

OD-3 & 4

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

IA No. GA/1/2024
In CS/155/2024

HINDUSTAN MEDICAL INSTITUTION AND ANR.
-VS-
ANAMIKA LODHA AND ORS.

&

IA No. GA/2/2024
In CS/155/2024

HINDUSTAN MEDICAL INSTITUTION AND ANR.
-VS-
ANAMIKA LODHA AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: May 22, 2024.

Appearance:

Mr. Jishnu Saha, Sr. Adv.
Mr. Anirban Ray, Adv.
Mr. Sankarsan Sarkar, Adv.
Mr. Rajshree Dutta, Adv.
Mr. Debdut Mukherjee, Adv.
Ms. Pritha Basu, Adv.
Mr. Debartha Chakraborty, Adv.
Mr. Kritin Sraff, Adv.
...for the petitioners

Mr. Jishnu Chowdhury, Adv.
Mr. Deepan Kumar Sarkar, Adv.
Mr. Aritro Basu, Adv.

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Debanjan Mandal, Adv.
Mr. Sanjib Kr. Trivedi, Adv.
Mr. Soumya Ray Chowdhury, Adv.
Mr. Satadeep Bhattacharyya, Adv.
Ms. Iran Hassan, Adv.
Mr. Sanket Sarawgi, Adv.
...for the defendant no.3

The Court: Three suits with connected applications, namely (i) CS/153/2024 (IA No. GA/1/2024 and IA No. GA/2/2024), (ii) CS/155/2024 (IA No. GA/1/2024 and IA No. GA/2/2024) and (iii) CS/156/2024 (IA No. GA/1/2024 and IA No. GA/2/2024) were placed before this Court upon being assigned by the Hon'ble Chief Justice. The matters were listed together for fixing dates and a composite order was passed on May 21, 2024. Although there are similarities in the cause of action, but the societies are different. The suits and applications are heard separately. They are detagged.

GA 1 of 2024 is an application for injunction filed in connection with CS No.155 of 2024. The petitioners are the plaintiffs. The petitioner No.1 is a charitable society registered under the West Bengal Society Registration Act, 1961 (hereinafter referred to as the 'said Society'). The petitioner No.2 claims to be the trustee and member of the Managing Committee (hereinafter referred to as the 'said Committee') of the society. The defendants/respondents also claim to be Trustees and members of the Managing Committee on the basis of the resolution dated February 26, 2024. The defendant No.3 claims to be the Trustee and Chairman of the Managing Committee. The petitioners have filed an application for temporary injunction restraining the defendants/respondents from acting in terms of or in furtherance of agenda notices dated February 22, 2024, February 27, 2024, May 13, 2024 and May 14, 2024. Prayer is made for an ad-interim injunction.

The notice dated February 22, 2024, was issued by Smt. Anamika Lodha, as one of the trustees of the society. By the said notice, an emergency meeting of the trustees was called on February 26, 2024, at 1 P.M. The agenda of the meeting inter alia included the following:-

- a) to grant leave of absence.
- b) to take note of the following judgement of the Division Bench of the Hon'ble High Court at Calcutta dated December 14, 2023,
- c) to consider and take actions including removal against such trustees of the society who had acted against the interest of the Society.
- d) to consider and approve appointment of new Trustees of the Society.
- e) to consider and approve removal of some of the enlisting members of the Managing Committee of the society and to consider and approve nomination of new members of the managing committee of the society.
- f) to consider and authorise the Trustees and the Members of the Managing Committee to act in accordance with the Rules and Regulation of the Society.
- g) to consider and authorise the Managing Committee or such other persons as decided by the Managing Committee to take custody of all the documents/data/records and books of accounts of the Society from the premises of Birla Building, 9/1 R.N. Mukherjee Road, Kolkata.
- h) to consider and appoint professionals to investigate into the financial and other affairs of the society.
- i) any other matter, which may be brought before the Trustees with the prior permission of the Chairman.

