

BEFORE THE COMPANY LAW BOARD
CHENNAI BENCH

CP. No. 25/2010

Decided on:22.10.2010

Present: Smt. LIZAMMA AUGUSTINE, MEMBER

IN THE MATTER OF THE COMPANIES ACT, 1956 (1 OF 1956) SECTIONS 397, 398,
402, 403, 404, 406 & SCHEDULE XI R/W SECTION 9

AND

IN THE MATTER OF M/S KASTURI & SONS LIMITED

PETITIONERS:

1. Mr N. Murali (HUF)
2. Mr N. Murali
3. Mr N. Ravi (HUF)
4. Mr N. Ravi
5. Mrs Tara Murali
6. Mr M. Krishna
7. Ms Kanta Murali
8. Mrs Sudha Ravi
9. Ms Aparna Ravi
10. M/s Serendipity Investments Pvt Ltd

RESPONDENTS:

1. M/s Kasturi & Sons Limited
2. Mr N. Ram
3. Mr K. Balaji
4. Mr K. Venugopal
5. Mrs Lakshmi Srinath
6. Mr R. Ramesh
7. Mrs Vijaya Arun
8. Mrs Akila Vijay Iyengar
9. Mrs Nirmala Lakshman
10. Dr Nalini Krishnan
11. Ms Malini Parthasarathy
12. Ms Vidya Ram
13. Mr Narayan Lakshman



PARTIES PRESENT:

1. Mr. Sudipto Sarkar , Senior Counsel] ... for Petitioners
2. Mr Krishna Srinivasan, Senior Counsel]
3. Mr. P. Dwarakesh, Counsel]
4. Mr. A.R. Ramanathan, Counsel]
5. Mr S.N. Mookherjee, Senior Counsel]
6. Mr.K. Manoj Menon, Counsel]
7. Mr. S. Arun Kumar, Counsel]for Respondents 1 & 3
8. Ms. Swarnam J. Rajagopalan, Counsel]
9. Mr. C. Aryama Sundaram, Senior Counsel]
10. Mr S. Raghunathan, Counsel]
11. Mr. D.R. Raghunath, Counsel]
12. Mr.B. Giridhara Rao, Counsel]
13. Ms T. Poornam, Counsel]... for Respondents No.2, 4 to 10
14. Mr.J.R. Jayant, Counsel]
15. Respondent 11 remained ex parte

ORDER

1. Kasturi and Sons Limited, founded in 1878 and later run by M/S Kasturi Srinivasan and Kasturi Gopalan as a partnership firm, was incorporated on 21 February 1940. The company was managed as a "quasi-partnership" and had a broad understanding of equal representation and shareholding among the four descendant families of the Kasturi brothers – G. Narasimhan and G. Kasturi (sons of K. Gopalan) and S. Parthasarathy and S. Rangarajan (sons of K. Srinivasan). Each family holds 25 percent of the paid-up capital of the company through their members and investment companies, as on 8 April 2010, the date the petition was filed. In 1991, the board was expanded from nine to 12, to accommodate three members from each of the four families. Since the complete implementation of the agreement in 2000, the board comprises 12 members. The board has five editorial directors, including



the 2nd respondent, N. Ram, who became the editor-in-chief in June 2003.

2. The petition is filed under sections 397, 398, 402, 403, 404, 406 and Schedule XI r/w section 9 of the Companies Act, 1956 (hereafter to be referred to as 'the Act'). Petitioners belong to the branch of inheritors of Shri G. Narasimhan, who was one of the four cousin brothers. The petitioners allege oppression and mismanagement by Respondents 2 to 10. It alleges failure to implement an editorial framework of retirement and succession, by which the 2nd respondent should have retired as editor-in-chief of all publications when he turned 65 on 4 May 2010, giving way to his brother and 4th petitioner N. Ravi, as agreed to by the editorial members of the board on 25 September 2009. At a board meeting on 18 February 2010, when Petitioners 2 and 4 circulated a document on corporate governance and retirement age of family members, the 2nd respondent said he did not agree to the retirement plan.

3. The petition says the appointment of the 12th respondent, the daughter of the 2nd respondent, as the European correspondent of 'Business Line' and the appointment of the 13th respondent, son of the 9th respondent, as the Washington correspondent of 'The Hindu' violated various provisions of the Companies Act. The appointments were objected to by Petitioners 6, 7 and 9, in a letter to the board on 19 September 2009. The petition says the office of the European Correspondent for 'Business Line' was a redundant position and the 13th respondent was not qualified for the post of the Washington Correspondent. It also says Petitioners 2 and 4 agreed to the appointments at a board meeting in view of the commitment made by



the 2nd respondent that he would step down as editor-in-chief in May 2010. They also considered family harmony and the need to give way for the younger generation. Respondents 12 and 13 assumed office with remuneration exceeding Rs 50,000/- a month, without waiting for the mandatory approval from the Central government, and they were paid 5000 pounds and \$10,000 as travel allowance respectively in the absence of managing director N. Murali, the 2nd petitioner.

