

(1982) 12 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 825 of 1981

Indore Textiles Ltd. and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 17-12-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 73, 77
Industries (Development and Regulation) Act, 1951 — Section 18A, 18A(2), 18AA, 18AA(2)

Citation : AIR 1983 MP 65 : (1983) ILR (MP) 377 : (1983) JLJ 223 : (1983) 28 MPLJ 41

Hon'ble Judges : G.P. Singh, C.J.; Faizanuddin, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; K.K. Adhikari, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, C.J.

Petitioner No. 1, Indore Textile Limited, is a company owning a textile mill at Agar Road, Ujjain. Petitioner No. 2 is a Director of that company. By order dated 12th Aug. 1977, the Central Government, acting u/s 18AA of the Industries (Development and Regulation) Act, 1951, authorised the Madhya Pradesh State Textile Corporation to take over the management of the whole of the mill for a period of five years. This order was challenged by the petitioners in Misc. Petition No. 57 of 1977. It was contended in that petition by the petitioners that the power conferred on the Central Government by Section 18AA is quasi-judicial in nature. This contention was accepted. It was also contended in that petition that the Central Government should have given a hearing to the petitioners before passing the said order and in the absence of a prior hearing the order was invalid being contrary to the principles of natural justice. This contention was partly accepted. It was held by this Court that prior hearing is not necessary in all cases

and that when immediate action is to be taken, a post decision hearing can meet the requirements of natural justice. It was on this basis that the Court by order dated 8th Sept. 1980 allowed the petition and directed the Central Government to give an opportunity within two months to the petitioner-company to show cause against the order u/s 18AA and to cancel the order if the petitioner was able to satisfy that the conditions requisite for making of the order did not exist. There was no appeal against the decision of this Court which has now been reported as *Indore Textile Ltd. v. Union of India* 1981 MPLJ 236 : (1981 Lab IC 545).

The Supreme Court in *Swadeshi Cotton Mills Vs. Union of India (UOI)*, , had to consider the same question. The Supreme Court also took the view that the power conferred u/s 18AA on the Central Government is quasi-judicial in nature and that the said power has to be exercised consistent with the principles of natural justice. The Supreme Court, however, held that a pre-decisional hearing u/s 18AA is a must. But the Supreme Court did not quash the order made by the Central Government which was challenged in that case and directed the Central Government to give a full, fair and effective hearing to the owner of the undertaking on all aspects of the matter including those touching the validity and/or correctness of the order u/s 18AA and then after a review of all the materials and circumstances to take a fresh decision, and/or such remedial action as may be necessary, just, proper and in accordance with law. The direction that this Court issued against the Central Government in the case of the petitioners in the earlier writ petition, although not so elaborate, was in substance the same as was given by the Supreme Court in *Swadeshi Cotton Mills*" case.

In pursuance of the directions of this Court in the earlier writ petition, a telegraphic notice was issued to the petitioner-company to appear for hearing on 15th Nov. 1980. The petitioner company was heard by Shri R. Ram Krishna, Joint Secretary in the Ministry of Commerce (Department of Textiles). As no order after this hearing was communicated by the Central Government to the petitioners, they filed the present writ petition on 16th July 1981 for challenging the order dated 12% Aug. 1977 passed u/s 18AA on the ground that the directions issued in the earlier writ petition were not complied with. By an interim order made on 25th Nov. 1981, we directed the Central Government to pass an order in the light of the hearing given to the petitioner-company by the end of December 1981. The Central Government on 2nd January 1982 sent a communication to the petitioner-company that the Government came to the conclusion that conditions requisite for the making of the order of take over did exist and that the take over was justified in the facts and circumstances of the case.

The petitioners then amended the petition for challenging the communication dated 2nd Jan. 1982. This document is Annexure C. This amendment was allowed on 12th Jan. 1982. One of the grounds raised for challenging the order of the Central Government was that it did not give any reasons in its order. On

16th Jan. 1982, this Court directed the Central Government to file a copy of the order passed by it. On 5th Feb. 1982, the Court was told that there was no other order except the one communicated to the petitioner-company. Thereafter, additional return was filed by the Central Government on 12th March 1982. It was stated in the additional return that the order was passed by the Minister for Commerce. It was also stated that although the communication sent to the petitioner-company did not disclose reasons, all relevant matters were considered and the Central Government is now willing to communicate a reasoned order.