By a notice dated February 27, 2024, an emergency meeting of the Managing Committee scheduled to be held on February 29, 2024, at 3:30 P.M., was called. The agenda were similar to those in the notice dated February 22, 2024. Further agenda with regard to removal of existing members of Managing Committee of the Society who had acted against the

interest of the society, removal of the existing Hony. Secretary and appointment of a new Hony. Secretary and all matters relating to the administration and finances of the society were also fixed.

The notice dated May 13, 2024 was issued by one Pradip Tondon representing himself as the honorary secretary of the Society, calling upon the trustees of the Society to attend the meeting to be held on May 21, 2024, at 3.30 P.M., on the following issues: -

1. To grant leave of absence.
2. To peruse, note and sign the previous minutes of the Board of Trustees held on 26th February, 2024.
3. To apprise about the status of legal update against some of the trustees and/or various other legal cases and to take such actions as may be deem appropriate.
4. Any other matter, which may be brought before the trustees with the prior permission of the chairman.
5. Vote of thanks.

The notice dated May 14, 2024 was also issued by one Pradip Tondon representing himself as the honorary secretary of the Society, calling upon all the members of the Managing Committee of the Society to attend the meeting to be held on May 22, 2024, at 3.00 P.M., on the following issues :-

1. To grant leave of absence.
2. To pursue, note and sign the previous minutes of the Board of Trustees held on 29th February, 2024.
3. To apprise about the status of legal update against some of the members of the Managing Committee and/or various other legal cases and to take such actions as may be deem appropriate.
4. Any other matter, which may be brought before the Managing Committee with the prior permission of the chairman.
5. Vote of thanks.

Mr. Jishnu Saha, learned Senior Advocate, appearing for the petitioners submits that neither Anamika Lodha nor Pradip Tondon had the authority to call the meetings. Harsh Vardhan Lodha (HVL), had ceased to be a trustee and a member of the managing committee. He was using his influence through his wife and his associates to influence the voting pattern of the society. He continued to masquerade as the chairman of the Managing Committee of the Society, although he was a rank outsider. The sole purpose behind his attempt to appoint new Trustees and members of the Managing Committee vide the notices under challenge, was to gain control over the voting pattern and decision making processes within the society which would influence the internal affairs of the MP Birla Group of companies. The said Society also had a considerable shareholding in those companies. The meetings were called at the instance of HVL in ignorance of the validly constituted and functional Managing Committee and Trustees.

Mr. Saha further contends that the resolutions so passed and adopted, had not been ratified. They did not have any binding effect in terms of Regulation 30 of the Society. HVL had ceased to be a member by a resolution adopted on March 4, 2021. The said resolution is still operative and unchanged. Smt. Anamika Lodha had filed a suit challenging the said resolution, but no orders have been passed either staying or setting aside the same. The suit has died a natural death. Mr. Saha further submits that several trustees have come and gone and at present Mrs. Nandini Nopany, Mr. Sushil Kumar Daga, Mr. Krishna Damani, Mrs. Anamika Lodha, Dr. Dinesh Jaluka, Mr. Ravi Kumar Patwa, Justice K. S. Jhaveri (Retd.) are the

trustees. The trustees had the ultimate voting rights and in terms of the order of the Hon'ble Apex Court, decisions taken by the majority of the trustees would be binding. The trustees were not required to act unanimously while casting their votes. By taking advantage of the said order, Mr. Lodha through his wife and one of the associates Mr. Pradip Tondon initiated meetings to make the Trustees and Managing Committee more compliant, by including persons belonging to his camp, so that he could control the votes in any voting process of the society in respect of the MP Birla Group of Companies, thereby gaining full control over the companies as well.

The crux of Mr. Saha's submission is that by gaining control of the Society in a circuitous manner, HVL was actually trying to influence all decisions not only of the Society, but also of the companies in which the society had considerable voting rights.

