

(1963) 08 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 749-D of 1962

Md. Hanif and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 23-08-1963

Acts Referred:

Industries (Development and Regulation) Act, 1951 — Section 15, 16, 18A

Citation : (1963) 08 P&H CK 0037

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : A.K. Nag and Yogeshwar Dayal, for the Appellant; S.N. Shanker, for the Respondent

Judgement

Shamsher Bahadur, J.—The Petitioner Mohd. Hanif, a Managing Director of the Sugauli Sugar Works (Private) Limited, in the district of Champaran in the State of Bihar; has questioned the validity of the notified order issued by the Government of India in the Ministry of Commerce and Industry on 5th of October, 1962 (Annexure C) taking over the management of the Company u/s 18A of the Industries (Development and Regulation) Act, 1951 (hereinafter called the Act).

2. The Petitioner, Mohd. Hanif, and his cousin Haji Ashraf Ali are the Managing Directors of the Sugar Works (Private) Limited (hereinafter called the Company), and according to the allegations made in the petition, there have been some differences of opinion between the management and the Cane Commissioner. These allegations, however, do not concern the merits of the question which has to be disposed of in this petition. Being of the opinion that the affairs of the Company were being managed "in a manner highly detrimental to the sugar industry and to public interest" a Committee consisting of Shri Gyan Chandra, Officer on Special Duty, Shri K. Nagaswami Senior Cost Accounts Officer, and Shri Jatinder Prasad, Cane Commissioner, was appointed to make "a full and complete investigation into the affairs and circumstances of the undertaking", u/s 15 of the

Act which provides that:

Where the Central Government is of the opinion that--

(a) * * * * (b) any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest; the Central Government may make or cause to be made a full and complete investigation into the circumstances of the case by such person or body of persons as it may appoint for the purpose.

3. After the Committee of investigation had taken evidence and collected materials, a report was submitted to the Central Government which, u/s 18-A, if it is of the opinion that "an industrial undertaking in respect of which an investigation has been made u/s 15 (whether or not any directions have been issued to the undertaking in pursuance of Section 16) is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest," may, by a notified order, "authorise any person or body of persons to take over the management of the whole or any part of the under taking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order." In the exercise of powers conferred on the Central Government u/s 18A the impugned notified order was made on 5th of October, 1962, wherewith Shri J.P. Goel, Officer on Special Duty was appointed an Authorised Controller to take over the management of the whole of the company for a period of three months. The effect of the order impugned is that the entire management and affairs of the company have been taken over by the Authorised Controller.

4. The question which arises in this petition is whether the Central Government was justified in passing the notified order without calling upon the Petitioner or any other representative of the company to show cause against the action which has been taken u/s 18A of the Act?

5. It has been asserted in the petition, and there is no denial of this, that the company during the course of investigation by the committee u/s 15 asked to be supplied with the material which had been collected and to be accorded an opportunity to cross-examine the witnesses who were to be examined during the course of investigation. While the company was asked to supply the relevant material to assist the Investigation Committee, the witnesses were not permitted to be cross-examined on its behalf. It is submitted by the learned Counsel for the Petitioner that the phrase "full and complete investigation" would be devoid of meaning or significance if an opportunity to cross-examine the witnesses who are to give evidence against the company is not given. There is no doubt that cross-examination is the only effective method of testing the veracity of the statement given by a person and it is difficult to avoid the conclusion that in the present instance the Investigation Committee did not allow a real and effective opportunity to the company to participate in the proceedings conducted by it.

It is, however, not necessary to decide the question whether the Investigation

Committee is under an obligation to examine the witnesses in presence of the representation of the undertaking whose affairs and management are under enquiry. It may well be said that the true object of Section 15 is to enable the Central Government to inform itself about the position of an undertaking in respect of which action is contemplated and it is conceivable that there may be occasions when evidence may have to be examined in camera to elicit full information and to maintain the assurance that confidence would be maintained. I would not, therefore, express any opinion on the question whether the Committee of Investigation u/s 15 is bound to examine the evidence or to take the material evidence in the presence of the parties concerned and a full opportunity being given to cross-examine the witnesses.

6. This does not mean that the Central Government can take what action it contemplates u/s 18A without the undertaking being afforded an opportunity to show cause against it. The matter came up recently before a Division Bench of this Court of Mahajan J. and myself in LP A No. 101-D of 1963 Union of India v. Narayan Lal Bansi Lal decided on 1st of August, 1983 (Punj). It was held by the Bench that the opinion which the Central Government has to form u/s 18A is objective and consequently a notified order cannot be passed without affording an opportunity to the undertaking concerned to show cause against it.

Concededly, no communication of any kind was made to the Petitioner or the company before the notified order (Annexure C) was issued. The action contemplated u/s 18A is of far reaching significance as the existing management of an undertaking under it can be displaced as in the present instance. It would be a plain denial of justice to take such a drastic action without affording at least an opportunity to the management of the undertaking to place whatever case it has to present against such action. Mr. S.N. Shankar, the learned Counsel for the Union of India, has invited my attention to certain proceedings in the Parliamentary Debates which culminated in the enactment of the legislation and states that it was proposed in the House that an opportunity should be afforded to the undertaking before an action is taken u/s 18A. The proposal was rejected by the Government. This is an extraneous consideration and cannot be taken account of in construing statutes. On the principles of natural justice, I reach the conclusion that the satisfaction of the Central Government before it comes to its conclusion with regard to the action proposed u/s 18A is objective in nature and on this construction, it cannot be denied that the Petitioner had to be given an opportunity before the notified order was issued.

7. In this view of the matter, this petition must succeed and the impugned order set aside. As, however, the question has been authoritatively settled only recently by a Division Bench of this Court, there would be no order as to costs.