

ORIGINAL CIVIL

*Before Harbans Singh, J.*MAJOR, MELLA SINGH (RETD.),—*Petitioner.**versus*THE PRESIDENT, JULLUNDUR CLUB LTD., AND OTHERS,—
*Respondents.***Civil Original No. 38 of 1968**

February 28, 1969.

Companies Act (I of 1956)—Ss. 177, 178 and 185—Voting by show of hands and on demand of poll—Difference between—Stated—Poll demanded at a general meeting of a Company—Voting at such poll—Whether must be by secret ballot—Voting by secret ballot at a meeting of a Club—Desirability of.

Held, that the main difference between the voting by show of hands as provided in section 177 of the Indian Companies Act, 1956, and on poll being demanded is that on show of hands, only the persons present count and the persons who are present by proxy have no say in the matter. In the second place, on a show of hand, each person present and voting counts as one vote irrespective of the number of shares held by him, whereas on a poll being taken votes of a particular person are counted according to the number of shares held by him. However, there is nothing magical about the show of hands or any other method. The idea behind taking a poll is to clearly ascertain the wishes of the persons, not only present in person but by proxies and give full effect to the fact of different members holding different shares and, therefore, having different voting rights. On poll being demanded, the voting must not necessarily be by secret ballot. The manner in which the voting is to be taken on a poll being demanded has been left to the discretion of the chairman by section 185 of the Act.

(Paras 4 and 6)

Held, that technically speaking, Chairman is not bound to take votes by a secret ballot when a poll is demanded yet in an institution like the Club, which is not a Commercial concern, it is highly desirable, in order to maintain the proper atmosphere in the Club and to inspire complete confidence in the management that whenever a poll is demanded, the Chairman should normally have the voting done by ballot which would not indicate the name of the person voting in any particular manner. In other words, it is highly desirable that the voting should be taken by a secret ballot.

(Para 8)

Application under section 151 of the Code of Civil Procedure read with section 179 of Indian Companies Act, 1956, praying that the Election of respondents Nos. 2 to 7 as members of the Managing Committee of the Jullundur Club, Ltd., Jullundur Cantonment be set aside being illegal and

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void being against the provisions of the Indian Companies Act and Articles of Association of the club and fresh election according to law be held.

K. S. BAKSHI, ADVOCATE, for the Petitioner.

L. M. SURI, ADVOCATE, for the Respondents.

JUDGMENT

HARBANS SINGH, J.—Jullundur Club Ltd., Jullundur Cantonment, is a public limited company incorporated under the Indian Companies Act. The Annual General Meeting of the Club for the year 1968 was held on 28th of September, 1968 at the Club premises. Major Mella Singh (retired), a resident of Jullundur Cantonment and a permanent member of the Club, had submitted certain objections in writing to the Club, pointing out certain irregularities mostly relating to the accounts etc. which accounts were to be passed at that General Meeting. According to Major Mella Singh, who is the petitioner in this case, this annoyed the Committee, managing the affairs of the Club which *inter alia* included Group Captain J.F. Shukla, who presided at the aforesaid Annual General Meeting of the Club in the absence of the Chairman. Six persons were to be elected as the members of the Managing Committee for the next year. For these six posts, seven names were proposed and seconded, including the name of Major Mella Singh, petitioner. Out of the remaining six, four were officers of the Defence Forces including Group Captain Shukla and two were civilian members, namely, Mr. K. S. Mathra Dass and Guru Amarjit Singh. Thus, there being seven names for six vacancies, votes had to be taken. The petitioner and four others demanded "election by poll". Article 27 of the Article of Association of the Club relating to the question of voting provides as follows:—

"Every question submitted to the meeting shall be decided in the first instance by the usual show of hands.....Unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the book of proceeding of Club shall be conclusive evidence of fact without proof of the number or proportion of the votes recorded in favour of or against such resolutions."