Mr. Abhrajit Mitra, learned Senior Advocate appearing on behalf of the defendants/respondents submits that the agenda had been enumerated in detail in the notices. The notices were issued to all trustees. Some of the trustees objected to the meeting, but none challenged the same either before or on the date of the respective meetings. The meetings were accordingly held and the resolutions were confirmed. It is further contended that cessation of trusteeship of HVL was contrary to the regulations of the society. The direction of the APL Committee which had been appointed in the testamentary proceedings, was no longer binding. The resolution of March 4, 2021 was adopted on the direction of the APL committee.

Mr. Mitra drew the attention of the Court to HVL's e-mail dated February 22, 2024. By the said e-mail, HVL proposed to take approval of the managing committee by way of resolutions by circulation, for passing the resolutions relating to appointment of authorised representatives and manner of voting in respect of postal ballots of the respective companies, in which the society was a shareholder. Mr. Mitra submits that although the plaintiffs alleged that by changing the constitution of the managing committee and the trustees, HVL was trying to take control over all decisions and voting patterns of the society, the letter sent by e-mail has not been challenged. Thus, the conduct of the petitioners were contrary to their own case in the suit. Mr. Mitra relies on the decision of the Hon'ble Apex Court in the case of *Kerala State Electricity Board v. Hindustan Construction Co. Ltd. & Ors. (2006) 12 SCC 500* in support of his contention that non-confirmation of the minutes would not have any effect on the decision which had been taken in the meetings. The meetings were already held for composition of the Trustees and the Managing Committee. Adequate quorum was available. The resolutions in the meetings had been unanimously adopted and those resolutions were subsequently confirmed.

Although detailed arguments have been advanced on the validity of the agenda notices, resolutions etc., this Court restricts this decision only to the prayer for ad-interim protection made by the plaintiffs.

The prima facie case and irreparable loss and injury urged by the petitioners justifying the grant of an interim injunction, are germane for discussion. A resolution dated March 4, 2021 was adopted, inter alia,

holding that HVL had ceased to be a trustee and chairman of the managing committee, on the strength of the order passed by the learned Single Judge. An administration pendente lite committee (APL) was formed by the High Court in the testamentary proceedings in respect of the Will of late Priyamvada Devi Birla (PDB). The APL had issued directions in respect of the companies and the society and directed that HVL could not continue as either as a Trustee or as a Chairman and member of the Managing Committee.

The learned Single Judge of this Court held that the directions of the APL would be binding and the same should be implemented.

The said order was challenged. At the time of admission of the appeal, an interim order was passed clarifying that HVL would be restrained from holding any office in any of the entities of the M. P. Birla Group during the pendency of the suit on the strength of the shares referable to the estate of PDB. When HVL chaired meetings as Director/ Managing Director/ Chairman of the M.P. Birla Group of Companies, contempt applications were filed. Such contempt applications were dismissed, inter alia, holding that there was every possibility that HVL was chairing the meetings on the strength of the votes by which he had been nominated as Managing Director/Chairman-cum-Director of those companies. Until the estate of PDB was defined quantitatively, it could not be held that HVL was in contempt. The appeal from the order of the learned Single Judge came up for hearing before the Hon'ble Division Bench of this Court. The Hon'ble Division Bench held that the APL Committee had stepped into the shoes of

the testatrix PDB. PDB was the owner of certain specific shares in the company. In such capacity as a shareholder, she had all incidental rights such as voting rights, decision making powers, etc. Ownership of shares and rights directly incidental thereto were heritable rights which devolved upon her estate on her demise, but her personal charisma, authority and influence asserted over shareholders and the management of other companies, were not heritable. They were not properties which could be treated as the subject of PDB's estate.