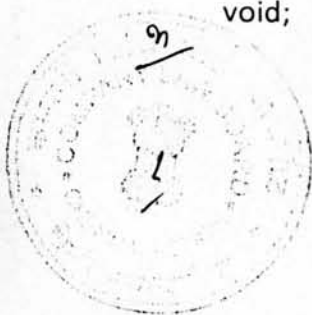
4. The petition says the board appointed the 3rd respondent as a managing director on 20 March 2010, designating the 2nd petitioner as 'senior managing director' and limiting his roles to supervisory powers of the circulation department. No agenda was circulated with regard to the stripping of powers and shareholders' approval was not sought. The advertisement department was allotted to the 6th respondent, who had mismanaged a subsidiary company and caused a loss of Rs 59.76 crore. The petitioners say no conclusion could be reached as the Petitioners 2 and 4 and the 11th respondent objected to the stripping of powers of the 2nd petitioner and no resolution was passed in the meeting. The 2nd respondent, on 22 March 2010, handed over a draft resolution to the Petitioners 2 and 4, allotting personnel, human resources and industrial relations departments as well as circulation to the 2nd petitioner. On 25 March 2010, the 2nd respondent sent an e-mail to various departments, detailing the board's decision on non-editorial board members' functions. On receipt of the e-mail, the 2nd petitioner wrote to all departments requesting them to ignore the editor-in-chief's e-mail. The management change was published in 'The Hindu' the next day. The minutes of the 20 March 2010 meeting was sent to the 2nd petitioner on 31 March 2010 by the company secretary. It was only through the



minutes, which only mentioned the allocation of circulation to the 2nd petitioner, that the petitioners came to know that none of their objections have been considered and all the resolutions passed. The 2nd petitioner wrote to the company secretary to inform him that the minutes did not reflect the actual deliberations and sent him his version of the minutes. A resolution dated 31 March 2010 authorised the 3rd respondent as MD to convene the board meetings. The petition says the respondents are opting for circulars to circumvent board meetings. The petitioners apprehend that Respondents 2 to 10 may alienate certain fixed assets to clear the debts of the subsidiary. They say the respondents are using the publication for self-promotion.

5. The petitioners seek:

- a) to implement a permanent editorial succession plan of retirement for the editorial board members on the lines of the editorial framework on retirement and succession, providing for retirement at the age of 65, as agreed upon by editorial members of the board on September 2009;
- b) to implement a permanent corporate governance policy/framework;
- c) to declare the resolution passed on 20 March 2010, in so far as appointment of the 3rd respondent as managing director of the company is concerned as improper, null and void.
- d) to declare the resolution passed on 20 March 2010, in so far as re-organization of non-editorial functions of the directors of the company is concerned, as improper, null and void.
- e) to declare the appointments of the 12th respondent as the European correspondent of 'Business Line' and the appointment of the 13th respondent as the Washington correspondent of 'The Hindu' as null and void;



f) to appoint a permanent independent chairman in the place of the second respondent to conduct future board meetings and general body meetings.

6. Extracts from the counter affidavit filed by R1 and R3:

The respondents say the petition filed by Shri N. Murali and others, whose main aim is to impose a retirement age for the Editor-in-chief, is not maintainable. The retirement age is neither wanted by three-fourths of the directors or shareholders nor provided for in the Articles of Association of the company. Article 205, which prescribed the age of retirement in the company, was deleted by a resolution at a general meeting on 15 December 1990. The board meeting on 27 June 2003 unanimously resolved to appoint the 2nd respondent as editor-in-chief. The 2nd respondent is qualified to be the editor-in-chief, says paragraph 11 of the petition. The circulation and advertisement revenue of the paper rose in the years when he was at the helm.

The petition does not say that the board's decision affecting the powers of 2nd petitioner is not in the interest of the company. It says that the decision, supported by three-fourths of directors, was to broad-base the management of the company and to involve all whole-time directors. The petition has not complained of any violations of shareholders' rights or of any changes in shareholding patterns or management.

The petition is based on the assumption that the company is a quasi-partnership. A division bench of the Madras High Court had earlier held that the company was not in the nature of a quasi-partnership. Even if the doctrine of quasi-partnership is applied, it would only apply vis-à-vis family group to group. The petitioners' grievance is not against any of the other groups, but members of their own group.



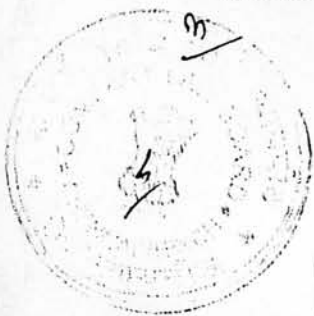
The 2nd and 4th petitioners themselves had approved as directors the appointment of the 12th and 13th respondents. The petitioners had suppressed the fact that the 2nd petitioner had applied for approval to the Central Government. The appointments have been made in accordance with section 314 of the Act. Questioning the appointments is wholly malafide.

The allegation of mismanagement of a subsidiary company by the 6th respondent is false since all decisions were approved by the board and most of them signed by the 2nd petitioner as managing director of the company.

The petition is part of the 2nd petitioner's desire to gain absolute control of the company, with the help of the 4th petitioner. The reason for the petitioners' allegation appears to be the ambition of the 4th petitioner to be the editor-in-chief and the 11th respondent to be the editor.