It was further stated that it was awaiting the direction of this Court and then to pass a reasoned order if the Court so directed. On 23rd April 1982, the Court was told that the Minister's order contained reasons on which we directed that those reasons be conveyed to the petitioner-company within a month. Thereafter, an order signed by Shri V. K. Shunglu, Joint Secretary in the Ministry of Commerce (Department of Textiles) was issued. This order states that having regard to the facts and circumstances mentioned in the order, the take over of the undertaking was not only proper but necessary. This order briefly contains the reasons. It is Annexure "D". The petitioner then further amended the petition for challenging this order also. Thereafter the Central Government passed another order on 11th Aug. 1982 u/s 18AA(2) read with Section 18A(2) continuing the take over for a further period of six months up to and inclusive of 11th Feb. 1983. This order was passed as the initial take over for five years was expiring on 11th Aug. 1982. This order is Annexure "F" to the petition. The petition was then again amended to challenge this order also.

Learned counsel for the petitioner-company raised before us the following three contentions : (i) The order of initial take over passed on 12th Aug. 1977 is invalid on the ground that the direction of the High Court in the earlier writ petition was not followed as the person who passed the order affirming the take over did not hear the petitioner company and the hearing was given by a different person; (ii) the take over is also invalid on the ground that the Central Government did not pass a reasoned order after hearing the petitioner and it is not open to the Court to gather the reasons from the notings in the file; and (iii) the order of extension of the period of take over passed on 11th Aug. 1982 is invalid for the reason that no prior hearing was given for continuing the take over beyond five years.

5-6. As regards the first contention, the facts relevant are as follows; We have already mentioned that the petitioner company was given a telegraphic notice to appear on 15th Nov. 1980 for hearing in compliance with the order of this Court in the earlier writ petition and the company's representative was heard by Shri R. Ram Krishna, Joint Secretary, on 15th Nov. 1980. On 20th March 1981, Shri Ram Krishna submitted a note that although technically the take over was justified but on moral grounds the take over was controversial and he impliedly recommended that the take over should be withdrawn. The Secretary suggested

that opinion of the Law Ministry and the Industries Ministry be obtained. The Commerce Minister directed accordingly, The Law Ministry and the Industries Ministry wrote that they had no concern with the matter. The file then came before the Joint Secretary Shri Shunglu who, on 15th June 1981 noted that it would not be possible for him to deal with the case, it was pointed out that in terms of the Court judgment, post takeover hearing was to be given to the party, since the matter was quasi-judicial, and that that hearing had already been given by Joint Secretary Shri Ram Krishna. Thereafter the file went to Shri Ram Krishna again who by his note dated 7th Aug. 1981 again recommended withdrawal of the take over. When the file reached the Commerce Minister, he on 14th Sept. 1981 ordered processing of the case in the light of the brief prepared by Shri Ram Krishna. The Deputy Secretary Shri Damodaran then prepared a note on 15th Dec. 1981 supporting the take over. Joint Secretary Shri Shunglu On 18th Dec. 1981 agreed with the opinion of Shri Damodaran and the Commerce Minister approved the same on 30th Dec. 1981. The Minister did not personally hear the petitioners. The question on these facts is whether it can be said that the petitioner company was not given an opportunity to show cause or in other words was not heard as directed by this Court in the earlier writ petition because the person passing the order i.e. the Minister did not himself hear the petitioner company. There is, however, no rule of construction or general principle from which such an implied requirement could be inferred.

