

(2006) 06 GUJ CK 0026
In the Gujarat High Court

Case No : Special Civil Application No's. 17688 of 2003 and 12601 of 2004

Administrator of Specified Undertaking of Unit Trust	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 14-06-2006

Acts Referred:

Arbitration Act, 1940 — Section 16
Bombay General Clauses Act, 1904 — Section 21
Bombay Relief Undertakings (Special Provisions) Act, 1958 — Section 3, 3(2), 4, 4(1)
Constitution of India, 1950 — Article 166(2), 19, 19(6)

Citation : (2006) 2 GLR 1663

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : Huzefa A. Ahmadi and Baiju Bhagat, for the Appellant; K.B. Trivedi, General and Sangeeta Vishen, AGP for Respondent 1, S.N. Soparkar and Mitul K Shelat, for Respondent 2, for the Respondent

Judgement

K.S. Jhaveri, J.—The challenge in Special Civil Application No. 17688/2003 is to the Notification dated 28th August 2003 issued by the respondent No. 1 declaring the respondent No. 2 company as a Relief Undertaking under the provisions of The Bombay Relief Undertakings (Special Provisions) Act, 1958.

1.1 In Special Civil Application No. 12601 of 2004 the challenge is to the order dated 1st September 2004 passed by the Debt Recovery Tribunal, Ahmedabad, rendered in original Application No. 189 of 2004 whereby the Tribunal has issued notice and restrained the petitioner from disposing off, selling, transferring, alienating, encumbering, parting with the possession, creating third party rights, title, interest and claim of nay nature whatsoever in the immovable property of the petitioner company and appointed a Receiver of the immovable properties of the petitioner Company. Therefore the question to be decided in this petition is whether the respondent No. 1 State was justified in issuing the aforesaid Notification dated 28th August 2003 in favour of the respondent Company or not.

2. The facts in a nutshell leading to the present litigation are as under:

2.1 Respondent No. 2 is a company incorporated under the provisions of Companies Act, 1956 and engaged, inter alia, in the business of manufacturing and marketing cement. The respondent No. 2 had approached the petitioner for financial assistance which was granted by the petitioner. The details of the financial assistance are as under:

1. Rs. 11,29,48,887/- towards subscription to 2,59,150 - 18% secured redeemable non-convertible debentures of the face value of Rs. 200/- each (being the Part B Non-Convertible portion) in the issue of 8,07,500 - 18% secured redeemable partly convertible debentures of Rs. 250/- each (comprising of 2 parts viz. convertible part - A (Rs.50/-) and the Redeemable non-convertible part-B (Rs.200/-) for the purpose of enhancing the plant capacity, expansion, modernization of entire production line. The debentures were issued and offered under Prospectus dated 17.8.1993.

2. Rs. 38,75,61,732/- towards subscription to 17,85,286 - 18% secured redeemable non-convertible debentures of the face value of Rs. 100/- each in the issue of 42,00,000/- - 18% secured redeemable partly convertible debentures of Rs. 150/- each (comprising of 2 parts viz. convertible part-A (Rs.50/-) and redeemable non-convertible part-B (Rs.100/- for the purpose of expansion, modernization and augmenting the long term working capital resources of company sanctioned under the Letter of Officer dated 14.9.1993 issued by erstwhile Saurashtra Cement and Chemical and Industries Ltd.

2.2 In spite of various letters and requests the respondent No. 2 failed to pay up the outstanding dues in respect of the aforesaid financial assistance. The petitioner, therefore, issued "Recall Notice" dated 5th August 2003 to the respondent No. 2. The total outstanding of the respondent No. 2 to the petitioner as on 25.7.2003 was Rs. 46,78,08,885/-. In spite of the aforesaid notice the petitioner has not received any payment from the respondent No. 2 company.

2.3 The respondent No. 1 issued notification dated 28th August 2003 declaring the respondent No. 2 company as a Relief Undertaking under the provisions of the Bombay Relief Undertakings (Special Provisions) Act, 1958 (hereinafter referred to as the said Act). The said notification was subsequently extended from time to time upto 30th June 2006. It is this notification which is challenged in the present petition.

2.4 In the meanwhile the petitioner in SCA No. 17688/2003 has filed recovery proceedings against the said respondent No. 2 Company before the Debt Recovery Tribunal, Ahmedabad wherein interim orders were passed and appointed a Receiver in respect of the immovable properties of the respondent No. 2 Company. Therefore they have filed Special Civil Application No. 12601 of 2004.

3. Mr. Ahmadi, learned Advocate appearing for the petitioner submitted that

under the provisions of Section 3 of the Act, the respondent No. 2 company is not eligible to be declared as relief undertaking as it does not fulfill any of the conditions of Section 3 of the Act.

3.1 He submitted that the respondent No. 2 has neither started, acquired or otherwise taken over by the State Government, nor the State Government has given any loan, guarantee or other financial assistance to the respondent No. 2 Company.

3.2 According to Mr. Ahmadi, the notification does not specify any reasons justifying the issuance of impugned notification in favour of the respondent No. 2. company and there was no application of mind on the issue in question.

3.3 Mr. Ahmadi submitted that no hearing was given to the person affected including the petitioner to whom the respondent company owes an amount of Rs. 50,05,10,619/- as on 15.12.2003 since issuance of Notifications under Sections 3 and 4 has a serious impact on the civil rights of creditors and other persons and hence at least public notice ought to have been issued before making a declaration. No such notice has been issued in any of the newspapers.

3.4 He submitted that the basic objective of the Act and Notification is not complied with. He pointed out that as indicated in the Auditors report, the total number of workmen and their corresponding salary and wages have also gone down in comparison to the last year. Therefore the very purpose and object, i.e. "to prevent unemployment" of the Notification is frustrated. He, therefore, submitted that the sole motive to get the notification issued is to delay and defeat the claim of creditors.

