

(1970) 02 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Appeal No. 560 of 1969

Bharat Kumar Chinubhai

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-02-1970

Acts Referred:

Citation : (1972) ILR Delhi 46

Hon'ble Judges : Om Prakash, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : N.C. Chatterjee, A.K. Nag, K.C. Dua, Syed Mehmood, O.P. Malhotra, B. Kirpal, A.B. Saharia and V.S. Bhatnagar, for the Appellant;

Judgement

Hardayal Hardy, J.

(1) The challenge in this petition under Articles 226 and 227 of the constitution is to an order made by D the Central Government u/s 18-A of the Industries (Development and Regulation) Act 65 of 1951 taking over the management of the Industrial undertaking known as the New Maneckchock Spinning and Weaving Company Limited Ahmedabad for a period of one year from the date of the publication of the order in official Gazette viz. 14-2-1969.

(2) The petitioner is the Managing Agent of the Company since 1957, In his petition he also laid claim to be the owner of the company, but that is evidently not correct even though his family is perhaps the holder of majority of shares therein. According to his allegations in the petition, the company had once seen better days, but from 1958 onwards the years of loss alternated with the years of profit till in 1965 its balance-sheet showed a gross loss of about 19 lacs of rupees and the position in the years 1966 and 1967 was no better. On 10th October 1967, the Central Government having formed an opinion that there had been or was likely to be substantial fall in volume of production in respect of cotton textiles manufactured by the company for which in its opinion there was no justification, appointed a committee consisting of three persons for the

purpose of making a full and complete investigation into circumstances of the case.

(3) The Petitioner alleged that he and the Directors of the company protested against Government's action but their protests were disregarded and they were asked to appear before the Investigation Committee on 24th January 1968. After a preliminary discussion at the meeting, the management submitted to the Committee a tentative scheme for the future working of the company but nothing more was heard after that from the Government or the Committee. Meanwhile the Committee kept on calling and examining behind the back of the petitioner several persons e.g. representatives of labour union, selling agents and brokers etc.

(4) The petitioner further alleged that in early 1969 the Committee concluded its labors but neither the copy of its report was made available to him or to other members of the Board of Directors nor were they informed about the conclusion reached by the Committee and the material on which those conclusions were based.

(5) On 14th February 1969, the following notification was published in the Gazette of India Extraordinary Part II-Section 3- sub-section (ii):- Ministry Of Industrial Development And Company Affairs (Department of Industrial Development) Order New Delhi, the 14th February, 1969. S.O. 620/18A/IDRA/69.-Whereas the Central Government is of the opinion that the new Maneckchock Spinning and Weaving Co. Ltd. Ahmedabad, an industrial undertaking in respect of which an investigation has been made u/s 15 of the Industries (Development and Regulation) Act, 1951 (65 of 1951) is being managed in a manner highly detrimental to public interest : Now, Therefore, in exercise of the powers conferred by section 15A of the said Act, the Central Government hereby authorises the Gujarat State Textile Corporation Limited, (hereafter referred to as Authorised Controller) to take over the management of the whole of the said undertaking, namely, the New Maneckchock Spinning and Weaving Company Ltd. Ahmedabad, subject to the following terms and conditions, namely, (i) the Authorised Controller shall comply with all directions issued from time to time by the Central Government; (ii) the Authorised Controller shall hold office for one year from the date of publication in the Official Gazette of this Order. The Central Government may terminate the appointment of the Authorised Controller earlier if it considers necessary to do so.

" THIS order shall have effect for a period of one year commencing on the date of its publication in the Official Gazette."

(6) On 22-2-1969 the Gujarat State Textile Corporation entered the premises of the company and took over possession of the mill. Thereafter the Petitioner made several representations to the Central Government but it was on 16-6-1969 only that the petitioner received from the Deputy Secretary, Ministry of Foreign Trade and Supply, Government of India a letter to the effect that the

appointment of Authorised Controller could not be cancelled nor could the report of the investigation be supplied as it was a confidential document. It is then that the petitioner moved this Court for grant of appropriate writs, orders or directions under Articles 226 and 227 of the Constitution on 16th July, 1969.

(7) In the counter-affidavit filed on behalf of Union of India (respondent No. 1 herein) the petitioner's allegations about no proper opportunity having been afforded to the management by the Investigation Committee were controverted and it was averred that the petitioner was given full opportunity of being heard and of adducing evidence. It was further averred that in none of the numerous representations made by the petitioner did the petitioner make any grievance that he had not been given any opportunity of being heard or of adducing any evidence or that witnesses were examined at his back and that such a plea had been raised by the petitioner for the first time in the petition filed by him in this Court. The counter-affidavit also set out at some length the facts leading to the financial morass in which the company was found. It was pointed out that the working of the company from 1962 onwards had shown increasing losses resulting in a carried forward loss of 80.80 lacs of rupees and that it was beyond the capacity of the petitioner to sustain the working of the mill. Reference was also made to the fact that the mill was closed down on 11-11-1968 and it remained closed till it was taken over on 22-2-1969. The closure of the mill on 11-11-1968 was on account of non-payment of over Rupees two lacs due to the Ahmedabad Electricity Company. As a result, 1700 work-men were rendered idle creating a grave situation.