7. Counter of R2:

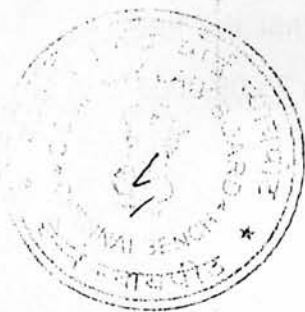
R2 adopts the counter filed by R1 Company. He was appointed as Editor-in-chief as per the Board resolution dated 27.06.2003 "to improve the editorial efficiency and performance" of the Company's publications, "including the restructuring of the editorial frame work and functions in an increasingly competitive milieu". As per the Board meeting held on 28.08.2008 it was resolved that the editorial directors would discharge their functions and "report to Mr N. Ram, Editor-in-chief." The second petitioner had fully concurred with these decisions of the Board. The second petitioner's abdication of responsibility and directive to the company secretary, to act contrary to the decision of the shareholders and the Board, impelled the Board to act. It is admitted that the five directors in the editorial department had an informal talk on 25.09.2009



in the office room of the second respondent where they discussed questions of editorial framework and succession. But it is denied that the practice of the company is to endorse such decisions in the Board meetings. No decision was taken in the informal gathering of editorial directors on 25.09.2009 nor did R2 agree, at any stage, that he would retire as Editor-in-chief at the age of 65. It was the fourth petitioner who outlined a scheme of retirement at the age of 65. It was agreed in the meeting that such matters could be discussed and decided only at Board meetings. The appointments of Respondents 12 & 13 were unanimously approved by the Board and shareholders. The qualification of R12 is detailed in para 7 & 10 of the counter. In the matter of appointment of R12 & R13 the second petitioner refused to issue a reply to the clarifications sought for the approval of their appointments. Hence the fourth respondent was authorised by the Board to issue the reply. The editorial decisions of the Editor-in-chief and the editorial team of a newspaper are decided in the interest of the newspaper.

Counter of R4:

The fourth respondent adopts the counter of R1 Company. He is the joint editor of Business Line. He interviewed Vidya Ram (R12), and discussed the issue with the members of the Board including the second petitioner and recommended her appointment as European Correspondent, 'Business Line', and the decision was unanimously approved by the Board. He denied any agreement among editorial directors on editorial succession. In the informal meeting of September 25, 2009 the fourth petitioner outlined a scheme on this issue. This respondent did not agree to the proposed scheme but pointed out that



the Board could decide such issues. This respondent and other shareholders have lost confidence in the second and fourth petitioners.

Counter of R6:

R6 adopted the counter affidavit filed by the company. He is the whole time director from 21.06.1991 and handling the advertisement and circulation department. Originally he was handling the advertisement department and circulation under the supervision of second petitioner. It is stated that the second petitioner was reluctant to forward the files to him. He denied the allegation that he has mismanaged the subsidiary company (SPIL) and caused loss to the company. The second petitioner is instigating the workers against other directors.

Counter of R9:

R9 has been the whole time director and joint editor of 'The Hindu' from 1991. She filed the counter affidavit also on behalf of her son – R13. She adopts the counter filed by R1. The qualifications of R13 are detailed in the counter. In the informal meeting of the editorial directors held on 25.09.2009 no decision was taken with regard to the retirement of R2 or succession issues. It was decided that the issues could be decided only by the Board. R13 has been appointed unanimously by the Board and the alleged charges of nepotism are denied. Second petitioner is not giving due respect to lady directors and he described them as "House wives". The CP is an attempt by second and fourth petitioner to subvert the decisions of the Board.

R8 and R11 remained ex parte.

Counter of R12:

The twelfth respondent adopts counter filed by R1, R2 & R3. It is stated that her qualifications as detailed in para 3 & 4 enabled her to be



appointed as the European Correspondent of 'Business Line'. Her qualifications and professional experience are in no way inferior to those of others appointed to comparable editorial positions within the company. The Board unanimously approved her appointment. She is not an illegal beneficiary of the actions of respondents 1 to 10.

8. Petitioners filed a Rejoinder with the following averments:

Regarding the principles of quasi-partnership the earlier decision in the ***G. Kasturi [(1992) CC Pg 661]*** is not applicable since significant changes have taken place after the case. The shareholders and directors have moved away from their decision and unanimously affirmed the quasi-partnership later, by expanding the Board of directors by including three directors from each of the four family groups, indicating a tacit agreement of equal representation in the management. The entire shareholding is held by four families and the company is run, managed and controlled by the members of the four families for the past 100 years, as represented by the company before the Central Government in connection with the appointment of respondents 12 & 13. All the members of the Board are made whole time directors in 2007 to maintain equality and fairness. The company is taking care of the welfare of the members of the four families, like pension to the wives of former directors, funding for the education of the children abroad, foreign travel for the directors at the expense of the company etc. The decision in ***G. Kasturi*** was passed on an interlocutory application. That apart, the case was finally compromised between the parties, without examining the issues in depth. The original article which fixed the



retirement age of 65 was deleted following the amendment of the provisions of the Companies Act which liberalized the retirement age limit of directors. The question of directors retiring from active running of the company was under discussion since mid-2007. It was in this context that the second petitioner proposed the idea in his letter of September 25, 2009. The second respondent agreed with this suggestion at the meeting of editorial directors on September 25, 2009 that the retirement should be on the basis of norms rather than be left to individuals to decide and that he himself would retire on May 4, 2010 when he turned 65. This declaration was taken in good faith by all the editorial directors present at the meeting and by the other directors on being told about it. The second respondent at the instigation of some of the other respondents went back on his commitment at the meeting of the Board on February 18, 2010. The above minutes are a proof that the discussions on the issue are a sequel to the prior discussions and commitment made in September 2009. The deep sense of grievance of the fourth petitioner, ninth and eleventh respondents who were ousted from their duties when the second respondent took over as Editor-in-chief on June 27, 2003 was remaining unaddressed even as the next generation families were being inducted into senior positions. The commitment on retirement was part of the ongoing succession planning in the organization when as the younger generation members were being inducted into the affairs of the company, the oldest members had to make way for those in between.