3.5 Mr. Ahmadi submitted that it is clear that the respondent No. 1 did not have any authority or competence to issue the impugned notification in favour of the respondent No. 2 company inasmuch as the respondent No. 2 company is not eligible for the protection under the Act as it is not the industrial undertaking to which the Act applies. According to him Section 3 of the Act does not cover the case of the respondent No. 2 as the respondent No. 2 does not fulfill any criteria as prescribed therein. He therefore submitted that the present petition deserves to be allowed.

3.6 Mr. Ahmadi has further submitted that in view of the declaration of "Relief Undertaking" the company could not have filed application before the Debt Recovery Tribunal and therefore the said application is required to be set aside.

3.7 Mr. Ahmadi has also contended that the legislative intent is only to stay the execution proceedings and not the adjudication proceedings. He, therefore, submitted that the proceedings which are pending before the DRT are required to be allowed to go on and only the decree should not be allowed to be executed.

3.8 He further submitted that the provisions of Section 4 of the Act i.e. "Enforcement" does not apply to "adjudication" but applies to "execution". Hence, what can be stayed is execution and not adjudication. Adjudication is only

crystalization of debt that is in common parlance called "decree".

3.9 Mr. Ahmadi submitted that the basic pre-requisites before issuance of a notification u/s 3 are not complied with and the Government has not stated what financial assistance has been exactly granted. According to him the sales tax deferment does not amount to loan, guarantee or assistance as envisaged in Section 3.

3.10 He further submitted that the manner in which the notification is issued u/s 3 is not proper and the words "conducted to serve" are absent in the notification. He further submitted that the principles of natural justice have been completely ignored.

4. Mr. Ahmadi has relied upon an unreported decision of this Court passed in SCA No. 7528 of 2004 and other allied matters dated 13th May 2005. One of the questions raised in the said petitions was that in view of the Notification issued by the State Government under the provisions of BRU Act declaring the company as "Relief Undertaking", whether the arbitration proceedings against the said company can be proceeded further or is required to be stayed till the validity of the said Notification. After considering the relevant facts of the case the learned Single Judge of this Court held that considering the statement and object of the BRU Act as well as Section 16 of the Arbitration Act of 1996 read with Section 4 of the BRU Act, a proceeding for ascertainment of any amount and/or adjudication between the parties may go on and the effect of Section 4, i.e. with regard to suspension of proceedings is required to be considered at the stage of execution of the award, if any, and the arbitration proceedings, during the operation of the BRU Notification may go on till the actual stage of execution of the award if any.

4.1 Mr. Ahmadi next relied upon an unreported decision of this Court passed in Special Civil Application Nos. 17526 to 17528 of 2005 dated 29th September 2005. In the said case the order of the Board of Nominees, Ahmedabad was under challenge whereby it was held that since the respondent company was declared as an "undertaking" under the Act, the leave to defend application for the said company in Lavad Summary suits should be kept pending till the notification of the Government of Gujarat declaring the respondent company as an undertaking is in force. This Court set aside the said orders and directed to decide the leave to defend application of the respondent company within a stipulated period of time. Thus, the learned Single Judge was of the opinion that the Court can proceed with the proceedings.

4.2 He has next relied upon a decision in the case of Suryoday Allo-Metal Powders Ltd. Vs. Senior Intelligence Officer and Another, The said decision has considered Sub-clause (iv) of Section 4 of the Act and held that Sub-clause (iv) of Section 4 of the Act shows that it is not applicable to the liabilities arising out of Central Excise Act and the word "liability" denotes a crystallized liability capable of recovery from the relief undertaking. Any proceedings leading to the

determination of the liability will be outside the scope of the said sub-clause and therefore by no stretch of imagination the proceedings initiated under Central Excise legislation can be brought within the purview of the provisions of the said Act.

4.3 He has also relied upon a decision in the case of Doburg Lager Breweries Pvt. Ltd. Vs. Dhariwal Bottle Trading Co. and Another, In the said decision it is held that Section 3 of the Act only requires that loan, guarantee or any other financial assistance must have been advanced by State Government prior to the date of notification and it must still be outstanding on that date. If that requirement is satisfied by the State itself or through its instrumentality or agent, before issuance of the notification, then the notification cannot be invalidated on ground that the loan had not been advanced under the Act? as the Act does not provide for any special mode for advancing loan.

4.4 Mr. Ahmadi has also relied upon a decision of this Court rendered in Special Civil Application No. 6324 of 2000 dated 8th December 2000. In the said case also the contention was that the State Government had no authority or jurisdiction to issue notification in favour of the respondent company as the BRU Act applies only to industrial undertakings started, acquired or otherwise taken over by the State Government and carried on or proposed to be carried on by itself or under its authority or to which any loan, guarantee or other financial assistance has been given by the State Government. In paragraph 33 of the said decision it is held as under:

33. Having gone through the pleadings of the parties and having heard the learned Counsel for the parties, it is obvious that while the challenge to the notification dated 22.10.1999 has become infructuous by efflux of time, the Court does not find that the Government has taken into account only the need to prevent unemployment without bothering to consider whether the Company has taken the necessary steps to put itself on a sound footing after issuance of the original notification dated 22.10.1999. In this view of the matter and for failure to give an opportunity of hearing to the secured creditors and representatives of unsecured creditors, the notification dated 6.10.2000 would have been liable to be struck down. But considering that the court has only now enunciated the revised principles for hearing to be afforded to the affected parties, the Court does not strike down the notification dated 6.10.2000, but issues appropriate directions in light of the principles laid down in this judgment so that the GBIFR considers the case. The Court also directs respondent No. 2 company to pay the GBIFR a sum of Rs. 1 lac to meet with the administrative costs including costs of public advertisements. It is also clarified that when the State Government receives any application for protection under the BRU Act, once the Government is satisfied about fulfillment of condition precedent regarding financial assistance from the State Government to the applicant, the State Government shall then refer the application to the GBIFR and thereupon the GBIFR shall examine the case of the respondent Company and other companies applying for protection

under the BRU Act even if such cases may not strictly fall within the criteria stipulated in the Government Resolution dated 13.8.1998 as amended from time to time. The learned Single Judge has also given various directions in the said decision.

