

THE HIGH COURT OF MEGHALAYA

CR(P) No. 14 of 2014

Balaji Candles Private Ltd. A company incorporated under the Companies Act, 1956, having its Head Office at Pahamkmedum, 8th Mile, Baridua, Ri-Bhoi District, Meghalaya, represented by its Director Shri Sumit Kumar Sogani.

.....Petitioner

-Versus-

1. Shri Sudhir Kumar Sogani, C/o Kalindi Plaza, 1st Floor, Unir IB, Pan Bazar, Guwahati-1, Dr. JC Das Road, District-Kamrup (M), Assam.

..... Respondent

2. Smti Minitha R Sangma, resident of Williamnagar, Kusimkolgre, East Garo Hills District, Meghalaya-794111.

.....Proforma Respondent

Shri H Abraham, Advocate, present for the petitioner.

Shri K Khan, Advocate, present for the respondent.

Date of Order 11th July, 2014.

O R D E R

ORAL: HON'BLE PRAFULLA C. PANT, CHIEF JUSTICE

Heard.

2. By means of this civil revision petition filed under Section 227 of the Constitution of India, the petitioner (defendant) has challenged the order dated

15.05.2014, passed by the Court of Assistant to Deputy Commissioner (Judl), Ri-Bhoi District, Nongpoh in Misc. Case No. 4(T) of 2014 in TS Case No. 1(T) of 2014.

3. Learned counsel for the petitioner (defendant) drew attention of this Court to Section 10GB of the Companies Act, 1956, which reads as under :

**“10GB. Civil Court not to have jurisdiction-(1)
No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force”.**

4. It is also pointed out that the dispute between directors of the same company, and between shareholders of the company could have been entertained by the Tribunal. Section 398 of the Companies Act, 1956 reads as under :

“398. Application to (Tribunal) for relief in cases of mismanagement-(1) Any members of a company who complain-
(a) that the affairs of the company (are being conducted in a manner prejudicial to public interest or) in a

manner prejudicial to the interests of the company; or

- (b) that a material change not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its Board of directors, 3 [***] 4(or manager), 5 (***) or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company ;*

may apply to the 1[Tribunal] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the 1[Tribunal] is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the 1[Tribunal] may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

(i) The holder of a General Power of Attorney for and on behalf of a shareholder can validly give consent to a petition under sections 397 and 398 of the Act, P Punnaiah v Jeypore Sugar Co. Ltd., AIR 1994 SC 2258: 1994(81) Comp. Cas.1:1994(2) Com LJ 13.

(ii) Section 398 comes into play when there is actual mismanagement or apprehension of mismanagement of the

affairs of the company. It may be contrasted with Section 397 which deals with oppression to the minority shareholders, whether there is prejudice to the company or not; Shanti Prasad v Kalinga Tubes Ltd., 1965(35)Comp Cas. 351: 1965(1) Com LJ 193:AIR 1965 SC 1535.”

5. In view of the above provisions of law suit pending before the trial court appears to be not maintainable.

6. At this stage, learned counsel for the respondent (plaintiff) Sudhir Kumar Sogani stated that he is ready to withdraw the suit.

7. In view of the above statement of learned counsel for the respondent (plaintiff), this civil revision petition is disposed of with the direction that the respondent (plaintiff) be allowed to withdraw the plaint as prayed for by him. The interim order shall stand vacated from the day plaint is withdrawn.

(Prafulla C Pant)
CHIEF JUSTICE

dev
11.07.14

MC No. 118 of 2014
IN WP(C)No. 138 of 2014

11.07.2014

HON'BLE THE CHIEF JUSTICE

List this Misc. Case along with WP(C)No. 138 of
2014.

CHIEF JUSTICE

dev
11.07.14

MC No. 185 of 2014
IN WP(C)No. 118 of 2014

11.07.2014

HON'BLE THE CHIEF JUSTICE

Shri N Syngkhon, Advocate, present for the applicants.

Shri K Paul, Advocate, present for respondents.

List this matter along with WP(C)No. 118 of 2014 on 15.07.2014.

CHIEF JUSTICE

dev
11.07.14

MC No. 190 of 2014
IN WP(C)No. 240 of 2014

11.07.2014

HON'BLE THE CHIEF JUSTICE

Shri H Kharmih, Advocate, present for the applicants.

Shri S Sen Gupta, Advocate, present for respondents.

Learned counsel for respondents prays for and is allowed one week's time to seek instructions in the matter.

List immediately after one week along with WP(C)No. 240 of 2014.