When a quasi-judicial power is conferred on the Government or a Minister, by a statute, it is presumed that Parliament intends the power to be exercised in accordance with the principles of natural justice according to the usual practice of the department concerned. The normal practice of Government departments is that the Minister in charge of the Department takes assistance from subordinate officials of his department. There is no breach of natural justice if the investigation or the hearing part is done by an official or a committee and the final decision is taken by the Minister after going through the report of the officer concerned and the evidence and material collected by him. Even in acting upon such a report the Minister may take assistance from others in his department and the decision reached by him cannot be tested being in violation of the principles of natural justice if he has honestly applied his mind to the relevant material and the decision reached by him is really his decision. (Wade, Administrative Law. 4th Edition, p. 467: De Smith, Judicial Review of Administrative Action, 4th Edition, p. 220). In *Local Government Board v. Arlidge* (1915) AC 120 (HL), which is leading authority on the point, it was held by the House of Lords that an order passed by the Minister, who was head of the Local Government Board, in an appeal, which required a quasi-judicial procedure, could not be set aside on the ground that the enquiry in relation to the appeal was not made by and the hearing was not given by the Minister but by an official of the Board. In holding, so Viscount Haldane, L. C. made the (following observations;

"The Minister at the head of the Board Is directly responsible to Parliament like

other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his Staff."

The principle laid down in *Arlidge's case* (1915 AC 120) was accepted by the Privy Council in the case of *Jefferies v. New Zealand Dairy Production and Marketing Board* (1967) 1 AC 551 (PC). In this case, the respondent Board was conferred with a quasi-judicial power by a statute to make a zoning order, it was held that the Board could appoint a person or persons to hear and receive evidence and submissions from interested parties, and if it reached the decision after fully informing itself of the evidence and submissions made, it could not be said that the Board had not heard the interested parties and had acted contrary to the principles of natural justice. It was also held that in some circumstances it may even suffice for the Board to have before it and to consider an accurate summary of the relevant evidence and the submissions if the summary adequately disclosed the submission and evidence to the Board. The decision of the Board was, however, set aside on the ground that the report which the Board considered did not state what the evidence was and the Board reached its decision without consideration of and in ignorance of the evidence.

The principle that when a quasi-judicial power is conferred on a Government department or a Minister, the pre-decision hearing need not be by the persons passing the final order has also been accepted in the American Administrative Law, it was no doubt observed by Chief Justice Hughes in the *Fred O Morgan* case (1938) 298 US 468, that "the one who decides must hear." But these observations have not to be understood in a literal sense. The word "hear" is used here in the artistic sense of requiring certain procedural minimum to insure an informed judgment by the one who has the responsibility of making the final decision and it does not necessitate that the person making the final decision must himself be the presiding officer at the hearing. In other words, the one who decides must give heed to the case and, directing his mind to it, must be the one who actually exercises the deciding function. It is not necessary that the person deciding should himself take the evidence and hear the oral arguments : (see *Schwartz, Administrative Law*, (1976) pp. 378 to 383). As observed by Professor Wade :

"The work of holding the inquiry and reporting on the evidence must be delegated to officials, and so in many cases must be the substantive decision itself. But what the Supreme Court of the United States continued to require was that the decision should be the personal decision of the Minister in the sense that he sees the record and exercises his personal judgment upon it. The case may be

predigested for him in his department, but he is the one who is required to decide. He must therefore "hear" in the sense of applying his mind to both sides of the case." (Wade, Administrative Law, 4th edition, p. 825).

The development of the Indian Administrative Law is also on the same lines (Jain and Jain, Principles of Administrative Law, 3rd edition, p. 250). The Supreme Court in Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court, , expressly approved and followed the decision of the House of Lords in Arlidge's case (1915 AC 120). In Pradyut Kumar's case, the question was whether the Chief Justice who had the power to dismiss could not authorise a Judge to make enquiry into the charges and to report and whether it was obligatory on him to himself make the enquiry. In holding that it was not necessary for the Chief Justice himself to make the enquiry, it was observed that although in case of a judicial tribunal, the tribunal cannot delegate its functions unless it is enabled to do so expressly or by necessary implication, the position is different in case of an administrative power which has to be exercised in a quasi-judicial manner and the statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent officer to enquire and report. It was further observed that what cannot be delegated is the ultimate responsibility for the exercise of the power. Arlidge's case had also decided that when hearing is held by one officer and the final decision is taken by another on the basis of the hearing officer's report, it is not always necessary to disclose the report to the affected person for inviting his comments before making the final decision. This principle has also been accepted by our Supreme Court : (Suresh Koshy George Vs. University of Kerala and Others, ; The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others, : Shadi Lal v. State of Punjab. AIR 197 SC 1124 and Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, .

