

(2002) 01 KL CK 0065
In the High Court Of Kerala
Case No : W.A. No. 1255 of 1994

K.S. Narayanan Iyer

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-01-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 31A, 31C, 39
Industries (Development and Regulation) Act, 1951 — Section 18AA
Kerala Sick Textile Undertaking (Acquisition and Transfer of Undertakings) Act, 1985 —
Section 1, 5

Citation : AIR 2002 Ker 382 : (2002) 2 ILR (Ker) 315

Hon'ble Judges : B.N. Srikrishna, C.J;G. Sivarajan, J

Bench : Division Bench

Advocate : K. Jagadeeschandran Nair, for the Appellant; P.S. Sreedharan Pillai, S.C.G.S.C. (for No. 1), Roy Chacko, Sr. Govt. Pleader (for No. 2) and K. Anand, (for No. 3), for the Respondent

Final Decision : Dismissed

Judgement

Srikrishna, C.J.—This appeal impugns the judgment of the learned single Judge dated 5th July, 1994 dismissing the writ petition.

2. The petitioner is an erstwhile shareholder and Managing Director of a company known as "M/s. Kottayam Textiles Limited". M/s. Kottayam Textiles Limited was running a textile mill at Ettumanoor in Kottayam District. This textile unit had run into severe financial troubles and was closed for a considerably long period. By a notification dated 6-2-1978 issued u/s 18-AA of the Industries Development and Regulation Act, 1951, the Central Government superseded the Board of Directors of the company and appointed an authorised agent to manage the textile unit. Despite the Central Government pumping in large finances, the viability of the textile unit did not show any improvement and, finally, the textile unit and all assets of the company were taken over by an Act known as The Kerala Sick Textile Undertaking (Acquisition and Transfer of Undertakings) Act, 1985 (Act 27 of 1985). This Act was reserved for the assent of the President and received

assent of the President on 14th October, 1985 and was published in the Kerala Gazette, Extraordinary No. 830 dated 15th October, 1985. This Act came into force from 5th October, 1984. By reason of Section 3 of this Act, with effect from the appointed day (1st September, 1983) as defined in Section 2(a), every sick textile undertaking and the right, title and interest of the owner in relation to every such sick textile undertaking stood transferred to, and vested absolutely in the State Government. Immediately thereafter, the right, title and interest of the erstwhile owner stood transferred under Sub-section (2) of Section 3 and vested in the State Textile Corporation, which is respondent No. 3 before us.

3. The petitioner challenges the validity of the provisions of the Kerala Sick Textile Undertaking (Acquisition and Transfer of Undertakings) Act, 1985 (hereinafter referred to as "the Act") on several grounds. Though the contentions raised are somewhat diffused and generalized, we have been able to gather that, principally, the validity of the provisions of the Act have been impugned as being violative of the fundamental rights of the petitioner guaranteed under Articles 14, 19(1)(g) and 21 read with Article 300-A of the Constitution.

4. The first contention urged is that, even after the fundamental right to property was deleted from Article 19, as a result of introduction of Article 300-A of the Constitution, the State cannot deprive any person of his property save by authority of "law". It is contended by the learned counsel for the petitioner that the expression "law" used in Article 300-A means a law which is just, reasonable and fair; any law which provides for compulsory acquisition without compensation would be unjust, unfair and inequitable. It is also contended that such compulsory acquisition, without adequate compensation or illusory compensation, would seriously affect the fundamental right to life guaranteed under Article 21 of the Constitution as the right to life encompasses not only a right to existence, but also the right to enjoy property. This contention is not only misconceived, but also not *res integra*. Learned counsel for the petitioner relied on the view expressed by certain learned authors in books and articles published by them. He also submitted that those views were amply supported by the judgment of the Division Bench of the Bombay High Court in *Basantibai Fakirchand Khetan v. State of Maharashtra* AIR 1984 Bom 388 which takes the view that, even after Clause (f) was deleted from Article 19(1), the right to property would not vanish, but would merge into and become one with the guaranteed fundamental right under Article 21. Article 21 has been expansively interpreted by the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and *Another*, , and it has been held that a fundamental right under Article 21 cannot be restricted except by a law which is fair, just and reasonable both as to substantively and as to procedure.

