

APPELLATE CRIMINAL.

Before Falshaw and Dulat, JJ.

THE STATE THROUGH THE REGISTRAR OF JOINT
STOCK COMPANIES, PUNJAB (PUNJAB AND
HIMACHAL PRADESH) (JULLUNDER CITY)

versus

THE AKAL TRANSPORT COMPANY PRIVATE LIMITED
LUDHIANA,—Accused-Respondents.

Criminal Appeal No. 810 of 1957

1958

July, 31st

*Companies Act (I of 1956)—Sections 314 and 652—
Directors and their relations holding offices or places of
profit under the company on the coming into force of the
Act—Whether can continue in office without a special
resolution of the company. ...*

*Held, that the only effect of section 652 of the Com-
panies Act, 1956, is that it is not generally necessary for com-
panies which were functioning before the new Act came
into force to re-elect their Board of directors or other
officials and that the existing directors and officials could
ordinarily continue in office as before but on the coming
into force of the new Act it immediately become necessary
for those companies in which offices of profit were held
by directors or their relations to have this state of affairs
ratified by the acceptance of a special resolution by a
meeting of the company.*

*State Appeal from the order of Shri Beni Parshad
Aggarwal, Additional District Magistrate, Jullundur District
dated 29th August, 1957, acquitting the respondent.*

KARTAR SINGH CHAWALA, Assistant Advocate-General
for Appellant.

Y. P. GANDHI, for Respondent.

JUDGMENT

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FALSHAW, J.—This is an appeal by the State
against the order of the Additional District Magis-
trate, Jullundur, acquitting the accused, the Akal
Transport Company, Private Limited, which was

summoned through its Manager, Kishori Lal, in a complaint filed by the Registrar of Joint Stock Companies, Punjab, under section 303(2) of the Companies Act, 1956.

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The allegations in the complaint are that in spite of the fact that no special resolution has been adopted by the Company under section 314(1) of the Companies Act, nine Directors of the Company named in the margin were either holding office of profit under the Company, or else relations of theirs were employed in the Company, and therefore, the said Directors must be deemed to have vacated their offices as Directors with effect from the 1st of April, 1956, when the Act came into force, and no return in the prescribed form showing the changes in the Board of Directors had been filed in the office of the Registrar within fourteen days of the change, or in fact apparently up to the time when the complaint was filed in June, 1957. It was further mentioned that special resolution for confirmation of the appointment of the relatives of the Directors concerned had twice been rejected by the share-holders of the Company in meetings held on the 21st of May, 1956 and the 27th of March, 1957.

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Two preliminary objections were raised on behalf of the accused Company, the first being that the complaint was liable to be dismissed under section 247, Criminal Procedure Code, because the Registrar who was the complainant was not attending the Court in person on each hearing and secondly because the Directors of the Company, who were in office when the Act came into force on the 1st of April, 1956, were saved by the provisions of section 652 of the Act.

The first of these objections was overruled by the learned Magistrate on the ground that section 247 gave him a discretion to dispense with the

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personal attendance of the complainant and he ordered that the personal attendance was not necessary in a case of this kind, but he accepted the second objection and acquitted the accused.

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The relevant provisions of the Companies Act are as follows:—

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“Section 314 (1) Except with the previous consent of the company accorded by a special resolution, no director of a com-
pany, no partner or relative of a such a director, no firm in which such a direc-
tor or relative is a partner, no private company of which such a director is a director or member, and no director, managing agent, secre-
taries and treasurers, or manager of such a private company shall hold any office or place of profit, except that of managing director, managing agent, secretaries and treasurers, manager, legal or technical adviser, banker, or trustee for the holders of debentures of the company,—

(a) under the company; or

(b) under any subsidiary of the company, unless the remuneration received from such subsidiary in respect of such office or place is paid over to the company or its holding company.

(2) If any office or place of profit under the company or a subsidiary thereof is held in contravention of the provisions of subsection (1), the director concerned shall be deemed to have vacated his

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office as director with effect from the first day on which the contravention occurs; and shall also be liable to refund to the company any remuneration received, or the monetary equivalent of any perquisites or advantage enjoyed by him, in respect of such office or place of profit.

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Section 303 (1) Every company shall keep at its registered office a register of its directors, managing director, managing agent, secretaries and treasurers, manager and secretary, containing with respect to each of them the following particulars, that is to say:—

* * *
 * * *

(2) The company shall, within the periods respectively mentioned in this subsection, send to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors, managing directors, managing agents, secretaries and treasurers, managers or secretaries or in any of the particulars contained in the register, specifying the date of the change. The period within which the said return is to be sent shall be a period of twenty-eight days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be twenty-eight days from the happening thereof.

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(3) If default is made in complying with subsection (1) or (2), the company, and every officer of the company who is in "default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues."

Section 652 which was held by the learned Magistrate to save the defendant company reads—

"652. Any person appointed to any office under or by virtue of any previous companies law shall be deemed to have been appointed to that office under or by virtue of this Act."

The question is therefore, whether in the case of a company which was already in existence on the 1st of April, 1956, when the old Act of 1913 was superseded by the new Companies Act, and in which offices of profit in or under the company were held by directors themselves or by relations of theirs, section 652 will dispense with the necessity for having the holding of these offices of profit by directors or their relations approved by a statutory majority of the members of the company by means of a special resolution as provided in section 314, immediately or as soon as possible after the coming into force of the new Act.

It would seem that before the new Act came into force there was nothing illegal in the holding of offices of profit in the Company by Directors themselves or their relations and the obvious intention of the new provisions contained in section 314 of the Act was to stamp out this practice, which quite evidently is liable to abuse, and no doubt has been abused in the past, and may well

produce a state of affairs not in the best interests of the members of the Company as a whole. I do not think that it could possibly have been the intention of the Legislature to allow this state of affairs to continue where it existed in companies already working when the new Act came into force. In the circumstances I consider that the only effect of section 652 is that it is not generally necessary for companies which were functioning before the new Act into force to reelect their Board of directors or other officials and that the existing directors and officials could ordinarily continue in office as before, but on the coming into force of the new Act it immediately became necessary for those companies in which offices of profit were held by directors or their relations to have this state of affairs ratified by the acceptance of a special resolution by a meeting of the company. I thus consider that the accused Company in the present case was wrongly acquitted in the preliminary stages on the strength of the provisions of section 652 of the Act and therefore the appeal of the State must be accepted and the order of acquittal set aside.

This is not, however, to be taken as expressing any opinion as to whether any offence has or has not been committed by the accused Company in this case, in which the true facts still remain to be established by evidence, and the law applicable to the facts as found still remains to be determined. I would accordingly accept the appeal and order that the trial of the accused company should proceed according to law.

DULAT, J.—I agree.

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