9. The letter dated 30.04.2010 written by R11 offers clinching proof of the above facts. After having got the appointments of their children through, R2 & R9, in collusion with R3 to R8 are seeking to thwart the



whole arrangement on editorial side by permitting R2 to continue without retirement. There is a breach of good faith and fair dealing.

Respondents' own version of the minutes of the meeting on 20th March, 2010 speaks about the exemplary nature of the duties performed by the second petitioner. He has an unblemished and impressive record in the company. Because he insisted that the company should follow all the legal formalities regarding the appointments of R12 & R13, and insisted to bring in norms of corporate governance, he was stripped of his powers. No grievances were even made out to him prior to his 'virtual removal'. Even in the case of major decisions being taken through circular resolutions, they represented the formalization of decisions already taken during discussions among directors. However, that customary practice did not precede in the case of the meeting on 20.03.2010. The second petitioner was projected in the Board meeting as a person who does not respect women. It is an indisputable fact that the implementation of the editorial succession plan suggested by him will enable Ms Malini Parthasarathy (R11) to become the first ever women editor of 'The Hindu'. It is to be noted that no complaint was previously made against him, no agenda was circulated with regard to the divesting of his powers, no right of hearing was offered to him and eventually the disputed resolution was sprung upon him from behind. The Board meeting was bound to take decisions on the pending and live issue of the editorial succession/retirement plan, but the second respondent in utter breach of his earlier commitment passed an unnecessary resolution removing the powers of the second petitioner. The said resolution is harsh and burdensome on the second petitioner. He has justifiably proved his full expertise and professional competence

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1. Ebrahimi Vs Westbourne Galleries Ltd – (1973) House of Lords Pg 360
2. Vijay Krishan Jaidka Vs Jaidka Motor Co. Ltd – (1997) 1 Comp LJ 268 (CLB)
3. Needle Industries (I) Ltd Vs Needle Industries Newly (I) Holding Ltd – (1981) SC 743
4. Pradip Kumar Sarkar Vs Luxmi Tea Co. Ltd – (1990) Cal 491
5. Kerala State Electricity Board Vs Hindustan Construction Co. Ltd – (2006) 12 SCC 500
6. Sangramsinh Case (123 CC 566)
7. ACE Rubber & Allied Products Pvt Ltd (121 CC 743)
8. Polymer Papers Ltd (123 CC 486)
9. Priyanka Overseas (139 CC 451)
10. Gaekwad Case (123 CC Pg 566)
11. M.S.D.C Radharamanan Vs M.S.D Chandrasekara Raja – (2008) 6 SCC 750
12. O'Neill Vs Phillips – 1999 House of Lords
13. Bihar School Examination Board Vs Suresh Prasad Sinha – (2009) 8 SCC 483
14. Kamal Kumar Dutta Vs Ruby General Hospital Ltd – (2006) 7 SCC 613
15. Dr S. Mangalam Srinivasan Vs Mani Forgings P. Ltd – (2006) 129 CC 544 (CLB)
16. Shoe Specialities P. Ltd Vs Standard Distilleries & Breweries P. Ltd- (1997) CC Vol 90 (Madras High Court)
17. Debi Jhora Tea Co. Ltd Vs Barendra Krishna Bhowmick – (1980) Cal 771



by his hard work, integrity, family commitment and regard for all the family members. Hence he is legitimately entitled to expect that he will be permitted to carry on his duties in the best interest of the company.

The fourth petitioner also contributed immensely to the company and the benefit of the entire family. He was appointed as the editor of the Hindu in January 19, 1991. As a result of his effort, there was an improvement in the circulation of Hindu from 1990-2003. The appointments of R12 & R13 are directly linked with the other oppressive action in divesting the second petitioner of all his responsibilities in a mala fide manner.

Allocation of advertisement department to the sixth respondent who has mismanaged a wholly owned subsidiary is a clear case of nepotism. When the second respondent was appointed as Editor-in-chief in 2003, four directors (4th petitioner, R9, R10 & R11) expressed their protest and walked out of the meeting. R2 is colluding with non editorial directors in breaking his commitment to retire at the age of 65.

10. Issues:

1. Whether the treatment meted out to the second petitioner by the respondents has been unfair and oppressive.
2. Whether respondents 2 to 10 are conducting the affairs of the company in a manner oppressive to the petitioners and prejudicial to the interest of the company and public interest.
3. Whether there was editorial frame work for retirement and succession for the editorial board members.
4. Whether the petitioners are entitled to any equitable reliefs.
5. To what reliefs and costs.