5. Mr. Kamal Trivedi, learned Additional Advocate General, appearing for the respondent No. 1 defended the issuance of notification.

5.1 Mr. Trivedi submitted that there is a gross delay in filing the petition inasmuch as the petition has been filed after a period of four months from the issuance of the notification.

5.2 He submitted that the petition suffers from the vice of suppression falsi suggestion vari inasmuch as the petitioner has not stated the correct and complete facts before this Court.

5.3 According to Mr. Trivedi, the notification u/s 3 of the Act was issued with a direction in purported exercise of powers u/s 4(1)(a)(iv) of the Act and provide that except in case of Government dues in relation to the said undertaking rights, privileges, obligations, liabilities (other than liabilities, etc. towards its employee) occurred or incurred before 28.8.2003, any remedy for the enforcement thereof shall be suspended and proceedings thereto pending before any Court, Tribunal, Officer or authority shall be stayed during one year commencing from 28.8.2003 upto 27.8.2004. He further submitted that the said notification was also issued for the reason that the Industries Commissioner, Gujarat State, Gandhinagar, has also granted sales tax incentives to the respondent No. 2. The fact that such benefits have been granted to the Saurashtra Cement Ltd. is known to the petitioner and therefore once the respondent No. 1 is directly involved in granting financial assistance, the prerequisite conditions for issuance of notification under the Act are absolutely satisfied.

5.4 Mr. Trivedi submitted that the respondent No. 1 has considered the fact that there are around 1055 direct employees as well as 4000 other workers employed, who depend upon the respondent No. 2 company and therefore the said workers and employees of the Company will vitally be affected if the said relief is not granted to the respondent No. 2 company.

5.5 Mr. Trivedi submitted that the respondent No. 1 exercised its quasi legislative powers while issuing the notification u/s 3 of the Bombay Relief Undertaking Act, 1958, the Government being a welfare State is required to protect the interest of the labourers whose livelihood would be affected on the closure of the undertaking in question. According to him a thorough inquiry has been undertaken by the respondent No. 1 and after satisfying the prerequisite conditions for the issuance of notification u/s 3 of the Act, the said notification has been issued and therefore no interference may be caused by this Court.

6. Mr. Kamal Trivedi has relied upon a decision in the case of D.S. Patel & Co. v. GST Corporation Ltd. reported in 1972 (13) GLR 33. In the said decision it is held

that there is an important distinguishing feature between a State undertaking and a private undertaking and in State undertaking what is involved is public interest and public finance and hence it is many a times found necessary to give it a special treatment for the protection of public interest which is therein involved. It was also held that the Bombay Relief Undertaking (Special Provisions) Act, itself contains sufficient guidance and a clear statement of legislative policy for the exercise of the delegated power and therefore the provisions of the State Act are not vitiated on account of excessive delegation of legislative powers.

6.1 Mr. Trivedi has relied upon a decision in the case of R.K. Garg v. Union of India and Ors. reported in AIR 1981 SC 2138 : (1981)4 SCC 676 : 1982(1) SCR 947 : 1981(3) Scale 1601 & 1743 In the said decision it is held that every legislation, particularly in economic matters, is essentially empiric and it is based on experimentation. There may be crudities, inequities and even possibilities of abuse but on that account alone it cannot be struck down as invalid. These can always be set right by the legislature by passing amendments. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions. Law relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc.

6.2 He next relied upon a decision in the case of Jagdish Chander Gupta Vs. Kajaria Traders (India) Ltd., wherein it is held that interpretation of ejusdem generic or noscitur a sociis need not always be made when words showing particular classes are followed by general words and before the general words can be so interpreted, there must be a genus constituted or a category disclosed with reference to which the general words can and are intended to be restricted.

6.3 Mr. Trivedi has cited a decision in the case of Directorate of Enforcement Vs. Deepak Mahajan and another, The principle laid down in the said decision in paragraphs 32 and 33 is as under:

Normally Courts should be slow to pronounce the legislature to have been mistaken in its constantly manifested opinion upon a matter resting wholly within its will and take its plain ordinary grammatical meaning of the words of the enactment as affording the best guide, but to winch up the legislative intent, it is permissible for Courts to take into account of the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane. In cases of this kind, the question is not what the words in the relevant provision mean but whether there are certain grounds for inferring that the legislature intended to exclude jurisdiction of the Courts from authorizing the detention of an arrestee whose arrest was effected on the ground that there is reason to believe that the said person has been guilty of an offence punishable under the provisions of FERA or the Customs Act which kind of offences seriously create a dent on the economy of the nation and lead to hazardous consequences. In given circumstances, it is permissible for Courts to

have functional approaches and look into the legislative intention and some times may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile. Thus the provisions of the FERA and Customs Act were passed not for any other purpose rather than their ostensible purposes, the vital of which being the economic development of the country and augmentation of revenue.

7. Mr. S.N. Soparkar, learned Senior Advocate appearing for the respondent No. 2 company justified issuance of the notification in question. He submitted that there is a gross delay in filing the petition and on this ground alone the petition deserves to be rejected. According to him the present petition has been filed only with a view to pressurize the respondent No. 2 company to settle the unrealistic demand of the petitioner.