The Division Bench made a clear distinction between the rights of PDB flowing from the ownership of the shares and those which had been remotely derived from the ownership of such shares being in the nature of control over the promoters' groups or the voters. The APL could exercise powers only on the strength of the shares which were owned by PDB but not on those shares over which PDB had either remote or derivative control. Thus, in my prima facie view, the APL could not interfere with the internal affairs of the MP Birla Group of companies and the societies. Upon disposal of the appeal on 14th December, 2023 and the Division Bench coming to a specific finding that the APL did not have any jurisdiction or right to interfere with the internal affairs or the management of the companies under the M.P. Birla group of companies, the resolution dated March 4, 2021 has become inoperative. The agenda notices were issued on February 22, 2024 and February 27, 2024. The petitioners received the notices and also raised objection, but did not take any steps to prevent the meetings from being held. Accordingly, the resolutions were passed and adopted. They

need for re-composition of the trustees and managing committee has been prima facie answered by Mr. Mitra. Such a need arose as one of the trustees and members of the Managing Committee, Mr. Damani was charge-sheeted. He is unable to function on account of his arrest. The prayer for bail had been rejected. Mr. Daga, the petitioner No.2. is also facing a criminal investigation. The charge-sheet filed upon completion of investigation against Mr. Damani was placed before the Court. The investigating agency indicated that the complicity of Mr. Daga was, prima facie, available and further investigation was necessary. It is further contended that the application for anticipatory bail filed by Mr. Daga, had been withdrawn. Learned Senior Advocate submits that a person who is an F.I.R. named accused cannot continue to manage the affairs of the society and the other person has been arrested. Investigation is going on in respect of the involvement of Mr. Daga on the allegation of defalcation of funds of South Point School. Thus, Mr. Pradip Tondon was made the Hony Secretary. I further find that the regulations, prima facie, do not prohibit a trustee from calling any meeting. Mr. Pradip Tondon was appointed as an honorary Secretary in one of the meetings held on the basis of Smt. Anamika Lodha's notice and resolution had been adopted. It is the petitioners own case that they have also constituted Trustees and Managing Committees in the past. The regulations also do not provide that non-confirmation of the resolutions render them void ab initio. Rather, the regulations provide that resolutions by circulation would be taken to be valid, but they should be confirmed.

Prima facie, it appears from the records that the meetings of 26th February, 2024 and 29th February, 2024 were held physically.

It also appears that three persons were available at the Managing Committee's Meeting as per Regulation 28 of the society. From the arguments advanced by Mr. Saha, the Court has not been able to understand the exact nature of the injury that the plaintiffs apprehend to suffer if the resolutions which have already been passed are not stayed. The thrust of the argument was control over the voting pattern by HVL. If HVL controlled the voting pattern of the society, he would also gain sufficient control over the management of the MP Birla Group of companies and its entities. Admittedly, the petitioners have not challenged the resolution by circulation by which HVL was seeking approval with regard to the exercise of voting rights in the entities of the MP Birla Group. Apart from HVL influencing the voting pattern, there are no other allegations against the defendants. Thus, the petitioners have failed to make out a case which warrants immediate protection of the Court, by staying the resolutions of the meetings. Infraction of law or the Regulations of the Society by the petitioners have not been established yet. The injunction has to be heard on affidavits. This is not an emergent situation where the society is required to be protected from any damage or wastage. This is not a case where the society is facing an immediate threat which would lead to depletion of its assets or disruption of its internal affairs and management. No such prima facie case has been made out.

There is nothing on record which would indicate that in furtherance to the resolution of March 4, 2021, HVL had been restricted from exercising voting rights on behalf of the society in other entities of the MP Birla Group.

The prayers in the injunction application are akin to the prayers in the suit.

In my view, the authority of Smt. Anamika Lodha, appointment of Mr. Pradip Tondon, the validity of the notices issued by Mr. Pradip Tondon calling for meetings are all matters to be decided in the final hearing of the injunction application as also GA-2 of 2024, which will be heard on affidavits.

In their affidavit in opposition, the defendants will annex the resolutions, the availability of the quorum and other documents which would indicate that HVL had been exercising his voting rights in spite of the Resolution of March 4, 2021.

Let affidavit-in-opposition to the injunction application as also the demurrer application be filed within two weeks. Reply thereto, if any, may be filed within two weeks thereafter.

Liberty to mention.

(SHAMPA SARKAR, J.)