
(1997) 07 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 2115 of 1995

National Textiles Corpn. (S.M.) Ltd.

APPELLANT

Vs

Girdharisingh Pratapsingh and others

RESPONDENT

Date of Decision : 24-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25
Payment of Gratuity Act, 1972 — Section 14, 7
Textile Undertakings (Nationalisation) Act, 1995 — Section 21, 5(3), 8
Textile Undertakings (Taking Over of Management) Act, 1983 — Section 2, 3(7), 4

Citation : (1998) 1 BomCR 407 : (1997) 3 MhLj 456

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : Mrs. Meena Doshi, for the Appellant; R.J. Kochar, L.S. Vyas and Raju Mane, for the Respondent

Judgement

R.M. Lodha, J.—The petitioner, National Textile Corporation (S.M.) Ltd., in this writ petition, impugns the order dated 30th June, 1994 passed by 2nd Labour Court, Bombay whereby it directed the petitioner to pay Rs. 11,716/- to each of the respondents No. 1 to 16 in all a sum of Rs. 1,88,486/- within two months from the date of the order.

2. The respondents No. 1 to 16 (for short, "workmen") made an application u/s 33-C(2) of the Industrial Disputes Act, 1947 (for short, "I.D. Act") before the Labour Court against the petitioner (for short, "NIC") and one Mr. Madanlal M. Tatia, Managing Director, Shri Sitaram Mills Limited, claiming arrears of wages for the period from April, 1983 till 19th October, 1983 collectively amounting to Rs. 92,720/- the bonus @ 8.33% for the years 1980, 1981, 1982 collectively amounting to Rs. 41,943/-, and, the leave wages for 90 days @ 30 days leave per year for the years 1981, 1982 and 1983 collectively amounting to Rs. 41,943/-. Thus the workmen claimed that they were entitled to amount of Rs. 1,88,406/- as aforestated. The N.T.C. contested the application filed by the

workmen and disputed it's liability principally on the ground that the claim made by the workmen was in respect of the period prior to appointed day i.e., 18-10-1983 and, therefore, the same was not enforceable against the Government of India or against the N.T.C. which is additional custodian. The second Labour Court, however, by the impugned order dated 30th June, 1994 held that the workmen have proved that the N.T.C. was liable to pay their dues and accordingly passed the order against the N.T.C.

3. Mrs. Doshi, the learned Counsel appearing for N.T.C. assailed the order passed by the Labour Court and urged that the Labour Court seriously erred in misconstruing the provisions of Textile Undertakings (Taking Over Management) Act, 1983 (Act of 1983) and particularly section 3(7) of the said Act. She would urge that section 3(7) of the Act of 1983 by removal of doubts has made it clear that any liability incurred by Textile company before the appointed day shall be enforceable against the Textile Company and not against the Government and/or custodian and, therefore, no liability could be fastened upon N.T.C. since the claim of the workmen related to the period prior to the appointed day. She would rely upon the judgment of this Court in *The National Textile Corporation (South Maharashtra) Ltd. petitioner v. Bhagirathi Gopal Martal & others*, 1990 M.L.J. 1315. *National Textile Corporation (South Maharashtra) Ltd. petitioner v. Shramik Janata Union and others*, respondents, 1991 (1) B.C.R. 160 : 1990 (2) C.L.R. 711 and *Rashtriya Mill Mazdoor Sangh Vs. National Textile Corporation (South Maharashtra) Ltd. and others*, .

4. Mr. R.J. Kochar, the learned Counsel appearing for the workmen on the other hand vehemently contended that the employment of the workmen continued with N.T.C. from the appointed day and, therefore, the N.T.C. was liable to make payment of the outstanding wages, bonus and leave wages for the period prior to appointed day as the said amount was earned by the workmen. Mr. Kochar sought to distinguish the judgments cited by learned Counsel for N.T.C. by urging that in none of the said cases the employment of the workmen continued with N.T.C. after appointed day. Mr. Kochar would also urge that the arrears of earned wages, bonus, or leave wages prior to appointed day cannot be said to be covered in the expression "any liability" in section 3(7) and, therefore, the N.T.C. is liable and the Labour Court cannot be said to have committed any error in passing the impugned order.