7.1 Mr. Soparkar submitted that the respondent No. 2 company is taking steps to revive itself in the larger interest of its creditors, workers and shareholders. According to him, the respondent No. 2 company employs approximately 1500 labourers and any indulgence by this Court would jeopardize the livelihood of the said labourers.

7.2 He submitted that it is for the Department of Labour and Employment, Government of Gujarat to determine whether a particular industrial undertaking requires to be provided relief under the said Act.

7.3 Mr. Soparkar submitted that there is no requirement in law that a Notification u/s 3 of the Act be accompanied with reasons for granting such relief. Such a notification is granted on an application made by an industrial undertaking stating the reasons for seeking relief under the Act and on a scrutiny of the relevant information and document provided by the undertaking and having satisfied itself that the said undertaking either requires relief for "preventing" unemployment or for unemployment relief, does the State Government issue such a notification.

7.4 Mr. Soparkar submitted that there is no provision or requirement for the petitioner to be heard before issuance of the Notification or that any publication in a newspaper was required under the Act. He submitted that the relief granted by way of the notification is temporary and is in the larger public interest.

7.5 Mr. Soparkar submitted that on a combined reading of subsection (b) of Section 4 with Section 4(i) and (iv) it is clear that the intention of the Legislature is to stay even the adjudication proceedings, otherwise the proviso to Clause (b) will be rendered nugatory.

7.5 In view of the above submissions he submitted that the petition deserves to be rejected.

8. Mr. Soparkar has relied upon a decision in the case of D.S. Patel & Co. v. GST Corporation Ltd. reported in 1972 (13) GLR 33, which is already cited hereinabove.

8.1 Mr. Soparkar has relied upon a judgment rendered by this Court in Company Petition No. 27 of 1981 and other allied matters dated 22nd October 1981. In the said decision the question considered was as to whether under Sections 3 and 4 of the Act the company petitions for winding up are liable to be stayed or liable to be dismissed or whether the Court will have powers to appoint a provisional liquidator at that stage to take possession of the properties of the company which is declared as a relief undertaking. The learned Single Judge in the said decision observed as under:

It is therefore obvious that once necessary notifications are issued by the State Government u/s 3 as well as Section 4(1)(a)(iv) of the State Act, the logical effect of such notifications is that the proceedings pending against the concerned relief undertaking in any court regarding the enforcement of pre-existing right of a given creditor against the concerned undertaking will get stayed. It is therefore obvious that the net effect of the notifications in the present case will be that the present proceedings initiated by the unsecured creditors of the respondent company which is now declared as relief undertaking will have to be stayed during the currency of these notifications.

8.2 Mr. Soparkar has also relied upon the decisions rendered in Special Civil Application No. 6324 of 2000 dated 8th December 2000 and in Special Civil Application No. 131 of 2001 dated 23rd January 2001, which are already referred hereinabove.

8.3 He has relied upon a decision in the case of Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, wherein in para 15 it is held as under:

15. Mr. Munshi's argument was that S.3 was the key to the At and that the object and direct effect of the Act was to stop advertisements and thereby impair the right of free speech by directly putting a prohibition on advertisement. If the contention of Mr. Munshi were accepted then the restriction to be valid must fall within cl (2) of Article 19 of the Constitution. In other words it must have relationship with decency or morally because the other restrictions of that clause have no application. If on the other hand the submission of the learned Solicitor-General is accepted then the matter would fall under Sub-cls.(f) and (g) and the restriction under Article 19(6). The object of the Act as shown by the scheme of the Act and as stated in the affidavit of Mr. Merchant is the prevention of self-medication and self-treatment and a curb on such advertisements is a means to achieve that end. Objection was taken that the preamble in the Act does not indicate the object to be the prevention of treatment of diseases otherwise than by qualified medical practitioners as the English Venereal Diseases Act, 1917

does. In this Court in many cases affidavits were allowed to be given to show the reasons for the enactment of a law, the circumstances in which it was conceived and the evils it was to cure. This was done in the case of Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, . Kathi Raning Rawat Vs. The State of Saurashtra, and in Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others, , affidavits were allowed to be filed setting out in detail the circumstances which led to the passing of the respective enactments.

8.3 Mr. Soparkar has relied upon a decision in the case of Inderjit C. Parekh and Others Vs. Shri V.K. Bhatt and Another, Para 4 of the said decision reads as under:

The object of Section 4(1)(a)(iv) is to declare, so to say, a moratorium on actions against the undertaking during the currency of the notification declaring it to be a relief undertaking. By Sub-clause (iv) any remedy for the enforcement of an obligation or liability against the relief undertaking is suspended and proceedings which are already commenced are to be stayed during the operation of the notification. u/s 4(b), on the notification, ceasing to have force, such obligations and liabilities revive and become enforceable and the proceedings which are stayed can be continued. These provisions are aimed at resurrecting and rehabilitating industrial undertakings brought by inefficiency or mismanagement to the brink of dissolution, posing thereby the grave threat of unemployment of industrial workers. SRelief undertaking? means u/s 2(2) an industrial undertaking in respect of which a declaration u/s 3 is in force. By Section 3, power is conferred on the State Government to declare an industrial undertaking as a relief undertaking, Sas a measure of preventing unemployment or of unemployment relief?. Relief undertakings, so long as they continue as such, are given immunity from legal actions so as to render their working smooth and effective. Such undertakings can be run more effectively as a measure of unemployment relief, if the conduct of their affairs is unhampered by legal proceedings or the threat of such proceedings. That is the genesis and justification of Section 4(1)(a)(iv) of the Act.

