

trying to import its own ideas of what is right and proper has imposed a condition upon the right of the landlord to maintain an application under s. 29 which finds no place whatever in the Act.

Therefore, in our opinion, the decision of the Tribunal is not merely erroneous, but its record contains an error which is apparent on the face of it. It is manifestly wrong decision and the error is patent inasmuch as the Tribunal has acted in conscious violation of the Tenancy Act and its provisions. Under the circumstances we think we are perfectly justified in interfering by a writ of *certiorari*.

We would, therefore, issue a writ of *certiorari*, quash the order of the Tribunal, and restore the order of the Mamlatdar. Opponent No. 1 to pay the costs. Government pleader to bear his own costs.

Rule absolute.

M. W. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Snan.

WALCHANDNAGAR INDUSTRIES LIMITED AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS *v.* RATANCHAND KHIMCHAND MOTI-SHAW (ORIGINAL PLAINTIFF), RESPONDENT.*

Indian Companies Act (VII of 1913), s. 86F—Director of company entering into petty contract of purchase with company—Consent of Board of Directors to particular contract not obtained—Action taken against contracting Director for contravention of section—Director relying upon prior resolution of Board giving general consent—Whether consent contemplated by s. 86F must be specific—Remedial nature of section—Canons of construction.

The consent of directors contemplated by s. 86F of the Indian Companies Act, 1913, is not a general consent but one which is referable to a particular or a specific contract or contracts. The Board of Directors must consider both the nature of the contract and the case of the particular director who wants to enter into that contract before the consent is given. Consent within the meaning of the section can be given only after a consideration of both the factors, viz. the nature of the contract and the qualifications of the director concerned.

Tyler v. Ferris,⁽¹⁾ distinguished.

* First Appeal No. 566 of 1952.

⁽¹⁾ [1906] 1 K. B. 94.

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Section 86F is remedial in its nature and the Court should give it, consistently with the language used by the Legislature, as wide an interpretation as possible.

It is never safe to construe a section by merely looking at certain anomalies that may result from a particular interpretation being put upon it. The Court should (if it can possibly do so) give an interpretation which would not result in difficulties in the working of the section. But if anomalies are inevitable, the duty of the Court is to draw the attention of the Legislature to the removal of those anomalies and not to remove them by giving a construction contrary to the intention of the Legislature.

The object of the Legislature has to be gathered from the language used by it; the Court cannot alter or amend that language in order to make it consistent with what the Court thinks might be the object of the Legislature in passing a particular measure. But when the Court is called upon to interpret a particular expression which is capable of both a wide and a limited interpretation, then it is open to the Court to consider the object of the Legislature and the mischief it aimed at, and put that construction on the expression as would be consistent with the avoidance of the mischief rather than its uncontrolled continuance.

FIRST APPEAL from the decision of R. M. Hathi, Judge of the City Civil Court, Bombay.

Suit for declaration and injunction.

Ratanchand Khimchand Motishaw (plaintiff) was one of the directors of Walchandnagar Industries Ltd. (defendant No. 1), a joint stock company registered under the Indian Companies Act, 1882. Seven other persons (defendants Nos. 2 to 8) were the remaining directors of the company at the date of the suit.

The plaintiff wrote letters to the company, dated April 30, 1941, August 1, 1942, and March 30, 1943, by each of which he disclosed his interest in the different companies for the purposes of ss. 87 (1) and 91A of the Companies Act, and on May 27, 1941, August 18, 1942, and June 23, 1943, the Board of Directors of the defendant company passed resolutions authorising the plaintiff amongst other Directors to enter into certain contracts with the company. The material part of each of those resolutions ran as follows:—

“Resolved (as required by s. 86F of the Indian Companies Act) that the Directors give their consent to.....R. K. Motishaw who has disclosed his interest under s. 91A of the Indian Companies Act and the Companies and/or Firms in which he is Director and/or member entering into contracts for sale, purchase or supply of goods and materials with this Company.”

On June 17, 1951, the plaintiff purchased one tin of pure ghee of 35 lbs. from the defendant company without obtaining the

consent of the Board of Directors to the specific contract. A meeting of the Board of Directors was held on June 19, 1951, which was attended by the plaintiff without any objection by the other Directors, but on July 16, 1951, the defendant company wrote a letter to the plaintiff alleging that as he had acted in contravention of s. 86F of the Indian Companies Act and art. 110 of the Articles of Association of the Company in entering into the contract, he had ceased to be a Director of the Company.

