

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CA Shri Mahendra Turakhia ...Petitioner
Vs.
The Registrar of Companies and Ors. ...Respondents

CORAM : V. M. KANADE , &
P.D. KODE, JJ.

P.C. :

1. The case of the Petitioner is that he is a Patron Member of Respondent No.2, which is a Section 25 Company established under the Companies Act, 1956. It is submitted that the ROC, after issuing a show cause notice to Respondent No.2 and after giving them hearing, had in terms disapproved the amendments which were sought to be made to the Articles of Association and Memorandum of Association by order dated 28th April, 2014. It is submitted that despite a specific order being passed by the ROC, Respondent No.2 is proposing to hold the Annual General Meeting tomorrow and is going to take decision which is expressly prohibited by the ROC in the said order.

2. On the other hand, the learned Senior Counsel appearing on behalf of the Petitioner submits that they have made an application, seeking review of the order passed by the ROC and our attention is invited to one such remarks on the website of the ROC. It is also submitted that they will not discuss or take any decision which is expressly prohibited by the ROC in the said order dated 28th April, 2014.

3. It appears that Respondent No.2 wanted to change the formation of Executive Council and Governing Council and Board of Directors by changing the number of members which constitutes the said three Committees as also the organizational set up. When this fact was brought to the notice of the ROC, the show cause notice was issued and, thereafter, after, giving reply to the show cause notice by Respondent No.2, such order was passed, prohibiting Respondent No.2 for making a change in the organizational set up. It is pertinent to note here the observation made by the ROC, which reads as under:

“In view of the above, you are hereby directed to take necessary remedial measure to rectify the above defects particularly for removal of the discriminatory voting rights given to the Founder Chief Pattern Members (FCP) and Pattern Members in terms of Section 41 of the Companies Act, 1956 read with clause 14 of Table “C” of the Companies Act, 1956 and restoration of Executive Council and Governing Council as it was prior to the amendment by bringing out a proposal for amendments of Articles of Association of the company in terms of the Companies Act, as

applicable to a Section 25 Company (Section 8 of 2013 Act). You are also hereby directed to refrain from exercising of such powers until it is modified and approved by this office.”

It is thus clear that expressly Respondent No.2 has been prohibited from carrying out any amendments in Executive Council and Governing Council. The remark which is found on the website, does not indicate that the ROC has stayed this order, but,has merely given remark that the restoration of Executive Council and Governing Council is being examined separately.

4. That being the position. In our view, in the Annual General Meeting, which is to be held tomorrow, will not take any step which has been expressly prohibited by the ROC in its order dated 28th April, 2014. Reply to be filed within four weeks. Stand over to 11th November, 2014. We hope that decision on the application filed by the Petitioner may be expeditiously taken by the ROC.

[P.D. KODE,J.]

[V. M. KANADE, J.]