As the requirements of this Article were fulfilled in as much as five members had demanded a poll, this request was granted and the

Chairman explained that under Article 28 of the Article of Association he as the Chairman was to fix the manner, time and place of the poll. The Chairman directed that the poll be taken then and there and the procedure adopted by him was as given in the minutes of the meeting of the Club (Exhibit R.W.1/1), as follows:—

“The Chairman then decided to divide the house into two parts and asked for volunteers from each part of the house for counting the votes. He further confirmed from the house that no body objected to the appointment of these two members for counting votes. He then explained to the house the system of the poll which was that on the announcement of the name of each of seven candidates, members in favour of each would raise their left hand. These could be counted by the respective member appointed for the purpose who would convey the count loudly to the chair. The chairman would then add both the sides and the proxies if any and would announce the total votes secured by each candidate. The six candidates securing maximum vote would be declared elected members of the Committee.”

The Chairman also informed the house that valid proxies from the following three members had been received:—

(a) Group Capt. J. F. Shukla	...	17
(b) Lt. Col. Charanjit Singh	...	6
(c) Major Mella Singh (Retd.)	...	8

Two persons volunteered for counting the votes. Candidates names were put to vote one by one. The four officers of the Defence Forces were elected unanimously. Shri K. S. Mathra Dass secured 146 votes including 23 proxies, Guru Amarjit Singh received 147 votes including 23 proxies and Major Mella Singh received 50 votes including 8 proxies. The result, therefore, was that six names proposed other than that of the petitioner were declared elected.

(2) The facts are not substantially in dispute. According to the petitioner, when the Chairman announced the method of taking the poll, he objected that the poll should be taken by ballot and not by show of hands, while according to Lt. Col. Charanjit Singh, who appeared as a witness on behalf of the respondent Club, no such request was taken by the petitioner. In any case, the position taken

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by the respondent Club is that irrespective of the fact whether such a request was made or not, under the Articles of Association of the Club, it was entirely within the discretion of the Chairman to select the method of taking the poll and it does not make any difference whether a member or members desired that the poll be taken in a particular manner.

(3) The two Articles which require interpretation are Article 27, which has been reproduced above, and Article 28, the relevant portion of which runs as follows:—

“If a poll is demanded as aforesaid, it shall be taken in such manner at such time and place as the chairman of the meeting directs, and either at once or after an interval or adjournment, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.”

These two Articles, so far as the question of manner of voting is concerned, are materially the same as sections 177, 178 and 185 of the Companies Act, 1956 (hereinafter referred to as the Act), which are as follows:—

Section 177—

At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 179, be decided on a show of hands.

Section 179—

(1) Before or on the declaration of the result of the voting on any resolution on a show of hands, a poll may be ordered to be taken by the chairman of the meeting of his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the persons or person specified below, that is to say—

(a) in the case of a public company, by at least five members having the right to vote on the resolution and present in person or by proxy.

(b) *	*	*
(c) *	*	*
(d) *	*	*

Section 185 of the Act gives power to the Chairman to regulate the manner in which the poll is to be taken. It runs as follows:—

“(1) Subject to the provisions of this Act, the Chairman of the meeting shall have power to regulate the manner in which a poll shall be taken.”

(4) The main argument on behalf of the petitioner is that provision in section 179 of the Act and Articles 27 of the Articles of Association of the Club giving right to five members to demand a poll obviously means that the method of voting should be different from the one envisaged by section 177 of the Act and the first part of Article 27. It is, therefore, urged that a voting on a poll being demanded has to be by a method different from the earlier one, viz by show of hands. On the other hand, on behalf of the respondent, it is urged that so far as the exact manner of taking the poll is concerned, that has been left to the discretion of the Chairman. The main difference between the voting by show of hands as provided in section 177 of the Act and on a poll being demanded is that on show of hands, only the persons present count and the persons who are present by proxy have no say in the matter. In the second place, on a show of hand, each person present and voting counts as one vote irrespective of the number of shares held by him, whereas on a poll being taken votes of a particular person are counted according to the number of shares held by him. In the present case, each member of the Club has only one vote and, therefore, the second question does not arise for consideration. According to the respondent, therefore, on poll being demanded the only difference which arises is that the proxies held by the members are also taken into consideration as was done in the present case.