In the light of the principles stat-ed above, the argument of the learned counsel for the petitioners cannot be accepted that as the Minister himself did not hear the petitioner company, the decision taken by him was invalid not being in conformity with the decision in the earlier writ petition and the principles of natural justice. As earlier seen, the Hearing was given by Shri R. Ram Krishna. Joint Secretary. His report which contained the submissions made by the petitioner company and his opinion on the question of existence of circumstances and legality of take over u/s 18AA was considered by the Minister after obtaining the opinion of other officials of the department, namely, Shri Damodaran and Shri Shunglu. The decision reached, however, was of the Minister himself who must be presumed to have considered the submissions of the petitioner company contained in the report of Shri Ram Krishna and his views and the views of other officials. It may here be recalled that although Shri Ram Krishna had recommended withdrawal of the take over on moral grounds, He had also expressed the view that technically the requirements of Section 18AA were satisfied. Having regard to the facts of the instant case and the principles of administrative law considered above, it cannot be held that there was no hearing

by the Minister and that his order is invalid for the reason that the oral hearing was given by an official of the Ministry namely Shri R. Ram Krishna and not by the Minister himself.

Learned counsel for the petitioners Heavily relied upon the case of Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, . in support of his submission that the Minister could not have delegated the hearing function to an official. It is true that in that case the Supreme Court by a majority held that the Chief Minister who decided the objections to a proposed scheme of nationalisation u/s 68-D, of the Motor Vehicles Act. 1939, in accordance with the rules of business could not delegate the function of hearing the objectors to the Secretary and observed that "if one person hears and another decides then personal hearing becomes an empty formality". But Nageswara Rao's case also refers with approval to the decision of the House of Lords in *Arlidge's case* (1915 AC 120) (p. 326) which was followed in *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, . Nageswara Rao's case cannot, therefore, be taken to have decided contrary to what is laid down in *Arlidge's case*. In our opinion, the case of Nageswara Rao must be confined to the construction of Section 68D of the Motor Vehicles Act and the rules made thereunder which specifically required "giving an opportunity to the person of being heard in person". The case cannot be understood to have decided that whenever a quasi-judicial power is conferred on the Government, the Minister concerned must himself hear and he cannot act on the report of an officer to whom the hearing function is delegated. This view that we have taken is in line with the decisions of the Kerala and Allahabad High Courts : (*Raghava Menon Vs. Inspector General of Police, Kerala*, , and *Triambak Pati v. B.H.S. & I. Edn.*, Allahabad AIR 1973 All 1 (FBI).

Coming to the second contention, we will assume for the purpose of this case that a reasoned order of the Central Government is necessary u/s 18AA after hearing the objection of the owner whose undertaking is taken over under that section. Even so, we do not find any good ground to accept the contention that the action taken by the Central Government is invalid. It is true that to begin with, no reasoned order was passed and the reasons were only contained in the notings of the file; but on a direction from this Court the Central Government passed a reasoned order which is Annexure "D". It is not in dispute that the reasons contained in this order are the same which are contained in the notings in the file and which were the basis of the order passed by the Minister. In view of the fact that a reasoned order has been passed and communicated to the petitioner company, the second contention that no reasoned order has been passed does not survive.

Lastly coming to the third contention that no hearing was given to the petitioner company before passing the order dated 11th Aug. 1982 (Annexure "F") u/s 18AA(2) read with Section 18A(2) continuing the take over for a further period of six months, we are of opinion that no prior hearing is necessary before passing

an order of extension of the period of take over. In this connection it has to be taken notice of that the owner whose undertaking is taken over is already heard at the time of exercise of the power u/s 18AA. The owner can also apply u/s 18F that it is not necessary that the order of take over should remain in force and the Central Government can cancel the take over under that section. Having regard to the hearing to which the owner of the undertaking is entitled at the time of passing of the order of take over and to the provision in Section 18F, which enables him to apply for cancellation of the order of take over, we do not think that there is an implied duty cast on the Central Government to hear the owner of the undertaking when it merely passes an order extending the period of take over.

The petition fails and is dismissed but without any order as to costs. The security amount be refunded to the petitioners.