On August 10, 1951, the plaintiff brought the present suit for declaration that the refusal of the first defendant and its Directors to recognize him as Director was illegal, that he had been at all material times and continued to be a debenture Director of the defendant company, that all the meetings held by the Board of Directors from and after July 16, 1951, without notice being given to him and acts done and resolutions passed at such meetings were illegal and void and not binding on the plaintiff and the defendant Company, and for an injunction restraining the defendants from holding such meetings.

On June 23, 1952, the trial Court decreed the suit.

The defendants appealed to the High Court.

Sir Jamshedji B. Kanga, and *Y. B. Rege*, with *Messrs. F. M. Pochkhanawala* and *J. M. Pochkhanawala*, for the appellants.

N. A. Mody, with *Messrs. Amarchand and Mangaldas*, for the respondents.

CHAGLA C. J. This appeal raises a very interesting and important question as to the construction of s. 86F of the Companies Act. The facts are proved and not disputed. The respondent was a Director of the Walchandnagar Industries Ltd. In June 1951 he entered into a contract with the company for the supply of one tin of ghee, and the question that arises is whether by reason of the respondent entering into this contract he has ceased to be a Director of the company. Section 86F imposes a personal disability upon a director of the company and the disability is that a Director of the company, or the firm of which he is a partner or any partner of such firm, or the private company of which he is a member or director, is precluded from entering into any contracts for the sale, purchase or supply of goods and materials with the company. The disqualification is not absolute because the section provides that with the consent of the directors, a director can enter into contracts which are prohibited under this section. It is clear

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that in enacting this provision, which is a novel provision and finds no place in the English Companies Act, the Legislature wanted to suppress a particular mischief and had a particular object in mind. A director of a company occupies a responsible position and the Legislature wanted that while occupying that position he should not be placed in a situation where there would be a conflict between his interest and his duty. His duty would be to his company of which he is a Director. His interest would be to enter into a profitable contract with the company. It is also clear that a Director holding the position that he does can obtain undue benefit by entering into profitable contracts with the company, and in order to suppress that mischief and to achieve the object which the Legislature had in mind, s. 86F was enacted. It is a well settled canon of construction that when we are considering a remedial measure we must give to the provision of law as wide an interpretation as possible, of course consistently with the language used by the Legislature, and if s. 86F is remedial in its nature, which it undoubtedly is, then it would be wrong to give it a restricted construction. On the contrary we should try and give it as wide an interpretation as possible.

Now, the very short question that arises on this appeal is whether the consent contemplated by s. 86F is a general consent or a consent which is referable to a particular or a specific contract or contracts. The contentions of Mr. Mody on behalf of the respondent is that the language used by the Legislature is general and there is no reason why we should limit the expression "consent" by adding to it the adjective "specific". Mr. Mody says that if we were to construe the section in that light we would really be re-writing s. 86F. Now, if s. 86F imposes a personal disability upon the directors, then to construe s. 86F in the manner suggested by Mr. Mody, viz. that by a general resolution the Board of Directors can remove the personal disability imposed upon the directors of the company under s. 86F would be in effect to give the power to the Board of Directors to repeal s. 86F if they were so minded. They could write off s. 86F from the Companies Act. That would be a construction entirely inconsistent with the object of the section and the mischief aimed at. Further, "consent" must imply a knowledge of the necessary facts and materials which leads to the consent. Consent cannot be given in the abstract or in vacuo. It can only be given in reference to the particular contract which a director intends to enter into. Therefore,

s. 86F requires that the Board of Directors should consider both the nature of the contract that the director wants to enter into and also the case of the particular director who wants to enter into that contract before the consent is given. It is only on a consideration of both these factors, viz. the nature of the contract and the qualifications of the director, that a proper consent within the meaning of s. 86F can be given for entering into a contract. If Mr. Mody's contention were to be accepted, the Board of Directors, without considering what the nature of the contract was, without considering the value, without considering the particular material in respect of which the contract was to be entered into, in anticipation and generally can agree to a director or directors entering into contracts with the company. In other words, power is given according to Mr. Mody under s. 86F to remove the personal disability which the Legislature has imposed upon the directors by s. 86F. In our opinion, the Legislature having imposed a personal disability upon the directors under s. 86F, the only power that is given to the Board of Directors is not to remove that personal disability generally, but to remove the personal disability with regard to a particular contract or contracts will regard to which the Board of Directors has applied its mind.