Cases relied on by Petitioners:



18. Hemant D. Vakil Vs RDI Print & Publishing Pvt. Ltd – (1995) 838 CC
Vol 84 (CLB)

Cases relied on by Respondents:

1. K.S. Mothilal Vs K.S Kasimaris Ceramique (P) Ltd – 2004 (50) SCL 116
(Mad)
2. Maharashtra Power Development Corporation Ltd Vs Dabhol Power
Co. – 2003 (117) CC 503 (BOM)/AIR 2004 Bom 38
3. Shanti Prasad Jain Vs Kalinga Tubes Ltd – AIR 1965 SC 1535/1965 (2)
SCR 720
4. Hanuman Prasad Bagri Vs Bagress Cereals P. Ltd – 2001 (105) CC 493
@ 495
5. R. Balakrishnan Vs Vijay Dairy & Farm Products P. Ltd – 2005 (125)
CC 661 @ 668
6. Raghunath Swarup Mathur Vs Har Swarup Mathur – 1970 (40) CC
282 (All) para 19
7. P.S Offshore Inter Land Services Pvt Ltd Vs Bombay Offshore
Suppliers & Services Ltd – 1992 (75) CC 581 @ 592
8. R. Ramanathan Chettiar Vs A & F Harvey Ltd – 1967 (37) CC 212 @
224
9. National Buildings Construction Corporation Vs S. Raghunathan –
1998 (7) SCC 66
10. Westfort Hi-Tech Hospital Ltd Vs V.S Krishnan – 2007 (2) CLJ 143
(Ker)
11. Government of West Bengal Vs Chatterjee Petrochem (Mauritius)
Co. – 2008 9143) CC 837 (Cal) @ 877 (58), 881(67);885(74)
12. Union of India Vs Hindustan Development Corporation – 1993 (3)
SCC 499 @ 537 (23-28) and para 31



13. Ashok Kumar Oswal Vs Vardhman Polytex Ltd – Manu/CL/0050/2002
14. G. Kasturi Vs N. Murali – 1974 CC 661 @ 669
15. Shirmati Abnash Kaur Vs Lord Krishna Sugar Mill Ltd – 1974 (44) CC 390 @ 413
16. Dr. Mrs Banoo J. Coyajee Vs Shanta Genevieve Pommeret Parulekar- 1995 (84) CC 534 @ 553
17. Kasinath Tapuriah Vs Incab Industries Ltd – 1998 (93) CC 725 @ 743 & 745
18. Sunil Dev Vs Delhi & District Cricket Association – 1994 (80) CC 174 @ 189
19. Priyanka Overseas P. Ltd Vs Pasupati Fabrics Ltd – 2007 (139) CC 451 @ 467 (19)

11. Issues 1 to 5:

The learned counsel for the petitioners invited my attention to certain factual aspects in support of the claim of quasi-partnership and legitimate expectation. Article 3(a) of the Memorandum of Association of the company mentions that one of the object was to take-over the partnership of newspaper business carried on by M/s K. Srinivasan and K. Gopalan under the name '*The Hindu*'. The entire share capital of the company is held by four families, being the descendents of the founder, the late Kasturi Ranga Iyengar. While giving a clarification on the selection and appointment of relatives of directors (R12 & R13) as foreign correspondents before the Ministry of Corporate Affairs, the company was projected as a closely held family company, managed and controlled by the members of the four families of the founder. This response was filed as per the minutes dated March 6, 2009 and signed by all the respondents. My attention was drawn to the minutes of the



meeting of the Board of Directors held on 18.02.2010 in which second respondent had pointed out that since 1905, R1 had been a family owned, family managed company even after it became a public limited company. It is pointed out that, after the judgment of Madras High Court finding R1 as a company to which principles of quasi-partnership are not applied, Articles of Association were amended providing equal representation to every branch of the four families. Alternatively it is pointed out that the above judgment is not applicable since that case was finally compromised before the Hon'ble Supreme Court of India. Relying on the decision in Sangramsinh's case (123 CC 566) it has been argued that the principles of quasi-partnership can be invoked to an incorporated company considering the real character of the company for the purpose of judging the dealings between the parties and the transactions which are impugned. The decision in ACE Rubber & Allied Products Pvt Ltd (121 CC 743) is cited to contend that the company is a family company to which the principles of partnership are attracted, because the management which was in the hands of the father of the petitioner and second respondent is now with the petitioner and the second respondent. In the cited decision, the father of the petitioner and the father of the second respondent therein were the subscribers to the Memorandum of Association and the first directors of the company, and the petitioner's father was the managing director of the company till his death and the second respondent's father was the chairman till his death. The petitioners also relied on the decision in Polymer Papers Ltd (123 CC 486) and argued that principle of quasi-partnership is applicable not withstanding the fact that the company is a listed company and if the same is managed in the same manner as that of a closely held



