A SATISH CHANDRA

v.

UNION OF INDIA

AUGUST 1, 1994

B [A.M. AHMADI AND B.L. HANSARIA, JJ.]

Company Law—Companies Act, 1956—Sections 397, 443—Companies (Amendment) Act, 1988—Sections 4, 5, 16, 21, 27—Legislative Competence of—Held, valid—Classification of powers—Conferment of power on Company C *Law Board to deal with oppression and mismanagement—Retention of powers of winding up by High Court—Held, valid.*

Constitution of India—Article 32—Companies (Amendment) Act, 1988—Legislative Competence of—Held, valid.

D *Companies Law—Companies (Amendment) Act, 1988/Company Law Board Regulations, 1991—Regulation 7—Provision directing minority to approach Board—Not oppressive—Hence, valid.*

The petitioner challenged Sections 4, 5, 16, 21 and 27 of the Companies (Amendment) Act, 1988 by which the Company Law Board was E **constituted on the grounds that the legislature was not competent to enact the Amendment Act, that there was no intelligible differentia in classification of powers in as much as power visualised under Section 397 of the Principal Act has been conferred on the Board whereas, power under Section 443 was retained by the High Court.**

F **The petitioner contended that the interests of minority share holders is not protected since they have to approach the Board before filing a petition, that the Bench of the Board does not function in all the States and that the minority share holders would not be able to obtain relief against their oppression.**

G **The petitioner also contended that the Parliament should not have enacted the Amendment Act since it has experienced failure once in 1967.**

Disposing of the Writ Petition, this Court

H **HELD : 1. The provisions of the Companies (Amendment) Act, 1988**

assailed in this case do not suffer from any constitutional infirmity. [392-B] A

2. The question of legislative competence does not arise in this case, since the Board is not a substitute for the High Court and appeals from the orders of the Board lie to the High Court. There is no lack of intelligible and acceptable differentia in having two fora for the purposes of Sections 397 and 443 of the Principal Act considering the drastic nature of the provisions. [392-G, H, 393-A] B

Sampath Kumar v. *U.O.I.,* **AIR (1987) SC 386, distinguished.**

4. The minority is not neglected, since there is provision for the Board to have sittings in the four metropolitan cities of the country in which very large percentage of important companies have their registered offices. [393-E-F] C

5. The failure of the Parliament may not be treated sufficient for not trying the experiment again. The question relating to the wisdom of the Parliament is not amenable to examination when the constitutionality is under challenge. [393-H] D

[The Court recorded the fact that the qualifications of Members of the Board as amended in Rules 1994 do leave sufficient room for appointment of persons with judicial experience as a Judicial Member of the Board.] [394-C] E

CIVIL ORIGINAL JURISDICTION : Civil Writ Petition No. 679 of 1992.

(Under Article 32 of the Constitution of India.) F

Satish Chandra, (In-person) and Sarat Chandra for the Petitioner

Altaf Ahmad, Additional Solicitor General, S.A. Matto, Hemant Sharma, P. Parmeswaran and Ms. A. Subhashini for the Respondent.

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The Judgment of the Court was deliverd by

HANSARIA, J. This petition under Article 32 of the Constitution challenging certain provisions of the Companies (Amendment) Act, 1988, hereinafter the Act, by which an independent Company Law Board (for short, the Board) was constituted has served its purpose well on framing H

A of the Company Law Board (Qualifications, Experience and other Conditions of Service of Members) Rules, 1993, which were published in the extraordinary Gazette of Government of India dated April 28, 1993, followed by amendment of these rules by notification dated 3.6.94 which, *inter alia,* substituted a new rule 8 in place of original rule 8. We have said so because the provisions of the Act assailed, namely, sections 4, 5, 16, 21 and
B 27 do not suffer from any constitutional infirmity. The challenge to the aforesaid sections has, however, been on the ground of legislative incompetence as well as lack of valid classification in having conferred the power visualised by section 397 of the Principal Act on the Board, as would appear from what has been stated under serial number 14 in the Table to
C section 67 of the Act, leaving power under section 443 with the High Court.