5. The claim of the workmen viz. arrears of wages, bonus as well as leave wages indisputably relate to the period prior to appointed day i.e. 18th October, 1983. There is also no dispute that the workmen continued to be in employment with N.T.C. after the erstwhile mill viz. Shri Sitaram Mills Ltd. was taken over under the Act of 1983. The question that needs answer is: whether in view of the aforestated fact situation the N.T.C. is liable to make payment of the claim made by the workmen relating to arrears of wages, bonus and leave wages prior to the appointed day. Under the provisions of the Act of 1983 the N.T.C. took over the management of Shri Sitaram Mills Ltd. from the appointed day. Section 3 of the

Act of 1983 deals with vesting of the management of the textile undertaking in the Central Government which reads thus:

"3. Management of certain undertakings to vest in the Central Government.

(1) On and from the appointed day the management of all the textile undertakings shall vest in the Central Government.

(2) The textile undertakings shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges of the textile company in relation to the said textile undertaking and all property, movable and immovable, including lands, buildings, workshops, projects, stores, spares, instruments, machinery, equipment, automobiles and other vehicles, and goods under production or in transit, cash balances, reserve fund, investments and booklets and all other rights and interests in or arising out of such property as were, immediately before the appointed day, in the ownership, possession, power or control of the textile company whether within or outside India and all books of account, registers and all other documents of whatever nature relating thereto.

(3) Any contract, whether express or implied, or other arrangement, in so far as it relates to the management of the business and affairs of the textile undertakings and in force immediately before the appointed day, or any order made by any Court in so far as it relates to the management of the business and affairs, of the textile undertaking and in force immediately before the appointed day shall be deemed to have terminated on the appointed day.

(4) All persons in charge of the management, including persons holding offices as Directors, managers or any other managerial personnel, of the textile company in relation to the textile undertaking immediately before the appointed day, shall be deemed to have vacated their offices as such on the appointed day.

(5) Notwithstanding anything contained in any other law for the time being in force no person in respect of whom any contract of management or other arrangement is terminated by reason of the provisions contained in sub-section (3), or who ceases to hold any office by reason of the provisions contained in sub-section (4), shall be entitled to claim any compensation for the premature termination of the contract of management or other arrangement or for the loss of office, as the case may be.

(6) Notwithstanding any judgment, decree or order of any Court, tribunal or other authority or anything contained in any other law (other than this Act) for the time being in force, every receiver or other person in whose possession or custody or under whose control the textile undertaking or any part thereof may be immediately before the appointed day, shall on the commencement of this Act, deliver the possession of the said undertaking or such part thereof, as the case may be, to the Custodian, or where no Custodian has been appointed, to such other person as the Central Government may direct.

(7) For the removal of doubts, it is hereby declared that any liability incurred by

a textile company in relation to the textile undertaking before the appointed day shall be enforceable against the concerned textile company and not against the Central Government or the Custodian".

6. The textile undertaking or textile undertakings are defined in section 2(d) of the Act of 1983 which read thus:

"2(d) "textile undertakings" or "the textile undertaking" means an undertaking second column of the First Schedule;

7. The appointed day is defined in section 3(a) to mean the date on which the Act comes into force and admittedly appointed day is 18-10-1983.

8. In *National Textile Corporation (South Maharashtra) Ltd. v. Shramik Janata Union and others*, 1990 M.L.J. 1315, one of the issues before the Division Bench of this Court was payment of half of the backwages for the period from 30th April, 81 to 18-10-1983 to the workman and this Court while construing the provisions of the Act of 1983 held that the workmen is entitled to recover the amount of half backwages for the period from 30th April, 81 to 18-10-83 from the erstwhile textile mill and not from the National Textile Corporation. The Division Bench of this Court extensively considered the rival contentions, the citations relied upon by the parties, and the relevant provisions of law and in paragraph-27 of the report held thus:

"27. The scheme of the Act, therefore, appears to be that the undertakings whose management is taken over are not to be hampered by any past liabilities which may have been incurred. If decrees and orders or awards which have been obtained in connection with such past liabilities are enforced against the properties of the textile undertakings whose management is taken over, the entire Act will become infructuous. In this context if we look at section 3(7), it provides that any liability incurred by a textile company before the appointed day shall not be enforced against the Central Government or the Custodian. The Custodian is defined u/s 2(b) as "the person appointed u/s 4 to take over the management of the undertakings". When, therefore, there is a prohibition against the enforcement of prior liabilities against the Custodian, it is a prohibition against the enforcement of such liabilities against a person who is in custody of assets and properties of the textile undertaking as described in section 3(2) read with section 4. There is no question of the Custodian being personally liable or being protected against any personal liabilities in such a situation. In fact, the Custodian may be a company incorporated under the Companies Act, 1956 as the petitioners are, in the present case. Therefore, this prohibition must be considered as a prohibition against enforcement of such prior liabilities against the assets and properties of the textile undertakings which are in the hands of the Custodian under the provisions of the said Act. The contention, therefore, that the prior liabilities of the workmen incurred before the appointed day can be enforced in execution against the properties and assets of the textile undertaking in charge of the Custodian under the said Act, must be

rejected".

9. Again in National Textile Corporation (South Maharashtra) Ltd. v. Bhagirathi Gopal Martal & others, the Division Bench of this Court reiterated legal position that the liability incurred prior to the taking over is enforceable against the erstwhile company and cannot be fastened on N.T.C. In Bhagirathi Gopal Martal, the question involved before the Division Bench related to liability to pay gratuity to workmen which arose before taking over of the undertaking and the Division Bench with reference to section 3(7) of the Act of 1983 held thus:

"6. The Textile Mill herein will come in the category of factory. The employer in the first instance is a person who has ultimate control over the affairs of the factory. Where the said affairs are entrusted to any other person, then such person called by any name, be treated as employer. In the present case when the workman retired, the owners of the Textile Mill were certainly the persons who were in ultimate control over the affairs of the factory. It is they who were the employers. Assuming for the sake of arguments that the Custodian herein could also be treated "employer" and made liable to make payment, in the absence of a dispute that the liability in respect of the gratuity accrued prior to the appointed date, section 3(7) of the Act will still apply. It may not be out of place to mention here that the lower authorities have given categorical findings that the employer was the Textile Mill and the liability had accrued prior to the appointed date. These findings are neither seriously challenged before us nor are we inclined to interfere with them in writ jurisdiction.

7. No doubt, section 14 of the Gratuity Act is a non obstante provision and is couched in a very wide language. However, section 7 of the Taking Over Act is also a non obstante provision and is couched in an equally wide language. The Gratuity Act is a general Act, applicable to all categories of establishments falling therein; whereas the Taking Over Act is a special Act applicable to sick textile mills only the management of which is undertaken over by the Central Government under that Act. That apart, the Gratuity Act is an enactment of 1972; whereas the Taking Over Act is an enactment of 1983. It has been held by the Supreme Court in the case of Shri Sarwan Singh and Another Vs. Shri Kasturi Lal, that where there are non obstante clauses in two enactments, the latter in point of time should prevail. Further it cannot be overlooked that the object of Taking Over Act is to ensure the smooth running of the Mills. For this purpose the Act provides for a number of powers which the Central Government is entitled to exercise including nullifying or modifying the effects of a number of Acts including Minimum Wages Act. The whole idea is that the Mill should run so that the workmen continue to remain employed. Thus in view of the policy of the Taking Over Act as well as the fact that in point of time the Taking Over Act is latter we hold that non obstante clause of section 14 of the Gratuity Act, assuming it was applicable, will not apply because of sub-section (7) of section 3 read with section 7 of the Taking Over Act".

10. Recently, the Apex Court in Rashtriya Mill Mazdoor Sangh v. National Textile

Corporation (South Maharashtra) Ltd. and others was dealing with the question whether in respect of textile undertaking whose management has been taken over under the Act of 1983, the N.T.C. was liable for the gratuity payable to an employee who had ceased to be in employment prior to taking over of the management of the undertaking and answered the question in the negative and held thus:

"10. The submission is that since the Act has been enacted to protect the interest of the workmen employed in the textile undertakings whose management has been taken over, sub-section (7) of section 3 should be construed in a manner that the interests of the workmen are protected and are not jeopardised and therefore, sub-section (7) of section 3 should be confined in its application to liabilities other than the liabilities relating to the dues of the workmen in respect of the gratuity payable under the Payment of Gratuity Act. We find it difficult to accept this contention. It is one of the cardinal principles of the statutory construction that where the language of an Act is clear, the Preamble cannot be invoked to curtail or restrict the scope of the enactment and only where the object or meaning of an enactment is not clear the Preamble may be resorted to explain it. (See: *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, and *Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar*, . Here we find that the language of sub-section (7) of section 3 is clear and unambiguous in as much as in the said provision it has been declared that any liability incurred by the textile company in relation to the textile undertaking before the appointed day shall be enforceable against the concerned textile company and not against the Central Government or the Custodian. The words "any liability" in sub-section (7) of said section 3 are of wide amplitude to cover every liability that was incurred by the textile company in relation to the textile undertaking before the appointed day. Moreover, the statement in the Preamble on which reliance has been placed by the learned Counsel for the appellant, regarding giving protection to the interests of the workmen employed therein, also indicates that what was intended was to reorganise and rehabilitate the textile undertakings whose management was being taken over with a view to prevent the closure of such undertakings and consequent unemployment of workmen and thereby protect the interests of the workmen who were employed in the textile undertaking at the time of the taking over of the management of the said undertaking. The said statement in the Preamble does not refer to persons who had ceased to be in employment of the textile undertaking on the date of such taking over of the management. We are, therefore, unable to hold that sub-section (7) of section 3, must be so construed as to exclude its applicability in respect of liability for payment of gratuity under the payment of Gratuity Act".

11. That the liabilities in respect of the period prior to the taking over of the management of the textile undertaking are not taken over by the N.T.C. is also borne out by the Textile Undertakings (Nationalisation) Ordinance, No. 6 of 1994 promulgated by the President on June 27, 1995. The said Ordinance provides for the acquisition and transfer of the textile undertakings specified in the First

Schedule, of the said Ordinance. Respondent No. 3 is one of the textile undertakings referred to in the said Ordinance. u/s 3 of the said Ordinance, the right, title and interest of the owner in relation to every textile undertaking mentioned in the First Schedule to the Act stands transferred and vests absolutely in the Central Government on the appointed day, i.e. April 1, 1994. u/s 5 of the said Ordinance, every liability, other than the liability specified in sub-section (2), of the owner of a textile undertaking, in relation to the textile undertakings in respect of any period prior to the appointed day shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the N.T.C. Clause (c) of sub-section (2) of section 5 refers to liability arising in respect of wages, salaries and other dues of the employees of the textile undertaking in respect of any period after the management of such undertaking had been taken over by the Central Government. Clause (a) of sub-section (3) of section 5 of the said Ordinance is similar to that contained in sub-section (7) of section 3 of the Act and declares that as expressly provided in the said section or any other section of the said Ordinance, no liability other than the liability as specified in sub-section (2) in relation to a textile undertaking in respect of any period prior to the appointed day shall be enforceable against the Central Government or the N.T.C. Section 8 of the said Ordinance provides that the owner of every textile undertaking shall be given by the Central Government, in cash and in the manner as specified in Chapter VI, for the transfer to and vesting in it, under sub-section (1) of section 3, of such textile undertaking and the right, title and interest of the owner in relation to such textile undertaking, an amount equal to the amount specified against it in the corresponding entry in column (4) of the First Schedule. Section 20 of the said Ordinance requires every person having a claim against the owner of a textile undertaking to prefer such claim before the Commissioner and section 21 prescribes the principles regarding priority of claims arising out of the matters specified in the Second Schedule. In the Second Schedule to the said Ordinance the liability in respect of the textile undertakings are divided in two parts; Part A deals with post-takeover management period and contains categories I and II; and Part B relates to pre-take-over management period and contains categories III to VI. Category III relates to arrears in relation to provident fund, salaries and wages and other amounts due to the employee. By Clause (a) of section 21 categories I and II have been given precedence over category III which means that the liabilities for the post takeover management period have priority over the arrears in relation to provident fund, salaries and wages and other amounts due to the employee in relation to the pre-take-over management period. These provisions are similar to those contained in section 21 of the Sick Textile Undertakings (Nationalisation) Act, 1974. In *M. Asghar Vs. Union of India (UOI) and Others*, the said provisions giving lower priority to the amounts due to the employees in relation to the pre-take-over period, was challenged before this Court. The said challenge was negated by the Court and it was observed (Para 3 of A.I.R.):

"The distinction made between the liabilities of the post-take-over management

period and the pre-take-over management period is prima facie sound as the former liabilities are those incurred pursuant to the public management of the undertaking under the statute, while the latter liabilities are those incurred in the course of the private management by the owner of the undertaking".