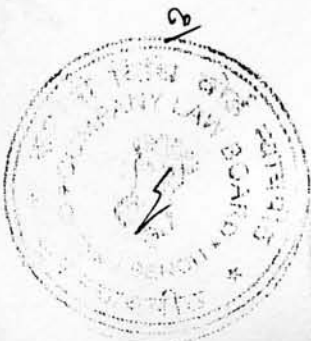
family. The above decision held that once the facts and circumstances of a case indicate that on piercing the corporate veil, the real structure is found to be not that of a company, equitable considerations applicable to a partnership could be applied to that company. In the above case the petitioners invoked the principles of quasi-partnership on the basis of the Memorandum of Understanding and it was held that the company was being managed as a closely held family establishment. It was also held that since the sons of the original promoters got gainful employment in the company, it was managed in the guise of a closely held company and hence the principles of partnership and legitimate expectation could be applied in that case. The decision further held that even though the petitioner could not complain against his removal as managing director, it was observed that the disputed board meeting for his removal was convened with a day's notice, and without any agenda proposing his removal. The learned counsel for the petitioners argued that the removal of the second petitioner who was in the Board for 30 years was unfair and oppressive. The second petitioner is the managing director with effect from 10.04.2006. It is pointed out that the treatment meted out to the second petitioner, by curtailing all his powers without giving any explanation or prior notice, is illegal.

12. Contentions of R1 & R3

According to the learned counsel for the respondents 1 & 3, company was converted to a public limited company to enable outsiders to be associated with it and hence principles of partnership cannot be made applicable to the company. Merely because members of extended family are shareholders, it cannot be held that company is in the nature of partnership. This principle has been recognized by Supreme Court in



Kilpest [(1996) 10 SCC 696]. The decision in Gaekwad case [123CC Pg 566] does not dilute the propositions enunciated in Kilpest. The reliance placed on Ibrahim's case [(1972) 2 All E.R 492] is misplaced (vide the decision in Hindu Overseas [(1976) 3 SCC 259]. Further, petitioners 2 & 4 have not been ousted and their status as members/directors is retained. Partnership principle is applicable only in case of a deadlock. The earlier decision of the Madras High Court in Kasturi's case is binding on the parties and it is not just an interim decision. There is no Memorandum of Understanding with regard to shareholding or management rights and the complaint is against the removal of the second petitioner as managing director. The second petitioner was originally appointed as managing director by a circular resolution, and there is no agreement that he will remain as managing director for life. According to the respondents, 2nd Petitioner was appointed as the managing director only for 5 years and any subsequent appointment has to be made at the general meeting. No person can claim legitimate expectation beyond the period of such appointment. Even if there was a legitimate expectation it cannot go beyond the period of appointment and contrary to the articles. There is no equality in shareholding between the warring groups of shareholders. Petitioners hold barely 15.38% stakes in the company. The petitioners are seeking to strip of the powers of the majority of directors who represent majority shareholders. The powers of the Board of directors cannot be curtailed, as directors are acting in a fiduciary obligation to the company. As per the Articles of Association the managing director subjects to the superintendents of the Board. The curtailment of the second petitioner's powers is not shown to be prejudicial to the interest of the



13. The other contesting respondents raised the following contentions:

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maintainable. It is not shown that company's affairs are being conducted in a manner prejudicial to the public interest or in a manner oppressive to any member. It is submitted that while exercising the powers u/s 397 and 398 the Court has to prevent the misuse of provisions by a party, otherwise it will amount to a source of greater oppression on the majority, than the one sought to be removed. The concept of legitimate expectation being in essence a question of fact (giving rise to substantial rights), would require the same to be specifically pleaded in the petition. No specific ground is raised based on legitimate expectation, except the averment that there existed a tacit understanding that the second petitioner was to occupy the post of managing director and lead the respondent company. The claim of 'tacit understanding' and the concept of legitimate expectation cannot co-exist. Even if the company is taken to be a quasi-partnership, the concept of legitimate expectation mandates a clear promise for an unambiguous representation to be proved by the petitioners by adducing cogent evidence. A mere wish or anticipation would not give rise to legal consequences. The second petitioner failed to substantiate as to what was the alleged promise made to him and what did he expect to be his right in the company. He is equating the reallocation of work in the company as his virtual removal as managing director. It would be open to the Board to transact any business in the meeting, albeit not mentioned, as an item in the agenda. In the past, the second petitioner was appointed as managing director by a circular resolution. The decision in Priyanka Overseas (139 CC 451) is not applicable to the facts of the case because there is no removal of the petitioner no.2, but only a reallocation of his duties. Even if it amounts to withdrawal of



powers/removal there is justification because the second petitioner was subverting the decisions of the Board and general body and also in view of the lack of confidence expressed by the other directors/shareholders. There is no legitimate expectation on editorial side in as much as several non-family members were appointed as Editor-in-chief. Because the appointment of respondents 12 & 13 were approved in the Board meetings and shareholders meeting and forms of approval were signed by the second petitioner, he cannot challenge the decisions to which he has been a party. The Central Government has accorded its approval to the said appointments. The so called legitimate expectation would extend to all family members including R12 & R13. The alleged understanding arrived at between editorial members on 25.9.2009 would be of no relevance since it is for the shareholders of the company to decide the age of retirement of directors, by making necessary provision in the Articles of the company.

In fact, to decide on the age of retirement is a vital aspect going to the basis of the management of the company and, it would not be a matter to be decided merely because 2 out of 12 directors, who hold 17% of the shares of the company, desire the same. Similarly, howsoever wide the powers of the Company Law Board may be under Section 402 of the Companies Act, a power of altering the basic structure of the management of the company would not be exercised by the Company Law Board unless it rendered a finding that the existing system was so flawed as to vitally affect the very functioning of the company, making it just and equitable to wind up the company for such reasons, and therefore, exercising powers to virtually restructure the managing structure of the company.

