mayurbhanj and in the town of Calcutta. Its authorised capital is Rs. 25 lakhs divided into 25,000 shares of Rs. 100 each. The company has seven share-holders. The Maharaja of Mayurbhanj subscribed and paid for 7,500 shares. The remaining six shareholders hold 150 shares only. All the shareholders are signatories to the memorandum of association of the company. The State of Orissa claims that by reason of the constitutional changes since the declaration of independence, all the shares held by the Maharaja of Mayurbhanj have now vested in it by operation of law. The State also based its claim to the shares on a formal instrument of transfer executed by the Maharaja. On March 16, 1950, the Government of Orissa lodged the share scrip and the transfer deed with the company, and requested it to make the necessary changes in the share register. The Government as also the Maharaja, through his agent, the Imperial Bank of India, repeatedly requested the company to register the Secretary to the Government of Orissa, Finance Department as the holder of the shares in place of the Maharaja. There was protracted correspondence in the matter for over three
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years and eventually on May 16, 1953, the board of directors of the company refused to register the transfer. On December 1, 1953, Sri S. K. Mandal, attorney for the State of Orissa, requested the company to record the name of the State as the owner of the shares in the share register, but the company declined to do so. On February 9, 1955, the State of Orissa filed an application under s. 38 of the Indian Companies Act, 1913 in the High Court of Orissa asking for rectification of the share register by inserting its name as the holder of the shares in place of the Maharaja. The company and the Maharaja were impleaded as respondents. The application was contested by the company only. On November 22, 1956, Ray, J. allowed the application. On September 13, 1957, he passed a supplemental order directing the filing of the notice of rectification with the Registrar within a fortnight. On September 5, 1960, a Division Bench of the High Court dismissed the appeal preferred by the company. The company now appeals to this Court on a certificate granted by the High Court.

Both courts concurrently held that (1) the title to the shares vested in the State of Orissa by operation of law; (2) the refusal of the board of directors to register the transfer was *mala fide*; (3) the State of Orissa was entitled to rectification of the share register and a proper case for the exercise of the Court's jurisdiction under s. 38 of the Indian Companies Act, 1913 had been made out; (4) the petition was not liable to be dismissed on the ground that the State had asked the company to register the name of the Secretary to the Government of Orissa, as the shareholder in place of the Maharaja. The appellate Court also held that under the articles of association of the company the board of directors had no power to refuse registration of a transfer where the transfer was by operation of law. The appellant challenges the correctness of these findings.

The courts below concurrently found that the 7,500 shares were held by the Maharaja in his capacity as ruler of the State of Mayurbhanj. This finding is amply supported by the documentary evidence on the record and is no longer challenged. The State of Mayurbhanj was one of the feudatory States of Orissa under the suzerainty of the British Crown. As from August 15, 1947, with the declaration of independence the paramountcy of the British Crown lapsed. Thereafter, steps were taken for the integration of the State with the Dominion of India. On October 17, 1948, the Maharaja of Mayurbhanj signed an agreement for the merger of the State with the Dominion. By art. 1 of this agreement, the Maharaja completely ceded to the Dominion his sovereignty over the State of Mayurbhanj as from November 9, 1948. Article 4 of the agreement allowed the Maharaja to retain the ownership of his private properties only as distinct from the State properties. On and from November 9, 1948, as a necessary

- A consequence of the cesser of sovereignty all the public properties of the State including the 7,500 shares in the company vested in the Dominion. By operation of law in consequence of the change of sovereignty, all the public properties of the State which were vested in the Maharaja as the sovereign ruler devolved on the Dominion as the succeeding sovereign.
- B As from January 1, 1949, the Government of India in exercise of its powers under s. 3(2) of the Extra Provincial Jurisdiction Act (47 of 1947) delegated to the Government of Orissa the power to administer the territories of the merged State. On August 1, 1949, the States Merger (Governors' Provinces) Order, 1949 came into force, and in consequence of s. 5(1) of the Order, all property vested in the Dominion Government for purposes of governance of the merged State became from that date vested in the Government of Orissa, unless the purposes for which the property was held were central purposes. By a certificate dated November 10, 1953, the Government of India declared that the 7,500 shares were not held for central purposes. Under the Constitution which came into force on January 26, 1950, the territories of the merged State were included in the State of Orissa. By reason of these successive constitutional changes, the shares became vested in the State of Orissa. The State is now the legal owner of the shares and the directors of the company are bound to enter its name in the register of members, unless there is some restrictive provision in the articles authorising them to refuse the registration.
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- E The company contends that under its articles, the directors have the power to refuse the registration. It relies on art. 11, which reads:
- F "The Board of Directors shall have full right to refuse to register the transfer of any share or shares to any person without showing any cause or sending any notice to the transferee or transferor.
- G The Board may refuse to register any transfer of shares on which the Company has lien."
- H Article 1-A attracts the regulations in Table A of the First Schedule to the Indian Companies Act, 1913 so far as they are applicable to private companies and are not inconsistent with the articles. The regulations in Table A make a distinction between transfer and transmission of shares. In respect of a transfer, they require that the instrument of transfer shall be executed both by the transferor and the transferee. A transmission by operation of law is not such a transfer. In *In re. Bentham Mills Spinning Company*(<sup>1</sup>), James, L.J. said "In Table A the word 'transmission'