5. The first limb of argument is *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, . It was pointed out to the learned counsel that *Basantibai* (supra) is no longer good law as the Supreme Court has specifically overruled in *State of Maharashtra and Another Vs. Basantibai*

Mohanlal Khetan and Others, . The Supreme Court specifically considered this argument and rejected it by saying that Article 21 does not deal with cases of deprivation of property at all. The Supreme Court observed (in paragraph 18) thus :

"16. Then in the end we have to consider the argument based on Article 21 of the Constitution which is urged on behalf of the respondents. Article 21 essentially deals with personal liberty. It has little to do with the right to own property as such. Here we are not concerned with a case where the deprivation of property would lead to deprivation of life or liberty or livelihood. On the other hand land is being acquired to improve the living conditions of a large number of people. To rely upon Article 21 of the Constitution for striking down the provisions of the Act amounts to a clear misapplication of the great doctrine enshrined in Article 21. We have no hesitation in rejecting the argument. Land ceiling laws, laws providing for acquisition of land for providing housing accommodation, laws imposing ceiling on urban property etc. cannot be struck down by invoking Article 21 of the Constitution."

6. In *Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc.*, this contention cropped up for consideration again. The Supreme Court went into the history of the fundamental right to property, right from the debates in the Constituent. Assembly to its deletion by the 44th Constitutional amendment, carried out a survey of various judgments from *The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others*, to *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, , and opined that as the law stands today the Legislature has power to acquire the property or private persons exercising the power of eminent domain by a law for public purpose. The law may fix an amount, or which may be determined in accordance with such principles as may be laid therein and given in such other manner as may be specified in such law. The principles laid down to determine the amount must be relevant to the determination of the amount. The doctrine of illusory amount or fixation of the principles to be arbitrary were evolved drawing support from the language originally couched in the unamended Entry 42 of List III which stands amended by the Constitution 7th Amendment Act and now refers only to "acquisition and requisition of property" by omitting reference to compensation totally. Consequently, the Supreme Court held that when the State exercises its power of eminent domain and acquires the property of a private person or deprives him of his property for public purpose, concomitantly, fixation of the amount or its determination must be in accordance with such principles as laid down therein and the amount given in such manner as may be specified in such a law. Judicial interpretation cannot be used as a tool to resurrect the doctrine of compensation as sine qua non to acquisition or deprivation of property under Article 300-A. This would be manifest from two related relevant provisions of the Constitution, i.e. Articles 30(1A) and the second proviso to Article 31A, as exceptions to the other type of acquisition or deprivation of the property under Article 300-A. It was also held that acquisition of property by a law is made in

furtherance of the directive principles of State Policy to distribute the material resources of the community including acquisition and taking possession of private property for public purpose. It does not require payment of just compensation or indemnification to the owner of the property expropriated. Such a compensation would be very negation of the effectuation of public purpose. Payment of market value in lieu of acquired property is not sine qua non for acquisition. Acquisition and payment of amount are part of the scheme and they cannot be dissected. The amount to be paid need not bear any reasonable relationship to the market value of the assets acquired and the resultant amount cannot be questioned in a Court of law. Finally, the Supreme Court observed "We further hold that after the Constitution Forty-fourth Amendment Act has come into force, the right to property in Articles 19(1)(f) and 31 had its obliteration from Chapter III. Fundamental Rights, its abridgment and curtailment does not get retrieved its lost position, nor gets restituted with renewed vigour claiming compensation under the garb "deprivation of property" in Article 300-A."

7. A Full Bench of this Court in Smt. Elizebeth Samuel Aaron and Others Vs. State of Kerala and Others, had "disapproved the view of the Bombay High Court in Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another, and held that Articles 300-A and 31-C, which has since been deleted, could not sustain a challenge on the ground of inadequacy or illusory nature of compensation. The Full Bench also negated the argument that Article 21 would be available for resurrecting the right to fundamental right to property which was put to rest by deletion of Articles 19(1)(f) and 31 of the Constitution and the further amendment in Entry 42 of the concurrent list.

8. These clear observations of the Supreme Court are more than adequate to repel all contentions urged by the petitioner. However, in fairness to the learned counsel, who took the trouble of arguing the matter for a considerable time, we shall also spend some more time to deal with the contentions separately.

9. The contention that there is infringement of fundamental rights guaranteed under Articles 14 and 19 is no longer available for Article 31-C immunizes the legislation against such challenge if the legislation has been enacted for the purpose of giving effect to the directive principles. Article 31-C reads as under :.