The facts in this particular case are extremely striking and significant. The respondent wrote to the company on the April 30, 1941 giving a list of the companies of which he was a director and also a list of the firms of which he was a partner for the purpose of giving particulars under s. 87 (1). Further, he gave a general notification under s. 91A that he should be considered interested in any subsequent transactions with the companies and firms whose names he had mentioned. It should be noted that the respondent never applied for any consent under s. 86F and yet at the meeting of the Board of Directors of May 27, 1941, it was resolved that as required by s. 86F of the Indian Companies Act the directors should give their consent to various directors including the respondent to enter into a contract for sale, purchase or supply of goods and materials with the company. Therefore, this is a striking instance which goes to show that the Board of Directors never applied their mind to the requirements of s. 86F, that they gave a consent when the consent was not asked for by the respondent, and light heartedly, without proper thought or consideration, a grave personal disability imposed upon the

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directors by the Legislature was removed by a stroke of the pen by the Board of Directors. If we were to accept Mr. Mody's contention the result would be that the Board of Directors of all the companies in India can pass general resolutions of this character removing the disability from all the directors and permitting directors to enter into as many contracts with the company as they liked and any control over such transactions would be removed as far as the directors are concerned.

On the construction, Mr. Mody has strongly relied on the fact that the Legislature has used the plural and not the singular. The Legislature has prohibited the entering into of any contracts and not any contract, and Mr. Mody says that the use of the plural was advised and the reason why the plural was used was to permit the Board of Directors to give consent with regard to the entering into of contracts. Now, there is no particular significance attached to the use of the plural in this context. The plural would undoubtedly include the singular and the prohibition is with regard to the entering into of any contracts or contract, and having used the plural s. 86F goes on to exempt from the class of prohibited contracts any contract or agreement for the sale, purchase or supply entered into before the commencement of the Companies (Amendment) Act, 1936. Therefore, the reason for this particular form of drafting seems to be that the plural was used in contrast to the singular which is used in the proviso which follows and which proviso exempts from the class indicated in the main section the contract or contracts entered into prior to the Companies (Amendment) Act, 1936.

Then Mr. Mody says that if we were to place this construction on s. 86F, it would lead to conflict with s. 91A. Section 91A deals with entirely a different subject-matter. The subject-matter of s. 91A is disclosure of interest by directors, and it provides that every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement, and the consequences of contravention is that the director is liable to a fine. The consequence of a contravention of s. 86F is much more drastic because under s. 86-I (h) the office of the director becomes vacant if he acts

in contravention of s. 86F. What Mr. Mody says is that if a contract is not determined on at the meeting of the Directors, but is subsequently entered into, then the director can disclose his interest at the first meeting of the directors after the contract has been entered into and that disclosure would be sufficient disclosure for the purpose of s. 91A. But Mr. Mody says how would that be possible if the director were not to take the consent of the Board of Directors and entered into a contract which contract falls under s. 86F. Mr. Mody says it might not have been possible for him to take a specific consent with regard to that particular contract and if a general consent is not permissible then although s. 91A makes it possible for him to disclose his interest subsequently he would not be able to disclose that interest or the disclosure of the interest would be immaterial and irrelevant because before that he would cease to be a director under s. 86F. Section 91A itself does present certain difficulties with regard to interpretation. For instance, there is a proviso by which a general notice can be given that a director is a director or a member of any specified company or that he is a member of a specified firm, and such a general notice does not require the director to give any special notice relating to any particular transaction with such firm or company. But the proviso does not refer to a case where the contract is with the director personally or when the director is personally interested and not as a director or a member of a specified company or a member of any specified firm, and it seems on the construction of s. 91A that perhaps a general notice will not be sufficient when a director is personally interested in a contract. I am only pointing out one difficulty with regard to the interpretation of s. 91A. But we are not called upon in this appeal to construe s. 91A. Section 91A and s. 86F deal with different subject-matters and the consequences of contravention of these two sections are different and the penalties indicated by the Legislature are also different. Contravention of s. 86F results in the office of the director becoming vacant. The failure to disclose interest under s. 91A does not result in the office of the director becoming vacant, but he makes himself liable to the payment of a penalty. Therefore, there may be a case where as a result of consent not being taken under s. 86F the director ceases to hold office, although if he had taken the consent he could have made the disclosure with regard to his interest at a subsequent meeting under s. 91A. Therefore, there is no such conflict between ss. 86F and 91A

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which would require at our hands a construction of s. 86F which will reconcile it with s. 91A.