(8) The affidavit also shows that after the management of the company was taken over by the Authorised Controller the mill started working from the month of March 1969 onwards. By the end of June 1969 the Authorised Controller and the National Textile Corporation, invested Rupees 25 lacs to restore the mill to its normal standard of working and productivity.

(9) There was however no denial of the fact that the copy of the Investigation Committee's report was not made available to the petitioner and other Directors and they were also not given any opportunity to show cause why action u/s 18-A should not be taken with respect to the company on the basis of the material disclosed by investigation. The position taken by the Government on the other hand was that it was not necessary to issue any such notice.

(10) A separate affidavit was also filed on behalf of the Authorised Controller. But the averments made therein are largely concerned with the circumstances under which impugned action was taken by the Government and the steps taken by the Authorised Controller in improving the working conditions of the mill.

(11) It however seems to us that it is not at all necessary for the purpose of deciding this petition to discuss the merits of the action taken by the Government as the only contention urged before us by the learned counsel for the petitioner was that before the management of the undertaking was taken

over by the Central Government, it was necessary under the law that the management of the company should have been supplied with a copy of the report and an opportunity given to it of showing cause why action should not be taken on the basis of the report. The power of the Central Government to take action under Sections 15 and 18-A was also not questioned by the Counsel.

(12) Counsel for the respondents urged on the other hand that there is nothing in the language of Section 15 and 18-A of the Act which renders such a course necessary. According to Dr. Syed Mahmood, learned Counsel for the Central Government, the Investigation Committee is merely a fact finding body which is appointed by the Government with the primary object of instructing its own mind. It is Therefore not at all necessary that in order to discharge its functions of making a full and complete investigation the evidence collected by it should be recorded in the presence of the company.

(13) There is a great deal of force in this argument. It is of the very essence of investigation that the body entrusted with the task should be free to collect material from any source. The function of investigation is to gather facts which are relevant to its purpose and in doing so it may adopt any procedure and examine any person or document either in the presence or in the absence of the party affected by it.

(14) Mr. Chatterjee, learned counsel for the petitioner, did not join issue with Dr. Mahmood on this point. In fact he conceded the right of the Investigation Committee to follow its own procedure. His argument however was that the petitioner's grievance pertained to the second stage of the proceedings. It was only after the investigation Committee had submitted its report and the Government had decided upon a course of action which prejudicially affected the rights of the petitioner on the basis of that report that the petitioner's right to be informed of the material would arise. It was argued that before action was taken he should have been informed of the main facts that had been found against the management of the company on the basis of which the Government's opinion was formed and ultimately led to the passing of the impugned order.

(15) In support of his argument reliance was placed by Mr. Chatterjee on a Division Bench judgment of the Punjab High Court in L.P.A. No. 101-D of 1963: Union of India and others v. Shri Narayan Lal Bansilal and another decided on 1-8-1963. The decision directly supports the argument of the learned counsel. The learned Judges Constituting the Bench (D. K. Mahajan and Shamsheer Bahadur JJ.) approved in that case the following observations of Harbans Singh J. from whose judgment an appeal was taken before them :

"SECTION 15 definitely lays down that before action can be taken by the Central Government u/s 18-A it must make or cause to be made a full and complete investigation into the circumstances of the undertaking. Such investigation is obviously to collect facts and the Central Government can only come to an objective opinion on consideration of the facts brought to its notice as a result of

the investigation or otherwise. Secondly as already indicated, very serious effects follow the decisions of the Central Government to take over the direct control. This would deprive the management of its right to manage the industrial undertaking for a period which may extend to five years and this period may be further extended, though in such a case the matter has to be brought to the notice of the Parliament. I have, Therefore, no doubt in my mind that before the Central Government can legally act u/s 18-A, it must comply with the rules of fair play and abide by the Rules of natural justice and give a hearing to the other party, namely, the management of the mill, before taking any final action in taking over the direct management of the mill. Thus even if the investigation body does not find it expedient to associate the management while collecting material and investigating the case, yet, if the Central Government want to take the drastic action u/s 18-A, it must bring to the notice of the management the material brought out against it and give it an opportunity of being heard."

(16) We are in complete agreement with the above. Mr. Chatterjee next argued that in the present case there was one other reason also which should incline us to that view. In the order appointing the Investigation Committee the ground for taking that decision was that in the opinion of the Central Government there had been or was likely to be a substantial fall in the volume of production in respect of the cotton textiles manufactured by the undertaking. This is a ground envisaged in Section 15(a)(i) of the Act. But the impugned order u/s 18-A showed that it was based on the Central Government's opinion which in turn was the outcome of the investigation made u/s 15, that the undertaking was being managed in a manner highly detrimental to public interest. That is a ground covered by Section 15(b).