CHIEF JUSTICE

dev
11.07.14

WP(C)No. 78 of 2014

11.07.2014

HON'BLE THE CHIEF JUSTICE

Shri A Goyal, Advocate, present for the petitioner.

Shri S Sen Gupta, Advocate, present for respondents.

Learned counsel for the respondents prays for and is allowed further four weeks' time to file counter affidavit.

List after four weeks.

CHIEF JUSTICE

dev
11.07.14

WP(C)No. 79 of 2014

11.07.2014

HON'BLE THE CHIEF JUSTICE

Shri A Goyal, Advocate, present for the petitioner.

Shri S Sen Gupta, Advocate, present for respondents.

Learned counsel for the respondents prays for and is allowed further four weeks' time to file counter affidavit.

List after four weeks.

CHIEF JUSTICE

dev
11.07.14

WP(C)No. 111 of 2013

11.07.2014

HON'BLE THE CHIEF JUSTICE

Ms P Kharkongor, Advocate, present for the petitioner.

Shri KP Bhattacharjee, Advocate, present for respondents.

Learned counsel for the petitioner prays for and is allowed further two weeks' time to file rejoinder affidavit.

List after two weeks.

CHIEF JUSTICE

dev
11.07.14

WP(C)No. 133 of 2014

11.07.2014

HON'BLE THE CHIEF JUSTICE

Adjourned at the request of Ms PS Nongbri, counsel
for the respondents. List after two weeks for hearing.

CHIEF JUSTICE

dev
11.07.14

WP(C)No. 138 of 2014

11.07.2014

HON'BLE THE CHIEF JUSTICE

List this writ petition along with WP(C)No. 133 of 2014.

CHIEF JUSTICE

dev
11.07.14

WP(C)No. 176 of 2014

11.07.2014

HON'BLE THE CHIEF JUSTICE

Shri R Sahu, Advocate, present for the petitioner.

Ms NG Shylla, Advocate, present for respondents.

Learned counsel for the respondents prays for and is allowed further four weeks' time to file counter affidavit.

List after four weeks.

CHIEF JUSTICE

dev
11.07.14

11.07.2014

HON'BLE THE CHIEF JUSTICE

Shri R Majaw, Advocate, present for the petitioner.

Ms PS Nongbri, Advocate, present for respondent
No. 1.

Shri P Nongbri, Advocate, present for respondent
No. 2.

Shri L Lyngdoh, Advocate, present for respondent
No. 3.

Learned counsel for respondent No. 3 states that
affidavit-in-opposition has been filed today in the
Registry.

Learned counsel for the petitioner prays for and is
allowed three weeks' time to file rejoinder affidavit to the
counter affidavit filed on behalf of respondent No. 3.

List this case after three weeks. Meanwhile, the
other respondents, namely, respondent No. 1 and
respondent No. 2 are also allowed to file their counter
affidavits.

The petitioner is directed to take steps for service
on respondents No. 4 and 5, who may also file their
counter affidavits within a period of three weeks.

CHIEF JUSTICE

dev
11.07.14

WP(C)No. 239 of 2014

11.07.2014

HON'BLE THE CHIEF JUSTICE

Shri R Jha, Advocate, present for the petitioner.

Shri R Deb Nath, CGC, present for respondents.

By means of this writ petition, the petitioner has sought quashing of the order dated 31.10.2011, whereby, his services were dismissed with effect from 25.10.2006.

Learned counsel for respondents prays for and is allowed four weeks' time to file counter affidavit.

List after four weeks.

CHIEF JUSTICE

dev
11.07.14

WP(C)No. 240 of 2014

11.07.2014

HON'BLE THE CHIEF JUSTICE

Shri H Kharmih, Advocate, present for the petitioners.

Shri S Sen Gupta, Advocate, present for respondents.

Learned counsel for respondents prays for and is allowed one week's time to seek instructions in the matter.

List immediately after one week.

CHIEF JUSTICE

dev
11.07.14

WP(C)No. 241 of 2014

11.07.2014

HON'BLE THE CHIEF JUSTICE

Shri P Thapa, Advocate, present for the petitioner.

Shri JM Thangkhiew, Advocate, present for respondents.

By means of this writ petition, the petitioner has challenged the order dated 26.09.2013, whereby, departmental appeal has been dismissed against the order dated 28.03.2011 dismissing the petitioner from the service.

Learned counsel for the respondents prays for and is allowed four weeks' time to file counter affidavit.

List after four weeks.

CHIEF JUSTICE

dev
11.07.14