(5) The main contention of the learned counsel for the petitioner was that as the high officers of the Defence Forces, who were on the Managing Committee were annoyed on objections having been raised, in writing by the petitioner, they had passed a word round to the other members of the Club, majority of whom were junior officers of the Defence Services—there being only ten civilian members, that the petitioner should be kept out of the Managing Committee. In view of this, it was not expected that if voting is taken by show of hands, they will be able to vote in a free manner and that if voting had been taken by ballot the petitioner was likely

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to receive the majority of the votes. Learned counsel for the respondent, while denying the suggestion, contended that if under the Articles of Association, it was open to the Chairman to select the manner of voting, the petitioner cannot object. The counsel for the parties were not able to cite any commentary or decided case which can throw any light on the point. I, however, find that in Palmer's Company Precedents, seventeenth edition, Part I, at page 496, it is mentioned as follows:—

“It having been ascertained that the persons demanding the poll are duly qualified the chairman will read out the demand, and will state that he grants the same, and will fix the time when and the place where the poll will be taken, and if necessary the meeting will be adjourned.

If the company has many shareholders it is not unusual to appoint a scrutineer or two to take the poll, and some articles of association expressly require such appointment. In a small company the poll is often taken by the chairman. In taking the poll it is usual to cause a list of members to be made out from the register, with six columns headed thus—(1) Names of Voters, (2) Number of Shares, (3) Number of Votes, (4) Observations, (5) Votes given: for, (6) Votes given: against.

At the time appointed for taking the poll, the members who vote personally will come up to the voting table and write their names down on sheets of paper headed “For” or “Against” the motion, as the case may be. A member voting as proxy for another will write down his own name and also that of the person whose proxy he is e.g.. “John Smith, by W. Jones, his proxy.”

More or less the same thing is repeated in Volume II of the same edition at page 616.

(6) It can be argued from this that the method to be adopted at the poll is different from the show of hands. I am, however, of the view that there is nothing magical about show of hands or any other method. The idea behind taking a poll is, as stated above, to clearly

ascertain the wishes of the persons, not only present in person but by proxies and give full effect to the fact of different members holding different shares and, therefore, having different voting rights. In the present case, instead of asking the members present to raise their hands when a particular name was put to the house, he could have asked the members to stand up to indicate that they voted in favour of that particular member. If this had been done the voting would not have been by show of hands, but all the same the main objection of the petitioner would still be there that out of regard for the high officers, the junior officers may not be able to exercise their right of vote freely. This objection would still remain even if members were asked to write their names on a sheet of paper and indicate whether they vote for or against a particular person as has been suggested in Palmer's Company precedents, reproduced above. I have not come across any authority which goes to the extent that on a poll being demanded, the voting must necessarily be by a secret ballot. The manner in which the voting is to be taken on a poll being demanded has been left to the discretion of the Chairman by the Articles of Association as well as by section 185 of the Act.

(7) In view of the above, therefore, I feel that there was no illegality in the procedure followed by the Chairman in taking the poll and this petition has, therefore, to be dismissed.

(8) I must, however, add that though technically speaking, Chairman is not bound to take votes by a secret ballot when a poll is demanded yet in an institution like the Club, which is not a Commercial concern, it is highly desirable, in order to maintain the proper atmosphere in the Club and to inspire complete confidence in the management that whenever a poll is demanded, the Chairman should normally have the voting done by ballot which would not indicate the name of the person voting in any particular manner. In other words, it is highly desirable that the voting should be taken by a secret ballot.

(9) With these observations, I dismiss this petition leaving the parties to bear their own costs.

R. N. M.