(1982) 02 GUJ CK 0010

In the Gujarat High Court

Mahendra Shantilal Shah APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 10-02-1982

Acts Referred:
Industries (Development and Regulation) Act, 1951 — Section 18FA, 18FA(1)

Citation : (1984) 56 CompCas 70 : (1982) 2 GLR 284

Hon'ble Judges : M.P. Thakkar, C.J;I.C. Bhatt, J

Bench : Division Bench

Advocate : K.S. Nanavati, Vasavada, for the Appellant; H.M. Mehta, for the Respondent

Judgement

Thakkar, C.J.—To stay or not to stay is the question. Granting stay will mean :

(1) continued unemployment, starvation, suffering and misery for about 4,000 workers who are jobless since the mill closed down about 18

months back and was ordered to be wound up as its economic substratum had disappeared.

(2) None-production of a commodity essential for the community-cloth.

(3) continued locking up of a productive unit which is being restarted after a lapse of about 18 months.

(4) Blocking the stepping up or giving boost to economic activity in a town like Bhavnagar.

2. Refusing stay subject to the result of the appeal will mean :

(1) No prejudice to any one (the official liquidator,m the secured creditors and the workers all are ad idem that the management of the industrial

unit in question should be taken over by the Central Govt.) Inn fact mp material was placed before the learned judge to show that any prejudice would be caused to the appellant. IT was not even argued that there would by any prejudice or detriment to the appellant or anyone else (in

granting or refusing permission to take over which would possibly be the prime, if not the sole consideration).

(2) Prospects of a sponsor coming forward to offer a scheme to run the mills will brighten.

(3) The industrial unit may reasonable by expected to fetch a better price as a running unit as compared to what it would fetch on the machinery

being sold at a public auction.

(4) The court will retain control and cane at any time review the situation and sanction a scheme or a sale in favour of a purchase of the running unit

in case a reasonable offer is forthcoming.

3. Taking into account the pros and cons, the likely impact on that interests of all concerned, the balance-sheet of balance of convenience leaves

the answer in no doubt. In fact, one and only answer is possible, unless one can subscribe to the proposition that stay of the opertion of impugned

order must always be granted once and appeal is admitted regardless of the consequences and regardless of the factor relating to relative hardship

and prejudice. Such litigations can last for years and what-ever is the outcome, immense and irreversible damage can be caused merely because of

the stay. And with all pious wishes to dispose of the appeal at the earliest (we have fixed it for final hearing in August, 1982), we do not, now when

we will be able to dispose of it, for, we have innumerable urgent matters involving high Stakes at hand and the future is imponderable. Granting a

stay in a matter like this demands anxious considerations for, say in such matter cause graters harm than Good. The creditability of the judicial

system itself is undermined, and delay which is more often than not unavoidable, add insult to injury.

4. We, therefore, consider it necessary and desirable to articulate of length the reasons for our decision to refuse interim stay of the operation of

the order giving rise to the letters patent appeal, even though we have admitted the same (inasmuch as it raises arguable issued and fixed it is

hearing in August, 1982.

5. The facts have been dealt with at length in the judgment under appeal rendered by our learned brother, Ahmadi J. in Company Applications No.

130 of 1981, in Company Petition No. 75 of 1978. On the judge''s summons taken out by the Union of India for permission to appoint any person

or body or persons to take over the management of the New Jehangir VAkil Mills Co. Ltd., (in liquidation) under S. 18FA of the Industries

(Development and Regulation) Act, 1951, (the Act), the learned company judge passed an order making the summons absolute in terms of

prayers (a) and (b) with the modification that the authoriese person will be the Gujarat State Textile Corporation. The Union of India was

permitted to appoint the said Corporation as the authorised person to take over the management of the aforesaid company, which was under

liquidation, as per the order passed on July 9, 1981, the reasons in respect of which were set out in a speaking order, dated October 13, 1981.