8.4 In the case of The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, it is held as under:

9. Unfortunately, the high Court surrendered to narrowness of interpretation of Regulation 26 by accepting the submission of the respondent. To be literal in meaning is to see the skin and miss the soul of the Regulation. The judicial key to construction is the composite perception of the deha and the dehi of the provision. So viewed, Regn. 26 is easy of comprehension.

8.4 Mr. Soparkar next relied upon a decision in the case of Doburg Lager Breweries Pvt. Ltd. Vs. Dhariwal Bottle Trading Co. and Another, . In the said decision it is held that there is no provision in the Act requiring that loan to the industrial undertaking should be granted under the Act itself before a declaration may be made u/s 3(1) thereof. If any such loan is granted by the State

Government to an industrial undertaking or guarantee or other financial assistance is given, then it may be declared as a relief undertaking. Paras 6, 12 and 14 read as under:

6. The effect of the above mentioned notification dated November 10, 1983 was that any right, privilege, obligation or liability accrued or incurred by the appellant company (except those mentioned therein) before it was declared a relief undertaking and any remedy for the enforcement thereof became suspended and all proceedings relative thereto pending before any Court, Tribunal, officer or authority came to be stayed automatically. Consequently the proceedings in the winding-up petition (Company petition No. 119 of 1982) filed by the 1st respondent against the appellant company were also stayed by the Company Judge of the High Court. Against his order an appeal was filed before the Division Bench and that appeal was dismissed. The order of stay thus became final. Having failed in this attempt to get the order of stay vacated, the respondent No. 1 apparently, in order to coerce the appellant filed a writ petition, being Writ Petition No. 1552 of 1984, out of which this appeal arises on the file of the Bombay High Court challenging the notification issued under Sections 3 and 4 of the Act and subsequent notifications which had been issued from time to time on May 9, 1984, May 10, 1985 and November 8, 1985 for the same purpose. It may be stated here that even today the last of the notifications that is the one issued on November 8, 1985 under those provisions is in force. It should also be stated here that pursuant to the resolution of SICOM dated February 17, 1984, another loan of Rs. 15,00,000/- was advanced to the appellant company by the State Government through SICOM. The notification dated May 9, 1984 recites that Rs. 15,00,000/- had been so advanced. It says that the State Government had provided the said loan under a package scheme of incentives through SICOM and the said recital is repeated in each of the subsequent notifications. Everyone of them contains a declaration in terms of Section 3 and a direction u/s 4(1)(a)(iv) of the Act as stated above. Each one of them can stand by itself though they refer to the fact that the undertaking is having the protection with effect from November 10, 1983, that is, from the date of the first notification, as that date becomes relevant for purposes of computing the aggregate period u/s 3(2) of the Act.

12. Section 1 of the Act sets out the short title of the Act and the extent of its application. Section 2 of the Act defines "industry" and "relief undertaking". "Relief undertaking" means an industrial undertaking in respect of which a declaration u/s 3 is in force. Section 3 of the Act and the material part of Section 4 have already been set out above. Section 3 which is a self-contained one refers to the industrial undertakings in respect of which a declaration may be made under it. It is not controlled by the Preamble to the Act. An industrial undertaking which may be declared as a relief undertaking u/s 3 may be of two kinds. It may be an industrial undertaking started, acquired or otherwise taken over by the State Government and carried on or proposed to be carried on by the State Government or under its authority. It may also be an industrial undertaking to

which any loan, guarantee or other financial assistance has been provided by the State Government. There should be a declaration that an industrial undertaking of either kind should be conducted to serve as a measure of preventing unemployment or an unemployment relief. Then such an undertaking will be deemed to be a relief undertaking for the purposes of the Act. The consequences of such declaration are contained in Section 4 of the Act one of them being that the State Government gets the power to direct that notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever any right, privilege, obligation, or liability accrued or incurred before the undertaking was declared as relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal, officer or authority shall be stayed. A notification issued under Sub-section (1) of Section 3 is renewable by like notification from time to time for further periods not exceeding twelve months at a time, so however that all the periods the aggregate do not exceed fifteen years. It is seen that the whole object of the Act is to subserve the public interest and in particular to prevent unemployment or to grant unemployment relief.

14. It may also be noticed that a distinction has been made in the Act between cases falling under Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 4 of the Act and cases falling under Sub-clause (iv) of Clause (a) of Sub-section (1) of Section 4 of the Act. Sub-clause (ii) of Section 4(1)(a) of the Act refers to the agreements, settlements, awards, standing orders made under the several labour laws mentioned under the Schedule to the Act and states that agreements etc. which may be applicable to a relief undertaking before it was acquired or taken over by the State Government or before any loan guarantee or other financial assistance was provided to it by or with the approval of the State Government for being run as a relief undertaking may be suspended in operation or shall, if so directed by the State Government be applied with such modifications as may be specified in the notification issued for the said purpose. In this case the Act seems to resolve a likely value conflict between loans given for running the industry as a relief undertaking and the rights of workmen under the agreements, awards etc. under the labour laws in the Schedule. This sub-clause does not have anything to do with Sub-clause (iv) of Section 4(1)(a) under which the case of a creditor like respondent No. 1 falls. Another distinction which may be noticed is the difference between the language in Sub-clause (ii) of Section 4(1)(a) and in Section 3. The former contains these words Sbefore any loan guarantee or other financial assistance was provided to it by or with the approval of the State Government for being run as a relief undertaking. In Section 3 we have these words Sor to which any loan, guarantee, or other financial assistance has been provided by the State Government shall with effect from...be conducted to serve as a measure or preventing unemployment or of unemployment relief. The only pre-condition for the exercise of the power u/s 3 is that loan must have been advanced prior to the date of notification and it must

still be outstanding on that day. This is what leaps to the eyes effortlessly on the mere opening of the eyes. On the other hand Section 3 does not say expressly or by implication `a loan etc is given for being run as a relief undertaking under this Act".