"31C. Saving of laws giving effect to certain directive principles.-- Notwithstanding anything contained in Article 13, no law giving effect of the policy of the "State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy :

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been

reserved for the consideration of the President, has received his assent."

In view of the non obstante Clause with which this article begins, no challenge to the law is possible on the ground of infringement of fundamental rights under Articles 14 and 19. The only issue that needs to be considered is whether it is a law which has been enacted towards securing all or any of the principles laid down in Part IV of the Constitution. That a declaration in the statute to this effect is unnecessary and inconclusive has been pointed out both in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, and in *Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc.*, . All that the Court needs to be satisfied is that the law was intended for the purpose of giving effect to a directive principle enshrined in Part IV of the Constitution.

10. In *Panipat W. & G. Mills Co, Ltd. v. Union of India*, AIR 1986 SC 2082, the Supreme Court repelled the contention like the one urged before us that there is infringement of natural justice as no hearing was given to the owner of the sick industrial company whose management was taken over and subsequently nationalised. It was pointed out that under the Takeover Act, where the undertakings of the Company are specified as sick textile undertakings, the Legislature it-sell" having decided that the undertakings of the company had become a sick textile undertaking, it was obvious that the Legislature did not leave it to the executive to decide whether a particular textile undertaking was a sick textile undertaking or not. If under the Takeover Act the question, whether a sick textile undertaking is sick or not, had been directed to be decided by the executive authorities, the owner of such undertaking could claim a right to be heard. But, when the undertaking is identified by the Legislature and specified to be a sick textile undertaking, the question of giving an opportunity to the owner of the undertaking does not arise. Thus, the principle of natural justice has been totally ruled out in such circumstances by the Supreme Court. The Supreme Court also highlighted in this judgment that such a nationalisation Act gave effect to the policy of the State towards securing ownership of material resources of the community to be distributed so as to subserve the common good, as enunciated in Article 39(b) of the Constitution. In these circumstances, such a nationalisation Act falls within the provision of Article 31-C of the Constitution. No challenge to its validity can be sustained on the ground of infringement of Articles 14 and 19 of the Constitution.

11. u/s 5 of the impugned Act all liabilities, other than the liability specified in Sub-section (2) of Section 5 of the owner of a sick textile undertaking in respect of any period prior to the appointed day, shall be the liability of the owner and it shall be enforceable against him and not against the State Government or the State Textile Corporation, Sub-section (2) only immunises liabilities arising in respect of loans advanced by the Central Government or the State Government to a sick textile undertaking or towards the wages and salaries of the employees and so on. The contention urged is that whatever liability was acquired by the

authorised person, between the date of the taking over of management and the date of acquisition, was on account of mismanagement by the authorised person and was not attributable to any default on the part of the owner of the undertaking. Hence, it is contended that it is unjust and arbitrary to foist such liabilities on the owner. Though not articulated, the argument really invokes the protection of Article 14. All that is contended, in other words, is that the distinction made in exemption from liability in Sub-section (2) of Section 5 as compared to other liabilities -- pre-taking over of management as well as during the period of management up to the date of acquisition -- is arbitrary and unreasonable and amounting to violation of Article 14. It is the policy of the Legislature to impose on the owner even the liability incurred during the period between taking over of the management and date of acquisition. In fact, the policy of the Legislature, both under the Industries Development and Regulation Act in taking over of management of sick industries, and in nationalising the sick textile undertakings, was obviously to advance the objective spelt out in Article 39(d) of the Constitution. The Legislature having considered that means of production vested in private hands were not being used for advancing the interests of the society, but were being used for advancing the self interests of private individuals, decided to take over management so that the sick textile undertaking could be run for the benefit of the public at large and for protecting the livelihoods of large number of employees working in the sick textile undertakings. This was obviously in public interest and the amounts spent and liabilities incurred during the interregnum by the authorised person were expenditure incurred for advancing this purpose in advancement of the directive principle in Article 39(d). Hence, it is not possible for us to accept the contention that the owner should be immunized from this liability, for that is the policy of the law which is clearly enacted in Section 5. Unless the petitioner can successfully impugn the legislation on any other ground, this also must be given effect to, as we have reiterated that Article 31(c) immunize against challenge such legislation intended to effectuate the directive principles in Article 39(b) and 39(c). Hence, this contention is liable to fail.