The provisions of the Ordinance No. 6 of 1995 also show that the liabilities for the period prior to the take over of the management are to be discharged from the amount payable to the owner of the textile undertaking for the acquisition of the undertaking and not by the N.T.C. It is, therefore, not possible to uphold the contention urged on behalf of the appellant that N.T.C. is liable in respect of the gratuity amount payable under the Payment of Gratuity Act to respondent No. 2."

11. Mr. Kochar, the learned Counsel for workmen sought to distinguish the aforesaid decision of the Apex Court by urging that before the Apex Court the employee had ceased to be in employment of erstwhile company prior to the taking over and in that fact situation it was held that N.T.C. was not liable for the gratuity payable to such employee. I am afraid the distinction drawn by the learned Counsel for workmen is superfluous and without any substance. Whether the employee ceased to be in employment prior to taking over of the management of the undertaking under the Act of 1983 or continued to be in employment after taking over of the management of the undertaking with the N.T.C. is not a circumstance of relevance, so far as erstwhile liability prior to the taking over of the management is concerned and no distinction on the face of clear provision of section 3(7) of the Act of 1983 could be drawn. By virtue of section 3(7), the liability incurred by the erstwhile textile company prior to taking over is only enforceable against that company and not against the Central Government or the Custodian. In my view, for the arrears of wages for the period from April, 83 to 18-10-83 which is past liability, such liability cannot be foisted on the N.T.C. even if the workman continued to be in employment with N.T.C. after taking over and such liability is only enforceable against the erstwhile company. Similarly, for the bonus as well as leave wages prior to the appointed day i.e. 18-10-83, the liability is only enforceable against the erstwhile company and not against the Central Government and the Custodian. Section 3(7) of the Act of 1983 which has a bearing on the past liabilities of erstwhile company in relation to textile undertaking admits of no doubt or ambiguity.

12. The contention of Mr Kochar, the learned Counsel for the workmen that the arrears of wages, bonus and leave wages prior to appointed day payable to the workmen are not covered in the expression, "any liability" u/s 3(7) and, therefore, the N.T.C. is liable is noted to be rejected. The expression "any liability", occurring in sub-section (7) of section 3 is an expression of wide connotation and import and it covers and comprehends every pecuniary obligation that may have been incurred by the textile company in relation to the textile undertaking before the appointed day by way of employment, business, commercial or trading activity and is not confined to commercial, business or such like liability as sought to be urged by Mr. Kochar. If the erstwhile textile

company did not pay the wages which became due to the workmen, prior to its taking over, obviously it was pecuniary obligation of the erstwhile company and such obligation has to be discharged by the erstwhile company u/s 3(7) of the Act of 1983. The Apex Court in Rashtriya Mill Mazdoor Sangh has held the gratuity payable to a workman prior to the appointed day is a liability incurred by erstwhile textile company, a fortiori the outstanding wages to a workman prior to taking over is also a liability incurred by the erstwhile textile company. The discussion by the Apex Court in paragraph 10 and 11 of the report in Rashtriya Mill Mazdoor Sangh case is complete answer to the contention of Mr. Kochar, and, I have no hesitation in holding that the claim made by the workmen in the application u/s 33-C(2) relating to arrears of wages, bonus and leave wages prior to taking over is covered under the expression "any liability" u/s 3(7) of the Act of 1983. In view of my discussion aforesaid, the order passed by the Labour Court cannot be sustained and has to be set aside.

13. The writ petition is accordingly allowed. The order passed by 2nd Labour Court, Bombay on 30th June, 1994 in Application (IDA) No. 80 of 1988 is set-aside. Rule is made absolute in aforesaid terms. No costs. Certified copy expedited.

14. Petition allowed.