8.5 Mr. Soparkar has also relied upon a decision in the case of Binod Mills Co. Ltd. Vs. Suresh Chandra Mahaveer Prasad Mantri, wherein it is held that the bar to suits or other legal proceedings against relief undertakings contained in Section 5 of M.P. Sahayata Upkram (Vishesh Upbandh) Adhiniyam is an absolute one for the duration of period contemplated in the Act and operates even against execution of decrees obtained against the relief undertaking by its creditors outside the State of Madhya Pradesh.

8.6 Mr. Soparkar has also relied upon a decision of Apex Court in the case of Directorate of Enforcement Vs. Deepak Mahajan and another, Paragraphs 26 to 30 read as under:

26. In Maxwell on Statutes (10th Edn.) at page 229, the following passage is found:

Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.

27. In Seaford Court Estates Ltd. v. Asher 1949 2 All ER 155, Denning, L. J. said:

When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written word so as to give "force and life" to the intention of the legislature.

A Judge should ask himself the question how if the, makers of the Act had themselves come across this ruck in the texture of it, they would have strengthened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

28. Though the above observations of Lord Denning were disapproved in appeal by the House of Lords in 1951 (1) All England Law Reports 839 (HL), Sarkar, J. speaking for the Constitution Bench in M. Pentiah and Others Vs. Muddala Veeramallappa and Others, adopted that reasoning of Lord Denning. Subsequently also, Beg, C. J. in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, approved the observations of Lord stating thus (at p. 552 of AIR 1978): "Perhaps with the passage of time, what may be described as the

extension of a method resembling the "armchair rule" in the construction of wills, Judges can more frankly step into the shoes of the legislature where an enactment leaves its own intentions in much too nebulous or uncertain a state.

29. It will be befitting, in this context, to recall the view expressed by Judge Frank in *Guise v. Walling*, 144 F (2d) 608 pp. 620, p 622 (CCA 2d, 1944) which is quoted in 60 Harvard Law Review 370, p. 372 reading thus:

The necessary generality in the wordings of many statutes, and ineptness of drafting in others frequently compels the Court, as best as they can, to fill in the gaps, an activity which no matter how one may label it, is in part legislative. Thus the Courts in their way, as administrators in their way perform the task of supplementing statutes. In the case of Courts, we call it "interpretation" or "filling in the gaps"; in the case of administrators we call it "delegation" or authority to supply the details.

30. Subba Rao, C. J. speaking for the Bench in *Chandra Mohan Vs. State of Uttar Pradesh and Others*, has pointed out that the fundamental rule of interpretation is that in construing the provisions of the Constitution or the Act of the Parliament, the Court "will have to find out the express intention from the words of the Constitution or the Act, as the case may be ..." and eschew the construction which will lead to absurdity and give rise to practical inconvenience or make the provisions of the existing law nugatory. A. P. Sen, J. in *Organo Chemical Industries v. Union of India* 1980 (1) SCR 69 : AIR 1979 SC 1803 has stated thus (at p. 1817 of AIR 1979): A bare mechanical interpretation of the words "devoid of concept or purpose" will reduce most of legislation to futility. It is a salutary rule, well established, that the intention of the legislature must be found by reading the statute as a whole.

8.7 In the case of *Shri Kantilal R. Shah v. The State of Gujarat*, reported in 1982 GLH 915 in para 26 it is held as under:

26. There is one more point. u/s 4(1)(a)(iv) of the Act proceedings which are required to be stayed are proceedings pending before any Court, tribunal, officer or authority, which includes all. It does not require to be stressed that Court taking up Payment of Wages cases is an Authority under the Wages Act. The Legislature has deliberately used all these words Court, Tribunal, Officer or Authority showing that it meant that any proceeding which would be before the Authority under the Wages Act or even the Industrial Tribunal or Workmen's Compensation Commissioner, shall have to be stayed if the provisions u/s 4(1)(a)(iv) of the Act are made applicable. Therefore, it cannot be said that the Wages Act would be outside the purview. It cannot also be said that past arrears of wages are not past debts. It can be said that here is a very peculiar position where the workers have put the undertaking in the position of a debtor, and the undertaking is liable to pay towards past wages, but which liability has been suspended under the provisions of Section 4 of the Act and, therefore, in view of these considerations, I think that the learned Civil Judge, senior Division,

Surendranagar, the Authority under the Wages Act, should have stayed the proceedings so long as the undertaking would remain covered under the Act.

9. Sections 3 and 4 of the Act, which is relevant for the purpose of this decision read as under:

3.(1) If at any time it appears to the State Government necessary to do so, the State Government may, by notification in the Official Gazette, declare that an industrial undertaking specified in the notification, whether started, acquired or otherwise taken over by the State Government, and carried on or proposed to be carried on by itself or under its authority, or to which any loan, guarantee or other financial assistance has been provided by the State Government shall, with effect from the date specified for the purpose in the notification, be conducted to serve as a measure of preventing unemployment or of unemployment relief and the undertaking shall accordingly be deemed to be a relief undertaking for the purpose of this Act.

(2) A notification under Sub-section (1) shall have effect for such period not exceeding twelve months as may be specified in the notification; but it shall be renewable by like notifications from time to time for further periods not exceeding twelve months at a time, so however that all the periods in the aggregate do not exceed ten years.?