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14. I have gone through the pleadings, documents, case laws and the written submissions filed by both sides.

Taking into account the venerable tradition and rich heritage of '*The Hindu*', I tried to sort out the differences within the family by inviting N.Murali (P2), N.Ravi (P4), N.Ram (R2) R.Ramesh (R6) and Malini Parthasarathy (R11) for a personal and informal discussion after the closure of hearing. Various proposals were put forward but a solution remained elusive. Hurt by the arbitrary curtailment of powers, the second petitioner wanted restoration of his earlier status so that he can retire in a dignified manner in August 2011. Though the second respondent promised to try for a consensus, he could not submit any worthwhile and commonly acceptable suggestion. The 11th respondent expressed her anguish at the constant upheavals in the board which are causing tremendous instability to the editorial structure.

15. In order to narrow down the difference as one between the 2nd petitioner and the 2nd respondent, I am examining at the outset the dispute relating to the appointment of the 12th respondent as European Correspondent and the 13th respondent as Washington Correspondent. I am not evaluating their competence to hold those posts except to note that the decisions of their appointments were taken unanimously by the board of directors. The mandatory approval required under section 314(1B) of the Companies Act has since been obtained from the central government. Even if there is any irregularity in this regard, it is only a compoundable offence. At the same time the respondents are aggrieved by the conduct of the 2nd petitioner, approaching the Central Government for refusal of approval. It is obviously unfair for the 2nd petitioner to do so after being a party to the decision of the board. Such



conduct can be found to be an action contrary to the interests of the company. The petitioners explained that his agreement was part of a wide understanding as per which the 2nd respondent would retire at the age of 65. However, the 2nd respondent withdrew himself from that commitment and according to the second petitioner that prompted him to retaliate. Prima facie, the conduct of the 2nd petitioner seems to be undesirable, justifying the deprivation of any equitable relief but taking into account the totality of the circumstances, I am leaving it as it is. Now the disputed appointments have become a fait accompli and the petitioners do not seem to be seriously pressing their plea against the 12th and 13th respondents. In these circumstances, I reject prayer (e) as infructuous.

16. The main contention in these proceedings can be safely narrowed down as a tussle between the second petitioner (Shri N. Murali) and the second respondent (Shri N. Ram). In the family tree these two belong to the same branch as the inheritors of Shri G. Narasimhan, who was one of the four cousin brothers. Shri Ram is the Editor-in-chief of '*The Hindu*' since June 2003. The petitioners point out that there was an editorial frame work of retirement and succession which, if implemented would have resulted in the retirement of Shri Ram as Editor-in-chief when he turned 65 on 04.05.2010. The frame work at best can be termed only as an informal understanding among the members of the family. Shri Ram vehemently denies the existence of any such enforceable agreement. However, he is admitting that there was an informal suggestion to this effect in September 2009. There is no retirement age for the Editor-in-chief either in law or in the Articles of Association of the company. The petitioners were expecting the replacement of Shri Ram as Editor-in-



chief by his brother (Shri N. Ravi) who is fourth petitioner. It may be a legitimate expectation but the members of the company cannot entertain any expectation which will go beyond the legal rights conferred on them by the constitution of the company. The editor is the 'living articulate voice' of the news paper and 'The Hindu' is a newspaper which can claim a grand succession of eminent editors during its 132 years of glorious existence. Continuing litigation and constant upheavals will cause great and irreparable harm to that reputation. There is some force in the contention of the petitioners that as the younger generation members are coming in, the oldest members had to make way for those in between. Evidently, and admittedly the Note on the Code of Corporate Governance Guidelines of the company sent by the second petitioner was placed at the Board meeting of 18.02.2010 and is under consideration by the Board of directors. It is on record that, in the Board meeting dated 21.08.2009, Ms Malini Parthasarathy (R11) has expressed her concern regarding the delay in the matter of evolving a frame work and guidelines for succession indicating how roles of different persons in the editorial were going to evolve. She also emphasised that the factors like one's particular experience, orientation, qualification and actual practical contribution in the area should figure in succession guidelines. Evidently, this note was also taken on record. The clause in the articles regarding the retirement at the age of 65 was deleted in 1991 not based on any discussion in the Board of directors, but based on the amended provisions of the Companies Act as per which there is no age qualification now for a person to retire as a director. So the issue on succession was never decided by the Board or shareholders. Viewed in this background, the proposal by the petitioners and R11 to frame a



Corporate Governance Policy cannot be described as an attempt to gain control of the company or to remove Shri Ram as Editor-in-chief. Since the Board of directors reallocated the non editorial side in order to broad-base the management of the company and to involve all whole time directors, it is desirable that such a decision is taken at the editorial side also.

17. Being an incorporated entity, the company is at liberty to effect any change in its structure, not amounting to oppression and mismanagement. In the instant case, the Board does not find any enforceable decision or understanding for removing second respondent Shri Ram from his present position. It is for the directors to think about the desirability of having a permanent succession plan as well as editorial frame work. No judicial intervention can be based on alleged, informal talk in the family. It is for the directors and shareholders of the company to decide the modalities of such succession without compromising professional considerations. For the reasons discussed above, I decline to pass any orders on final relief (a) & (b) in the CP regarding the implementation of a permanent editorial succession plan of retirement and Corporate Governance Policy. As repeatedly undertaken by the respondents, the Board of directors and the shareholders are directed to consider these issues in the Board of directors as well as meeting of shareholders and to take a decision without much delay.