12. In *Basantibai* AIR 1986 SC 1463 (*supra*) the Supreme Court reiterated its views in *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, , and highlighted the impact of Article 31-C on the right to property. It pointed out that Clause (b) of Article 39 of the Constitution states that the State shall, in particular, direct its policy towards securing that the ownership and control of material resources of the community are so distributed as best to subserve common good. The expression "material resources of the community" would cover all properties held by the private owners also. It was also pointed out therein that Article 31-C does not require a declaration to be made by the Legislature in the Act to the effect that it was enacted to achieve the object in Article 39(b) or any other directive principle. The question whether the Act is intended to secure the object contained in the directive principle or not does not depend on the declaration by the Legislature, but on its contents. That issue is

open to judicial scrutiny. If the Court is satisfied that the Act subserves any one of the directive principles, then the mandate in Article 31-C would operate in favour of the legislation and shield it from any challenge on the ground of infringement of the guaranteed fundamental rights under Articles 14 and 19.

13. In *Minerva Mills Ltd. v. Union of India* AIR 1988 SC 2030 the Supreme Court pointed out (vide paragraphs 15 and 16) that the Textile Nationalisation Act had been enacted to give effect to the principle specified in Clause (b) of Article 39 of the Constitution. It could not be gainsaid that textile industries constitute "material resources" of the community and any set back or fall in the production of textile goods would have adverse effect on the national economy and also cause hardship to the people. It is with a view to reorganising and rehabilitating the sick textile undertakings, so as to subserve the interests of the general public by the augmentation of the production and distribution, at fair prices, of different varieties of cloth and yarn, and for matters connected therewith or incidental thereto, that the Sick Textile Nationalisation Act had been enacted. Upon examination of the provisions of the Act impugned before us, we are satisfied that the observations of the Supreme Court in this judgment fully apply to the Act challenged before us also. In the circumstances, we are satisfied that the present Act challenged before us gives effect to the policy of the State towards securing the ownership and control of the material resources of the community to be so distributed as best to subserve the common good. In the circumstances, we are of the view that the Act impugned before us gets the protection of Article 31-C and the petitioner cannot challenge the constitutional validity thereof on the ground of violation of the provisions of Articles 14 and 19 of the Constitution.

14. A series of cases was considered and their principles reiterated by the Supreme Court in *Maharashtra State Electricity Board Vs. Thane Electric Supply Co. and others*, ;. Though a number of other cases were cited before us, we do not refer to all of them for the principles are clear and there is no point in multiplying authorities.

15. In the final analysis, a legislation can be challenged as unconstitutional only on three grounds which are recognised : (a) competence of the Legislature, (b) infringement of a guaranteed fundamental right and (c) infringement of a basic feature of the Constitution. On an analysis on all three grounds, the challenge to the legislation before us must fail. There is no argument advanced that the State Legislature was not competent to enact the legislation. By reason of our finding that the legislation is intended to advance the directive principles enshrined in Article 39 (b) and (c) of Part IV of the Constitution, the attack on the ground of infringement of fundamental right under Articles 14 and 19 fails. Though an attempt was made to project Article 21 into the picture, we are of the view that Article 21 is intended for better purposes than protection of property rights. Finally, there is no argument that the legislation infringes or violates any basic feature of the Constitution. In these circumstances, the challenge to the constitutionality of the legislation must fail.

16. Learned counsel for the appellant also attempted to challenge the taking over of the management of the mill by the notification (Ext. P3) dated 6-2-1978. The learned single Judge has rightly given short shrift to this argument on two grounds. In the first place, he has rightly pointed out that this attempt to challenge the taking over of management by the notification of 1978, by a petition filed in 1986, is delayed. Consequently, and, pertinently, more than prudently the learned single Judge pointed out that after the undertaking itself was nationalised, any challenge to the taking over of its management became infructuous and failed for that reason. We agree with this reasoning of the learned single Judge. Apart therefrom, we also rest our conclusion on the foundation of the mandate under Article 31A(b) for we are of the view that the taking over of the management of the undertaking by the State by the notification issued u/s 18-AA of the Industries Development and Regulation Act was predominantly in public interest and in order to secure the proper management of the undertaking with a view to preserve the material resources of production and protect the employment of large number of workers. For this reason also, we are of the view that the challenge must fail.

In the result, the writ appeal is dismissed. No order as to costs.