(<sup>1</sup>) (1879) 11 Ch. D. 900, 904.

is put in contradistinction to the word 'transfer'. One means a transfer by the act of the parties, the other means transmission by devolution of law." Article 11 refers to transfers. A devolution of title by operation of law is not within its purview. Being a restrictive provision, the article must be strictly construed. In the instant case, the title to the shares vested in the State of Orissa by operation of law, and the State did not require an instrument of transfer from the Maharaja to complete its title. Article 11 does not confer upon the board of directors a power to refuse recognition of such a devolution of title. We may add that we express no opinion on the question whether such an article applies to an involuntary transfer of shares by a Court sale having regard to the provisions of 0.21, r. 80 of the Code of Civil Procedure with regard to the execution of necessary documents of transfer.

Clause 22 of the regulations in Table A read with art. 1-A confers power upon the board of directors to decline registration of transmission of title in consequence of the death or insolvency of a member. In the instant case, there is no transmission of title in consequence of death or insolvency, and clause 22 has no application. Under the articles, the directors had therefore no power to refuse registration of the devolution of title on the State of Orissa by operation of law in consequence of the constitutional changes.

Though the State of Orissa had acquired title to the shares by operation of law, by way of abundant caution it obtained a deed of transfer and lodged it with the company together with the share scrip. The transfer deed was duly stamped and complied with all the formalities required by law. The claim of the State of Orissa based upon the transfer deed was within the purview of Art. 11. Even with regard to this claim, the Courts below concurrently held that the board of directors acted *mala fide* in refusing to register the transfer. This finding is amply supported by the materials on the record. In spite of the fact that the State had filed with the company a certificate of the Collector of Stamp Revenue, West Bengal, that no stamp duty was payable on the transfer, the company raised the objection that the transfer deed must be stamped. To avoid this objection, the Government stamped the deed and again lodged it with the company. For over three years, the directors delayed registration of the transfer on frivolous pretexts. On May 16, 1953, the directors without assigning any reason declined to register the transfer. Before the High Court, the company asserted that the registration was refused because the Maharaja of Mayurbhanj was under an obligation to execute an agreement conferring valuable rights on the company and the State of Orissa had failed to honour this obligation. Reliance was placed on cl. 6 of the company's memorandum of association, which stated that the company and the Maharaja proposed to

- A** enter into an agreement and a copy of the proposed agreement was annexed. Clause 6 shows that there was a proposal between the parties to enter into an agreement, but there was no concluded agreement between them, nor was there any binding obligation on the Maharaja to execute an agreement. The directors could not use their power of declining to register the transfer under Art. 11 for the purpose of forcing the State of Orissa to enter into the proposed agreement. Actually, the reason given at the trial was an afterthought. The Imperial Bank of India representing the Maharaja was pressing for registration of the transfer. By its letter dated March 17, 1953, the company assured the Bank that the registration would be effected shortly. Nevertheless, on May 16, 1953 the directors capriciously refused to register the transfer.

**D** The power under Art. 11 to refuse registration of the transfer is a discretionary power. The directors must exercise this power reasonably and in good faith. The Court can control their discretion if they act capriciously or in bad faith. The directors cannot refuse to register the transfer because the transferee will not enter into an agreement which the directors conceive it to be for the interests of the company.

**B** We cannot accept the contention that the petition was liable to be dismissed because the State of Orissa had asked for registration in the name of the Secretary, Finance Department. No such objection was taken by the company, although it had taken numerous other objections. Moreover, by letter dated December 1, 1953, Shri S. K. Mandal, the attorney for the State of Orissa, had definitely called upon the company to record the name of the State as the owner of the shares in the share register. In spite of this letter, the company refused to make the necessary registration.

**F** The Maharaja of Mayurbhanj has ceased to be the owner of the shares. The State of Orissa is now their owner, and has the legal right to be a member of the company and is entitled to say that the company should recognise its membership and make an entry on the register of the fact of its becoming a member and its predecessor-in-title having ceased to be a member. The name of the State of Orissa has, without sufficient reason, been omitted from the register and there is default in not entering on the register the fact of the Maharaja having ceased to be a member. The Court's jurisdiction under s. 38 is, therefore, attracted. The High Court rightly ordered the rectification in the exercise of its summary powers under s. 38. The jurisdiction created by s. 38 is very beneficial and should be liberally exercised. We see no reason why the Court should deny the applicant relief under s. 38. The directors of the appellant company on the most frivolous of objections have prevented the State of Orissa from becoming a

member for the last 16 years. It is a matter of regret that justice **A** has been obstructed so long. There is no merit in this appeal.

The appeal is dismissed with costs. The appellant company do forthwith carry out the order of rectification passed by the Courts below in case the order has not been carried out yet. **B1**

*Appeal dismissed.*