The aforesaid company has been ordered to be wound up by and order passed by the learned company judge on February, 1981. Some five

months thereafter the summons praying for permission to take over the management of the company in exercise of the power under s. 18FA(1)

was taken out on july 9, 1981. WE are told that the company which was engaged in the manufactured of cotton textile was closed down on July

11, 1980. Since that dated about four thousand workmen employed by the company (about 2,500 permanent and about 1,500 temperate

workmen) have become unemployed and are striving as the are not in a position to obtain alternative employment in Bhavnagar where there are no

opportunities for securing employment in any other textile unit. Under s. 18FA contained in Chap. III-AA of the Act relating to ""Management or

control of industrial undertakings owned by companies in liquidation"", the Central Govt. has the power to authories, with the permission of the High

Court, the taking over of management or control of industrial undertakings. the relevant provisions require to be quoted :

Power of Central Government to authories, with the permission of the High Court persons to take over management or control of industrial

undertakings :

(1) If the Central Govt, is of opinion that there are possibility of running or restarting an industrial undertaking, in relation to which an investigation

has been made u/s 15A, and that such industrial undertaking should be run or restarted, as the case may be, for maintaining or increasing the production, supply or distribution of articles or class of articles relatable to the scheduled industry, needed by the general public, that Government

may make an application to the High Court praying for permission to appoint any person or body of persons to take over the management of the

industrial undertaking or to exercise in respect of the whole or any part of the industrial undertaking such functions of control as may be specified in

the application.

(2) Where application is made under Sub-S. (1) the High court shall make an order empowering the Central Govt. to authories any person or

body of persons (hereinafter referred to as ""the authorised persons"") to take over the management of the industrial undertaking or exercise

functions of control in relation to the whole or any part of the industrial undertaking (hereinafter referred to as ""the concerned part"") for a period

not exceeding five years ....

(3) Where an order has been made by the High Court under sub-s. (2)., the High Court shall direct shall direct the official liquidator or another

person having, for the time being, charge of the management or control of the industrial undertaking, whether by or under the orders of any court,

or any contract of instrument or otherwise, to make over the managements of such undertaking or the concerned part, as the case may be, to the

authorised persons and thereupon the authorised person shall be deemed to be the official liquidator in respect of the industrial undertaking or the

concerned part, as the case may be.....

6. It will be seen that the power under s. 18FA(1) can be exercised if the Central Govt. is of the opinion that (1) there is a possibility of raining or

restarting the industrial underrating in question and (2) it is desirable that the industrial undertaking should be run or restarted for maintaining or

increasing the production or supply or distribution of the articles or class of articles relatable to the scheduled industry, needed by the general

public. The Central Government has obviously been satisfied that it is possible to restart the industrial underacting. The very fact that an application

to take over the management has been made and permission is sought under S. 18FA, would go to show that in the opinion of the Central Govt.

there are possibilities of restarting the industrial undertaking. The Certification is the subjective satisfaction of the Central Govt. who else can determine whether mill can be restarted if the onerous responsibility for taking over and running rests on the shoulders of the Central Govt. ? That

is not a question which is possibly justifiable. the second condition which is required to be satisfied is whether it is desirable to restart the industrial

undertaking for maintaining or increasing production, supply or distribution of articles relatable to the scheduled industry, needed by the general

public. Entry 23 of the Schedule to the Act, inter alia, pertains to ""Textiles made wholly or in part of cotton, including cotton, yarn, hosiery and

rope"". It is, therefore, clear that the articles in question are those which are relatable to the scheduled industry needed by the General public. It is

obvious that if the mill is restarted, supply of such articles would be augmented. IT cannot be, and it has not been, argued otherwise. The Central

Govt. appears to have taken out this summons in order to authories the taking over of the management or control of this industrial undertaking

which is owned by the company in liquidation for the purpose of augmenting supply of a commodity needed by the general public which is

specified in the Scheduled, as also presumably to provide employment to the four thousand workmen, who are starving since about more than one

and a half years (from July, 11, 1980). It is in this background that we are concerned with the question as to whether or not the order passed by

the learned company judge granting permission for taking over should be stayed using the pendency of the appeal. We have to consider the

consequence of granting the prayer for stay made by the appellant who is one of the shareholders and unsecured creditor of the company under

