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Equity Prevails: When Conduct Speaks Louder Than the Register of Members

AUTHOR Asav Rajan Arora, Tanvi Dalvi

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Dr. Bais Surgical and Medical Institute Pvt. Ltd. & Ors. v. Dhananjay Pande

Civil Appeal Nos. 8973 & 9456 of 2010 | Supreme Court of India | May 4, 2026

Introduction

In a significant pronouncement on the interpretation of membership under the Companies Act, 1956, a Division Bench of the Supreme Court of India comprising Justices Pamidighantam Sri Narasimha and Alok Aradhe has authoritatively held that the absence of a formal entry in the register of members does not, by itself, preclude a person from maintaining a petition for relief from oppression and mismanagement under Sections 397 and 398 of the Act. The judgment, rendered in Dr. Bais Surgical and Medical Institute Pvt. Ltd. & Ors. v. Dhananjay Pande, affirms the primacy of equitable considerations and cumulative factual conduct over technical procedural formalities in determining locus standi for oppression proceedings.

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Background and Factual Matrix

Appellant No. 1 is a private limited company incorporated in 1994, which established and operated a hospital. The company encountered financial difficulties shortly after commencing operations, whereupon the Respondent, Dhananjay Pande, proposed infusing capital on the conditions that he be appointed Managing Director and that the hospital be converted into a specialised cardiac facility. Both conditions were accepted; the Respondent was appointed Managing Director with effect from January 1, 1998, and the hospital was renamed Ekvira Heart Institute, the name "Ekvira" being drawn from the Respondent's own trading concern.

The Respondent claimed that 14,75,998 shares were allotted to him at a Board meeting on July 15, 1999, against share application money paid by him, an assertion disputed by the appellants. Disputes eventually escalated, resulting in the Respondent's suspension, followed by conciliation proceedings in May 2000, the withdrawal of his suspension, and his consequent withdrawal from daytoday management.

Proceedings Before the Company Law Board and High Court

In January 2001, the Respondent filed the first company petition under Sections 397 and 398 of the Companies Act, 1956, alleging oppression and mismanagement, principally on the ground that share certificates had not been issued despite receipt of his share application money. The appellants contested the Respondent's locus standi, contending that he did not qualify as a "member" within the meaning of the Act. Notably, the Respondent had also instituted civil suits for recovery of the invested amounts, which the appellants cited as evidence that he treated his investment as a recoverable debt rather than share capital.

The Company Law Board, by order dated December 2, 2004, upheld the Respondent's status as a member and directed either allotment of shares or refund of investment with interest. A second company petition followed in January 2005, challenging the subsequent allotment of 60,00,000 shares to Appellant No. 2 as consideration for property transfer to facilitate a management agreement with Wockhardt Hospitals Ltd. an alleged allotment that diluted the Respondent's stake from 49% to 15%. The Company Law Board found this allotment oppressive and directed purchase of the Respondent's shares with interest. Both orders were affirmed by the High Court, and the Supreme Court thereafter admitted the appeals.

Issues in Contention

The sole legal issue for determination was whether, in the absence of a formal entry of the Respondent's name in the register of members, he could nonetheless be regarded as a "member" of the company so as to invoke the jurisdiction of the Company Law Board under Sections 397 and 398 of the Act.

Rival Submissions

On behalf of the appellants, senior counsel submitted that membership under the Companies Act, 1956 is constituted exclusively by Section 41, which mandates a written agreement to become a member and entry of the person's name in the register of members. It was further contended that membership constitutes a jurisdictional fact for the purposes of Sections 397 and 398, and that the Respondent's act of filing civil suits for recovery of his investment was inconsistent with any claim to membership. The appellants placed reliance upon Balkrishan Gupta & Ors. v. Swadeshi Polytex Ltd. (1985), Nanalal Zaver & Anr. v. Bombay Life Assurance Co. Ltd. (1950), and Severn Trent Water Purification Inc. v. Chloro Controls (India) Pvt. Ltd. (2008).

The Respondent countered that entry in the register of members is a statutory obligation owed by the company, and that the appellants could not be permitted to take advantage of their own default in discharging it. It was argued that the broader definition of "member" under Section 2(27) governs locus under Sections 397 and 398, and that the cumulative conduct of the company accepting and utilising the Respondent's investment, appointing him Managing Director, and renaming the hospital after his trading concern unequivocally demonstrated recognition of his proprietary interest. Reliance was placed upon Shri Balaji Textile Mills Pvt. Ltd. v. Ashok Kavle (1988), M/s World Wide Agencies Pvt. Ltd. v. Margarat T. Desor (1990), and Umesh Kumar Baveja v. IL & FS Transportation Network Ltd. (2013).

The Court's Analysis and Ruling

The Supreme Court undertook a detailed examination of the interplay between Section 2(27) and Section 41 of the Act. The Court observed that Section 2(27) employs language of wide amplitude, embracing every category of member subject only to the exclusion of sharewarrant bearers. Section 41, by contrast, merely prescribes procedural modes of acquiring membership, and the requirement of a written agreement introduced by the 1960 Amendment was designed to prevent fraudulent inclusions rather than to make register entry the sole route to membership.

The Court reaffirmed the equitable character of the jurisdiction conferred by Sections 397 and 398, and held that the expression "member" in those provisions must be construed with reference to the wider definitional framework of Section 2(27) rather than being confined to the procedural requirements of Section 41(2). Noting approval from a consistent line of High Court decisions including the Delhi High Court's ruling in Umesh Kumar Baveja that conduct reflecting acceptance and utilisation of an investor's funds constitutes strong evidence of recognition of proprietary stake the Court held that considerations of equity and justice must prevail where the company has, through sustained conduct, recognised the claimant as a stakeholder.

Applying this framework to the facts, the Court found that the Respondent had been consistently recognised as a coowner through contemporaneous correspondence, conciliation proceedings acknowledging a 30% ownership interest, induction as Managing Director, and rebranding of the hospital in the name of his trading concern. The Court accordingly dismissed the appeals and directed release of the deposited amounts in favour of the Respondent.

Key Legal Principle

The Supreme Court has firmly established that where cumulative factual circumstances demonstrate longstanding recognition of a person's proprietary stake by the company through correspondence, conduct, and financial dealings equity and justice must prevail to treat such person as a member for the purpose of maintaining oppression and mismanagement proceedings, notwithstanding the absence of a formal entry in the register of members.

Significance for Corporate Practice

This judgment carries significant implications for minority investors, corporate disputes, and the interpretation of membership rights under company law. It reinforces the principle that courts will not permit a company to exploit its own procedural default to defeat substantive rights of genuine shareholders. Practitioners advising investors in closely held companies should take heed: where an investor's funds are accepted and utilised, and where the company's conduct demonstrates consistent recognition of that investor as a stakeholder, the courts will be slow to deny the investor access to the remedies designed to protect minority shareholders from oppression and mismanagement.

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