4(1) Notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever, the State Government may, by notification in the Official Gazette, direct that-

(a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under Sub-section (2) of Section 3

(i) all or any of the laws in the Schedule to this Act or any provisions thereof shall not apply (and such relief undertaking shall be exempt therefrom) or shall, if so directed by the State Government, be applied with such modifications (which do not however affect the policy of the said laws) as may be specified in the notification;

(ii) all or any of the agreements, settlements, awards or standing orders made under any of the laws in the Schedule to this Act, which may be applicable to the undertaking immediately before it was acquired or taken over by the State Government or before any loan, guarantee or other financial assistance was provided to it by, or with the approval of, the State Government, for being run as a relief undertaking, shall be suspended in operation, or shall, if so directed by the State Government, be applied with such modifications as may be specified in the notification.

(iii) rights, privileges, obligations and liabilities shall be determined and be enforceable in accordance with Clauses (i) and (ii) and the notification:

(iv) any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal, officer or authority shall be stayed;

(b) the right, privilege, obligation or liability referred to in Clause (a)(iv) shall, on the notification ceasing to have force, revive and be enforceable and the proceedings referred to therein shall be continued:

Provided that in computing the period of limitation for the enforcement of such right, privilege, obligation or liability, the period during which it was suspended under Clause (a)(iv) shall be excluded notwithstanding anything contained in any law for the time being in force.

(2) A notification under Sub-section (1) shall have effect from such date, not being earlier than the date referred to in Sub-section (i) of Section 3, as may be specified therein, and the provisions of Section 21 of the Bombay General Clauses Act, 1904, shall apply to the power, to issue such notification.

10. As regards Section 3 of the Act is concerned, it refers to the industrial undertakings in respect of which a declaration may be made under the Act. An industrial undertaking which may be declared as a relief undertaking u/s 3 of the act may be an industrial undertaking started, acquired or otherwise taken over by the State Government and carried on or proposed to be carried on by the State Government or under its authority, or it may be an industrial undertaking to which any loan, guarantee or other financial assistance has been provided by the State Government. It is also required to be noted that there should be a declaration that an industrial undertaking of either kind should be conducted to serve as a measure of preventing unemployment or an unemployment relief. Under such circumstances an undertaking will be deemed to be a relief undertaking for the purposes of the Act.

11. Section 4 of the Act lays down the consequences of the declaration u/s 3 of the Act. Under this section the State Government will have power to direct that notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever any right, privilege, obligation, or liability accrued or incurred before the undertaking was declared as relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal, officer or authority shall be stayed.

12. In view of the above facts it is required to be examined whether the respondent No. 2 can be declared as a "Relief Undertaking" or not. The main test is whether the respondent No. 2 was started, acquired or otherwise taken over by the State Government and carried on or proposed to be carried on by the State Government or under its authority, or whether any loan, guarantee or other financial assistance has been provided by the State Government to the respondent No. 2. In this connection it is required to be noted that the State

through Industries Commissioner, Gujarat State, Gandhinagar, has granted Sales Tax incentives to the respondent No. 2 company. Under the circumstances, I am of the view that since the State has given such relief to the respondent company, it is directly involved in granting financial assistance, the prerequisite conditions for issuance of the notification under the Act and therefore provisions of Section 3 of the Act are complied with. It is, therefore, clear that the respondent No. 1 has the power to issue notification in question. Therefore I do not find any substance in the contention that the respondent No. 1 has not given any assistance to the respondent No. 2 company. At this stage it would be profitable to look into the decision in the case of M/s D.S. Patel & Co. (supra). Paragraphs 47 and 48 of the said decision reads as under:

47. So far as the notification which is issued u/s 3 is concerned, the argument was that it does not comply with the condition precedent for the exercise of the powers u/s 3 inasmuch as the loan, guarantee by the State was advanced to the company in the year 1965 while the action of issuing the declaration is taken four years thereafter i.e. In the year 1969. We do not find any substance in this contention because if a reference is made to the provisions of Section 3, it would be found that it contemplates the issuance of the declaration even in cases where loan, guarantee or other financial assistance "has been provided? in the past. Moreover, we find in the record the case, a copy of the Director's report of New Manekchowk Spinning & Weaving Co. Ltd. For the year ending 31st December, 1963 and other relevant documents going to show under what circumstances a loan of Rs. 20 lacs was taken by that company from the Government. This documents show that the said company was not able to make enough profit, on account of the fact that its machinery was worn out. The company, therefore, took a loan of Rs. 20 lacs in the year 1965 from the Government with a view to replace its worn out machinery. It is found that even thereafter the company could not work properly and ultimately the Central Government had to take action u/s 18A of the Central Act as it was found that the industry was run by the company in a manner which was detrimental to public interest. It is obvious, therefore, that the loan of 20 lacs rupees was advanced by the State Government in the year 1965 to enable the company to stand on its legs, and thereby to prevent unemployment. So, even if it is believed that the loan in question should have been provided as a measure of preventing unemployment", we find that the condition is satisfied. Under the circumstances it is not possible to believe that the notification issued u/s 3 is ultra vires the provisions of that section.

48. So far as the notification issued u/s 4 is concerned, there is absolutely nothing in the petition to show that the Government has issued that notification without applying its mind. The Government, has of course, suspended all rights, obligations and liabilities under Sub-clause (iv) of Section 4(1)(a) but that would be with reference to the facts relating to financial affairs of the New Manekchowk Spinning & Weaving Co. Ltd. It was for the appellant to rely upon the facts going to show how the Government have not applied their mind at the time of

suspending all rights, privileges, obligations and liabilities under Sub-clause (iv) of Section 4(1)(a). The petitioners have not done this. Therefore, it is not possible event o attack the validity of the notification issued u/s 4. In this connection, we may refer to the Supreme Court decision given in Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another, . Reference to page 875 of the reported decision shows the observation of the Supreme Court that in such cases in which the petitioner has failed to make out the case for non-application of mind, it would be better for the Government to leave the petitioner to their burden in view of the legal presumption and the provisions contained in Article 166(2) of the Constitution.