Then Mr. Mody has drawn our attention to certain difficulties and anomalous consequences that would result by reason of the construction we are placing upon s. 86F. Mr. Mody says that there are many petty contracts which a director may have to enter into with his company and with regard to which it would be impossible for him to take specific consent from time to time, and yet if the construction of s. 86F be what we are proposing to put upon it, it would either make it impossible for the director to enter into these petty contracts or, if he did enter into them, would result in his vacating his office. It is never a safe guide for a construction of a section merely to look at certain anomalies that may result from a particular interpretation being put upon the section. It is true that a Court must, if it can possibly do so, give an interpretation to a section which would not result in difficulties in the working of that section. But, on the other hand, many legislations, and specially modern legislations, have been so framed and so drafted that some anomaly or other is inevitable, and when such anomalies present themselves to the Court the duty of the Court is to draw the attention of the Legislature to the removal of these anomalies and not to remove them itself by giving a construction contrary to the intention of the Legislature. It is perfectly true that the fact that no limit is placed by the Legislature upon the extent or value of the contract under s. 86F may result in serious difficulties and it would have been much more advisable for the Legislature to have provided that all contracts are not prohibited under s. 86F, but contracts exceeding a certain value and extent, and if that had been done there would have been no difficulty with regard to s. 86F. But we are not prepared at the instance of Mr. Mody, in order to remove this anomaly, to give a carte-blanche to the Board of Directors to remove the personal disability upon the directors and in effect to repeal s. 86F by passing a general resolution giving consent to a particular director to enter into any and all contracts for sale, purchase or supply of goods, whatever the value, the nature or the extent of the contract may be.

The final argument of Mr. Mody is that we should not speculate as to the intention or the object of the Legislature and we must construe s. 86F as we find it. It is perfectly true that the object of the Legislature must be gathered from the

language used by it and that it is not open to the Court to alter or amend that language in order to make it consistent with what the Court thinks might be the object of the Legislature in passing a particular measure. But when the Court is called upon to give a wide or limited interpretation to a particular expression and when that expression is capable of both those interpretations, surely it is open to the Court to consider what was the object of the Legislature and what was the mischief aimed at, and the Court must try and give that construction to a particular expression which will be more consistent with the suppression of the mischief rather than that mischief being allowed to continue uncontrolled. In this particular case the Legislature has not clearly indicated whether the consent referred to in s. 86F is a general consent unrelated to the contract to be entered into by the director or the consent is with reference to a specific contract or contracts, and in the absence of any clear indication by the Legislature we must try and give a construction more in accordance with the object intended by framing s. 86F rather than a construction which would defeat that object.

Mr. Mody has relied on an English case reported in *Tyler v. Ferris*⁽¹⁾. The English Appeal Court was called upon to construe s. 14 of the Weights and Measures Act and that section provided:—

“An Inspector of Weights and Measures may, with the consent of the local authority, prosecute before a Court of summary jurisdiction or justices any information, complaint or proceeding arising under the Weights and Measures Act or in the discharge of his duties as such Inspector;”

and the question that arose was whether a separate consent had to be given in each case or whether the Inspector could be authorised by the local authority to conduct all prosecutions, and the English Court of appeal held that the section did not provide that a separate consent was to be given in each case and if that was the intention of the Legislature a very much clearer expression of that intention would have been given in that section. Mr. Mody strongly relies on this judgment which according to him establishes that when the word “consent” is used without any further indication by the Legislature, “consent” must be construed to mean general consent. Section 14 of the Weights and Measures Act and s. 86F of the Companies Act are not in *pari materia*. Section 14 of the Weights and

⁽¹⁾ [1906] 1 K. B. 94.

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Measures Act³ deals with the authority to be conferred upon a particular officer to launch a prosecution. There is no question of any disability being imposed by the Legislature nor is there any particular object to be achieved or any mischief to be suppressed, and when it was merely a question of sanctioning a prosecution the Court of appeal in that particular context held that it was not necessary that the local authority should give a specific and separate consent with regard to each prosecution. It is difficult to contend that in the light of this decision we must hold that the expression "consent" has the same connotation in s. 86F although s. 86F is dealing with entirely a different subject-matter.

The Court below held in the suit filed by the plaintiff for a declaration that he had not ceased to be a director of the first defendant company, in favour of the plaintiff, and gave to the plaintiff the declaration that he sought. It is from that decision that the company has come in appeal before us, and although it may be unfortunate that the plaintiff should be disqualified by reason of a very small and petty contract which he entered into, in allowing the appeal we are enforcing the section, although realising that it may cause hardship in this particular case upon the plaintiff, in the larger and wider interest which the Legislature had in mind and in order to prevent directors from using their responsible office to their own advantage. If companies are to be properly administered in this country, the Board of Directors must apply their minds to the specific instances where directors require their consent for entering into contracts with the company.

The appeal will, therefore, be allowed with costs. Suit dismissed with costs.

Appeal allowed.

M. W. P.