liquidation. It may be stated that the appellant himself had, in the course of the liquidation proceedings, declared before the company court that the

assets of the company that the assets of the company were not sufficient to meet its liabilities, as is mentioned in the judgment under apple. If the

order passed by the learned company judge granting permissions for taking over the management is stayed, two consequences will follow : (1)

about four thousand workmen who are likely to get employment immediately will have to wait till the appeal is disposed of (they have been jobless

for more than one and a half years by now) and (2) the supply of essential articles specified in the Schedule which is needed by the general public

will not be augmented till the matter is disposed of. Even though we have fixed the matter for final hearing in August, 1982, there is no guarantee that we will be able to dispose of it in that month. It will all depend upon the number of urgent matters awaiting decision and the position of the

board. On the other hand, and if the interim relief is refused, there will be no prejudice to the appellant. Once the mills company starts working, the

assets of the company under liquidation will become more valuable. The machinery of the mills company which has remained idel for about tow

years will not fetch a price which is comparable to the price which a running factory will fetch when it is already producing the goods. Admittedly

today on party is coming forward to sponsor any scheme for the running of the factory. A discussed in the judgment under appeal, numerous

adjournments were sought for the purpose of presenting a scheme for the running of the factory by way of a scheme sanctioned under s. 391 of the

Companies Act, but the efforts did not succeed. These efforts were made when the summons was being heard by the learned company judge in

October, 1981. some four months have passed thereafter and yet the appellant is not in a position to present any scheme. It does not appear that

there is any sponsor who is prepared to offer any scheme for the running of the mill in the near future. It the stay is not granted and the authorised

person is permitted to take over the management in exercise of powers under s. 18FA subject ot the result of the present appeal, the appellant will

get sufficient time and opportunity to procure some sponsor who can present a scheme for the running of the mill. The other alternative would be to

sell the lands and the machinery by public auction and the price which it would fetch would understandably be very small. The extent of the secured

debts itself is to the tune of about rupees three crores (it is so stated at the Bar). THe interest burden would go on mouning. The assts may very

likely. Not fetch eve sufficient funds to meett claims of the secured creditors. It is, therefore, in the interest of the shareholders, the creditors and all

concerned , that the mill starts functioning at the hands of the authorised person under s. 18FA subject to the result of the present appeal. THe

company court case perhaps examine the legality and propriety of the appeal. It is even possible that the Central Govt. can be persuaded to

terminate the management to the thousands of suffering workers. It the central Govt. were to withdraw its application for taking over and the

liquidator has to proceed with sale of the properties and effects of the company under liquidator, all concerned, including the appellant, very likely would suffer considerable loss. It may be stated that all the workent and secured creditors as also the official liquidator have no objections to the

prayer made by the Central Govt. for taken gover the management under s. 18FA being granted. The objections is being raised only by the

appellant who was the managing director of the company before it was taken into liquidation. It may be stated that some other shareholders and

cerditors had appeared before the learned company judge in order ot resist the summons taken out by the Central Govt. but ultimately they have

not challenged the impugned order by filing any appeal. It needs to be reiterate that none of them did even argue or contend (much less produce

any material to support such plea) before the learned company judge that any prejudice or detriment would be occasioned to them,. The appellant

cannot possibly challenge the opinion formed by the Central Govt., (1) that it is possible for the Central Govt. to restart the mill , and (2) that it is

necessary to argument the supply of an essential article of the class relatable to the scheduled industry. Under the circumstances the appellant will

not suffer any prejudice at all if the operations of the order passed by the learned company judge, which has given rise to the present appeal, is not

stayed., As against this, there will be great prejudice to the society, to the economy, and to workers s also to others. That there will be no

prejudice to the official liquidator as also the secured creditors is obvious because they have un hesitingly supported the request for taking over

made by the Central Govt. before the learned company judge.

7. Taking into consideration all these circumstances we are of the opinion that the order under appeal does not need to be stayed. In fact prejudice

will arise if it is stayed whereas it would be in the interest of all concerned if the authorised person is permitted to take over the management and

control of the undertaking subject to the result of the appeal and subject to the control of the company court.

8. Application is, therefore, rejected.