13.1 In the case of Doburg Lager Breweries Pvt. Ltd. Vs. Dhariwal Bottle Trading Co. and Another, it is held that granting loan etc. by State Government to industrial undertaking is enough and such loan need not be under the Act.

14. As regards the contention that the notification does not specify any reasons justifying the issuance of impugned notification in favour of respondent No. 2 company is concerned, I am of the view that the Act does not stipulate that the State is required to assign any reasons for issuing the notification. A bare reading of Section 3 shows that the issuance of notification should serve as a measure of preventing unemployment or unemployment relief. From the record it is pointed out that there are about 1055 direct employees as well as 4000 other workers who are working in the company who depend on the respondent No. 2 company and the State has considered the fact that those employees will be vitally be affected if the said relief is not granted to the Company.

14.1 It is required to be noted that the Government being a welfare State, it required to protect the interest of the labourers whose livelihood would be affected on closure of the company. According to the respondent No. 1 a thorough inquiry has been undertaken by the respondent No. 1 and after going through the circumstances and various aspects the decision has been taken. It cannot therefore be said that there was no application of mind on the part of the respondent No. 1 while issuing the notification in question.

14.2 In this connection it would be relevant to refer to the case of Directorate of Enforcement Vs. Deepak Mahajan and another, wherein it is stated that the Acts were passed for their ostensible purposes, vital of which being economic development of country and augmentation of revenue and that the Court can look into and sometimes may even go behind words and enactment to give effect to legislative intention.

14.3 It is also useful to refer to relevant observations made in the order dated 22nd October 1981 in Company Petition No. 27 of 1981 as under:

It is therefore obvious that once necessary notifications are issued by the State Government u/s 3 as well as Section 4(1)(a)(iv) of the State, the logical effect of such notifications is that the proceedings pending against the concerned relief undertaking in any Court regarding the enforcement of pre-existing right of a

given creditor against the concerned undertaking will get stayed. It is, therefore, obvious that the net effect of the notifications in the present case will be that the present proceedings initiated by the unsecured creditors of the respondent Company which is now declared as relief undertaking will have to be stayed during the currency of these notifications....

.. The intention of the State Act is to avoid unemployment and provide for unemployment relief and for that purpose many sick undertakings are declared as relief undertakings and they are immunised from existing burdens and obligations and the pendency of legal proceedings relative thereto so that relief undertaking can be supplied with the requisite relief and it can once again stand on its own legs and may start a healthy life over again. ...

14.4 On a bare perusal of Sections 3 and 4 of the Act, it nowhere suggests that there is a requirement under the Act for hearing the affected parties or issuance of a public notice in the news paper or to adhere the principles of natural justice. It is required to be noted that declaration as a "Relief Undertaking" is not a permanent feature and it is only a temporary measure. The remedies to the creditors are not at all closed for ever. It cannot also be said that there is a favouritism to certain creditors. What the Act stipulates is to give an opportunity to the sick industry to revive itself if possible. The legislature has therefore thought it fit that it was not necessary to issue any public notice nor observance of principles of natural justice.

15. A contention has been raised that as indicated in the Auditors report, the total number of workmen and their corresponding salary and wages have also gone down in comparison to the last year. Therefore the very purpose and object i.e. To prevent unemployment is frustrated. It may be that the number of workman and their corresponding salary may have gone down. It is possible that certain employees may have left the company due to uncertainty . Being a sick company it may not also be possible to increase the wages till the company comes out of its financial crisis. The fact remains that the majority employment remains without any lock-out or retrenchment. Therefore, I do not find any substance in the contention raised on behalf of the petitioner.

16. It has been contended that while exercising power under the Act the State Government has not examined the interest of the secured creditors. While considering the case under a particular Act the Court has to look into the fact whether the action taken is justified or not. It is quite natural that while exercising power under the Act certain institution or persons might be affected, but the purpose for which the Act is enacted is achieved, the exercise of that power cannot be said to be arbitrary even though some section of the society might be affected by such exercise of power. In such cases, when the purpose is achieved, it cannot be said that the exercise of powers are not done properly. In the present case for the last three years the industry has survived and the employees are protected. The Notification is extended only upto 30th June 2006 and it is reported that the Government is examining the matter. Therefore, I am

of the view that the Government has not committed any illegality in issuing the notification.

17. As regards the contention with regard to proceedings before the Debt Recovery Tribunal is concerned, the law is already settled. In the case of Binod Mills Co. Ltd. (supra), the Apex Court held that the bar to suits or other legal proceedings against relief undertakings contained in S.5 is an absolute one for the duration of period contemplated in the act and operates even against execution of decrees obtained against the relief undertaking by its creditors outside the State. In the decision rendered in Company Petition No. 27 of 1981 and other allied matters, this Court held that the winding up proceedings of the concerned relief undertaking will have to be stayed. In that view of the matter the the proceedings before the DRT will have to be stayed. Even otherwise, on a combined reading of Sections 3 and 4 and more particularly subclause (iv) of Clause (a) and proviso to Section 4(b) it is clear that the restriction imposed is to stay all proceedings including adjudication, otherwise, the purpose for the enactment i.e giving temporary reliefs to the industrial undertakings and to avoid unemployment will be frustrated.

18. In the premises aforesaid, I do not find any substance in Special Civil Application No. 17688 of 2003. The same is, therefore, required to be dismissed. Accordingly it is dismissed.

18.1 So far as Special Civil Application No. 12601 of 2004 is concerned, the same is partly allowed. The proceedings pending before the Debt Recovery Tribunal are stayed for the duration of "Relief Undertaking". Rule is made absolute accordingly with no order as to costs.