2. The legislative incompetence is sought to be sustained by Shri Satish Chandra, who has appeared in person, by seeking to draw some assistance from the decision by a Constitution Bench of this Court in
D *Sampath Kumar's* case, AIR (1987) SC 386. That case has however, no relevance because the Administrative Tribunals which had been set up by the Administrative Tribunals Act, 1985, were taken as substitutes of the High Court, whereas the Board is not so, which would be apparent from the fact that an appeal from the orders of Board has been provided to the High Court by section 10-F inserted in the Principal Act by section 5 of
E the Act, whereas from the judgment and order of the Administrative Tribunals as set up by the aforesaid Act no appeal lies to the High Court. Moreover, the Adminisrative Tribunals Act has even taken away the constitutional power of the High Courts under Article 226/227 of the Constitution because of what has been provided by Article 323-A; and so, this Court
F felt called upon to examine the legislative competence of the Administration Tribunals Act. The position here is entirely different. Sampath Kumar's case is, therefore, out of bounds.

3. Insofar as lack of valid classification is concerned, this argument too has not appealed to us, because, even according to Shri Satish Chandra
G the power of winding up conferred by section 443 of the Principal Act, which still rests with the High Court, is more drastic. The submission by learned Additional Solicitor General Shri Ahmed has, therefore, more merit - the same being that as the winding up power has more serious consequences the same has been retained with the High Court while
H clothing the Board with a less drastic power visualised by section 397. This

difference does provide a good ground of distinction, according to us. We are, therefore, not impressed with the argument of lack of intelligible and acceptable differentia in having two fora for the aforesaid two purposes. A

4. Shri Satish Chandra has taken pains to try to persuade us to find fault with the concerned provision of the Act because it does not protect minority share holders who would normally like to invoke power of section 397 inasmuch as these minority share holders would be required to approach Benches of the Board which do not function in all the States as do the High Courts, because of which the minority share holders would not be able to obtain relief against the oppression by the majority. This argument has no teeth in it inasmuch as regulation 7 of the Company Law Board Regulations, 1991 shows that the Benches of the Board are ordinarily required to have sittings at places mentioned in sub- regulation (2) - these being in Northern, Southern, Eastern and Western regions. Sub-regulation (1) has further stated that all proceedings, other than those required to be before the principal Bench under regulation 4, shall be instituted before the bench within whose jurisdiction registered office of the company is situated. It is well known that registered office of the vast majority of important companies are either in Calcutta, Bombay, Madras or New Delhi, which have been named, by sub-regulation (3), as the places where the regional Benches of the Board shall ordinarily sit. The proviso has further stated that the Bench may, at its discretion, hold its sitting in any other city or town falling within the region. This type of litigation has, therefore, been well taken care of by providing sittings of the Benches in the four metropolitan cities of the country in which very large percentage of important companies have their registered offices. The minority, therefore, need not feel neglected, not to speak of stifled or suppressed. B C D E F

5. Only other argument of Shri Satish Chandra which needs mention is that the Parliament itself had once made an experiment with establishment of such a Board earlier by enacting Amendment Act of 1963, which experiment did not succeed because of which the Board came to be abolished in 1967. The failure of the experiment may not be treated sufficient by the Parliament not to try again. In any case, this is a question relatable to the wisdom of the Parliament which is not amenable to examination by a Court when seized with the constitutionality of the provision. G H

A 6. The petition has, therefore, ceased to be of any importance because of the aforesaid rules having been framed. It may be pointed out here that proceedings of this Court would show that this case was being adjourned from time to time to enable the Government to finalise the aforesaid rules which having been done in 1993 and having undergone B amendment in 1994, the grievance about the qualifications of the members of the Board, about which the Act when enacted was silent inasmuch as it left the qualifications and experience to be prescribed, has been well met. So the petition has served its purpose well, as stated in the opening paragraph of the judgment. It may be put on record that the qualifications as amended in 1994 do leave suffcient room for appointment of persons C with judicial experience as a Judicial Member of the Board. This has not been disputed by Shri Satish Chandra.

7. In the result, the petition having served its purpose is required to be closed which we hereby do. The petition stands disposed of accordingly.

V.M. Petition disposed of.