18. On the basis of the judgment of the Madras High Court in G.Kasturi Vs N Murali, [1992] 74 Comp Case 661, Kasturi and Sons Limited is a public limited company which cannot claim the position of a quasi- partnership. As such the petitioners cannot entertain any



legitimate expectation and their claims shall be based on the decisions taken by the board of directors. As the concept of legitimate expectation was not seriously taken as a specific ground in the pleadings, I am not bound to enter into any finding in that regard. What is specifically pleaded is the existence of a tacit understanding on the basis of which 2nd petitioner is holding the post of Managing Director since 2006. His appointment is for a period of five years from 10.04.2006. As a result of the in fight, his powers were curtailed and he was elevated to the glorified position of Senior Managing Director at the meeting of the board held on 20.03.2010. Prior to this meeting, N. Murali, as Managing Director, was in charge of accounts and EDP (independent), general administration, advertisement, circulation and production (joint). As per the reallocation of his duties on 20.03.2010, his responsibilities were reduced to circulation (independent), accounts, human relations and industrial relations (joint). It is pertinent to note that N. Murali is in the service of the company as an employee for four decades, i.e. from 1971. Out of this for three decades, he was a director. In 2006 he was unanimously elected as Managing Director. As per the understanding arrived at the meeting of the directors on 18.02.2010, N. Murali will retire from the day to day affairs of the company in August 2011 when he reaches the age of 65. Moreover, his term of appointment is to expire only on 10.04.2011. This being the admitted position, the decision to trim his powers taken on 20.03.2010 seems to be surprising. Charges were raised against him by his own brother and cousins without any notice or putting the same on the agenda. The nature of the urgency in taking this type of action against the Managing Director is not properly explained to me. Though he was elevated as Senior Managing Director, it



was done only for the purpose of creating a space for the 3rd respondent to become Managing Director. Following the stripping of powers, only one out of the original seven functions, now remains with the 2nd petitioner. There is justification for him to argue that it was a vindictive and punitive action, perhaps in retaliation to his objection to the foreign appointments of the 12th and 13th respondents. Without giving him an opportunity to explain, several serious allegations were raised against the 2nd petitioner. The stripping of powers and non-routine reallocation of functions without notice and specific agenda is lacking in probity and good faith. It is unfair on the part of the respondent directors to humiliate the 2nd petitioner in such a way. I think the arbitrary and well-planned decision taken against the 2nd petitioner on 20.03.2010 requires reconsideration. Lack of notice of the allegations without agenda is enough to establish oppression. Since the 2nd petitioner is willing to retire in August 2011, it is only reasonable to facilitate him to terminate his 40-year-old association with the company in an honourable manner. Even though directorial complaints cannot be taken as a ground for oppression in a public limited company, I am inclined to interfere in the instant case, taking into account the special circumstances. I hereby set aside the decision taken by the board of directors on 20.03.2010 to the extent it reallocates the functions of the Senior Managing Director and direct that the position prior to 20.03.2010 shall be restored as far as allocation of departments concerning the 2nd petitioner is concerned. This will not affect the continuation of R3 K. Balaji as Managing Director and his functions can be appropriately determined by the board without affecting the position and status of the 2nd petitioner as Senior Managing

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Director. The month of August in the year 2011 is not far away and I hope it will augur well for the beleaguered company.

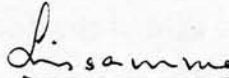
19. Some allegations are raised regarding the waiver of interest in respect of a loan availed by a member of the family and the mismanagement of a subsidiary company by R6. In view of the reliefs granted in the CP I do not think it necessary to go into those allegations. In the light of the discussions made above, CP is disposed of as follows:

- (i) the reliefs (a) & (b) to implement permanent editorial succession plan of retirement for the editorial Board members and permanent corporate governance policy on the basis of the informal discussion among the editorial directors are declined. The Board of directors and the shareholders are hereby directed to consider these issues in the meeting of the Board of directors as well as shareholders and take a decision in this matter as observed in paragraphs 16 and 17 supra without much delay;
- (ii) Regarding reliefs (c) & (d) I hereby set aside the decision taken by the board of directors on 20.03.2010 to the extent it reallocates the functions of the Senior Managing Director (P2) and direct that the position prior to 20.03.2010 shall be restored as far as allocation of departments concerning the 2nd petitioner. This will not affect the continuation of R3 K. Balaji as Managing Director and his functions can be appropriately determined by the board without affecting the position and status of the 2nd petitioner as Senior Managing Director.
- (iii) For the reasons stated at para 10 of this order above, relief (e) regarding the appointments of 12th respondent as European




Correspondent of 'Business Line' and 13th respondent as Washington Correspondent of 'The Hindu' is declined.

- (iv) Relief (f) is declined.
- (v) No order as to costs. All interlocutory applications are dismissed and all interim orders are vacated.


(LIZAMMA AUGUSTINE)

DATED THIS THE 22nd DAY OF DECEMBER, 2010.


Certified to be True Copy


Clerk of the Court
Dated the 22/12/10