(17) It is true, as was held by the Supreme Court in *Shri Ambalal M. Shah and Another Vs. Hathisingh Manufacturing Co. Ltd.*, any investigation on the basis of Section 15(a) would necessarily cover also the quality of the management of the industrial undertaking and Therefore the validity of the action u/s 18-A cannot be assailed on the ground that the ultimate action was not in consonance with the preliminary order u/s 15. But there is something to be said in favor of Mr. Chatterjee's argument that if ex-parte investigation is ordered on the basis of one kind of allegation and the ultimate action is taken on a different allegation the rules of fair play demanded that the management should be apprised of the material on which the ultimate decision is based. It may be that the management in that case is able to satisfy the Government that the Investigation Committee had completely misjudged the situation or that the facts found by it were patently wrong and the material considered by it was wholly extraneous to the subject matter of inquiry before it and its entire approach to the problem was lopsided or wrong.

(18) In fairness to Dr. Syed Mahmood it may be stated that he frankly conceded that even if there was nothing in Section 18-A of the Act providing for a show cause notice and no rules had also been framed in that behalf, the rules of fair-

play made it imperative that the petitioner should have been supplied a copy of the report and he should have also been given an opportunity to explain and meet the material found against the management before action under the Section was taken by the Government, He however laid great emphasis on the fact that such opportunity had been afforded to the management of the company at the stage of investigation and that there was no provision for holding a second inquiry as is contemplated under Article 311 of the Constitution.

(19) We are not at all impressed by this argument. We do not wish to suggest even for a moment that after the report of the Committee is received by the Government it should hold a full dress inquiry at which witnesses should be examined in the presence of the representatives of the management and cross-examined by them or defense evidence recorded. The manner in which an opportunity has to be given to the management to be heard against the proposed action is entirely a matter for the Government. All that is required is that the management of the company should get an adequate opportunity of presenting its case.

(20) It is now well-settled that even an administrative order A which involves civil consequences must be made consistently with the rules of natural justice. The persons concerned must be informed of the case of the State and the evidence in support thereof and he must be given a fair opportunity to meet the case before an adverse decision is taken. In our opinion, the above observations of Shah J. who spoke for himself and Mitter J. in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, though made in the case of compulsory retirement of a Government servant, apply with equal force to the facts of the present case.

(21) Dr. Mahmood lastly argued that the petitioner was guilty of negligence and delay and he had also acquiesced in the action. The impugned order was made on the 14th February 1969 and yet the present petition was not filed till 16th July 1969. During this period the new management had restored the mill to its normal condition of working and productivity. The Authorised Controller appointed by the Government had also brought in fresh working capital of Rupees 25 lacs between March and June 1969. The petitioner stood by allowing all those developments to take place and when he found that the company could not stand on its feet he filed the present petition challenging the validity of Government's action and at the same time trying to benefit by it. The petitioner was Therefore not only guilty of laches and delay but he should also be held to have acquiesced in the order made by the Government. In this connection our attention was invited to the principle stated by Sir Barnes Peacock in *Lindsay Petroleum Co v. Prosper Armstrong Hurd, Abram Farewell, and John Kemp* (1874) 5 P.C. 221 of the report which was approvingly referred to by the Supreme Court in the *Moon Mills Ltd v M.R Mehar President, Industries Court Bombay and others* Air 1967 Sc 1450.

(22) We find it difficult to agree with the learned counsel in holding that in the present case there has been any such negligence, laches or delay or acquiescence

on the part of the petitioner as may disentitle him to the grant of a writ. As soon as the petitioner was deprived of possession of the mill on 22-2-1969, he sent representation after representation to the Government and asked turn a copy of the report to be supplied to him. It was only by the Government's letter dated 16-5-1969 that his request for supply of copy and for revocation of the order of appointment of Authorised Controller was turned down. The time-lag between 16-5-1969 and 16-7-1969, when the present petition was filed, can scarcely be regarded as amounting to laches or acquiescence on the part of the petitioner.

(23) The result of the foregoing discussion is that the petition has to be allowed. The impugned order dated 14th February 1969 whereby the possession of the industrial undertaking has been taken over by the Government has Therefore to be quashed on the ground that it was made without affording the petitioner adequate opportunity of showing cause against the proposed action u/s 18-A of the Act. We however find the period during which the order is to remain in force will expire within the next few days and the Government will naturally have to consider the question of further extension of the order. Meanwhile in view of the fact that the Authorised Controller has been able to inject fresh finance amounting to Rupees 25 lacs and has also brought about substantial improvement in the working of the Company, it seems rather inexpedient that the possession of the mill should be handed back to the petitioner without fresh consideration of the merits of the case by the Government. We Therefore direct that the operation of our order shall remain in abeyance for a period of six weeks. During this period the petitioner may be granted a reasonable opportunity to enable him to present his case against further extension of the period. There will be no order as to costs.