
(1969) 03 BOM CK 0014

In the Bombay High Court

Case No : Special Civil Application No's. 1945 and 2023 of 1966

Shankarrao Maruti Nagane

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-03-1969

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 114, 42, 46, 98

COMPANIES ACT, 1956 — Section 445, 457

Constitution of India, 1950 — Article 14, 19, 226, 227, 31

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2

Citation : (1970) 72 BOMLR 77

Hon'ble Judges : Patel, J;Madon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Madon, J.—As these two petitions under Article 226 of the Constitution raise common questions and impugn the same action of the respondent, the State of Maharashtra, we propose to dispose of them by one judgment.

2. Narsing-Girji Manufacturing Company Limited (hereinafter referred to as "the Company") is now in liquidation, owned textile mills at Sholapur. Certain disputes between the employees of all textile mills at Sholapur including the Company and their employees were referred for adjudication under the Bombay Industrial Relations Act, 1946. Reference No. 10 of 1946 related to the claim of operatives, while references Nos. 3 to 8 of 1948 related to the claims of the clerical staff. Awards in both those references were made in 1948. By the said awards, dearness allowance at a certain rate was directed to be paid by these textile mills to their employees.

3. On August 8, 1957, the Company closed down its mills because it found it financially impossible to work them. Two winding up petitions were thereafter filed in this Court, being C.A. Nos. 2201 of 1957 and 2396 of 1957, and in the said petitions a winding up order was made on December 10, 1957 and the

Official Liquidator was appointed liquidator of the Company. Thereafter, with a view to alleviate the hardship of the workmen of the Company's mills who had been rendered unemployed since the date of the closure of the mills, the State Government desired to take on lease the lands, buildings, structures, machinery and plant of the said mills situate in the mill compound for the purpose of running a textile mill. A scheme for the said purpose was presented to the Company Judge, and by the order dated January 16, 1958, the same was sanctioned. By the said order the Official Liquidator was authorised to let to the Government the Immovable properties, plant and machinery of the said mills situate in the mill compound upon terms and conditions contained in the said scheme, and the Government agreed to pay to the liquidator a nominal rent of rupee one per month as consideration for the said lease. Clauses (5), (4) and (5) of the said scheme are material and require to be quoted in full. These clauses are as follows:

3. Government will not be held responsible for payment of any retrenchment compensation or any other compensation to any labourers or employees engaged by the previous management of the Mills Company or by the Official Liquidator nor shall Government be bound to re-employ such labourers and employees. If any retrenchment or other compensation is payable or becomes payable in respect of the service under the previous management the same shall not be paid or discharged by Government.

4. In the event of Government taking over the services of any labourers or employees who were engaged by the previous management, the taking over of such services will be on the basis of a new contract of employment between Government as the employers and such labourers and workmen as employees during the subsistence of the lease.

5. The labourers or employees employed by Government shall have no claim against the Official Liquidator and in the event of sale by the Official Liquidator of the demised premises such sale shall be free from the claims, if any, of such labourers and workmen employed by Government in respect of the period during which Government are in possession of the demised premises as Lessees.

Possession of the mills was handed over by the Official Liquidator to the Government on January 24, 1958. The Government thereafter had to incur considerable expenditure for repairing the machinery and plant and for partly replacing it so as to put the mills in a running- condition, and the Government commenced running the mills only from March 1, 1958. Meanwhile, as the draft lease was not executed, by an order dated November 19, 1958, the Company Judge authorised the Official Liquidator to grant a licence to the Government to use the Immovable properties, plant and machinery authorised to be demised by the said order dated January 16, 1958. The licence was to be for an indefinite period determinable and terminable either by the Official Liquidator or the Government by a six weeks' previous notice in writing. The licence was granted upon the same terms and conditions as contained in the said order dated

January 16, 1958, with certain modifications by which the said rent of rupee one was now to be paid as and by way of licence fee.

4. On December 2, 1958, the Bombay Relief Undertakings (Special Provisions) Act, 1958 (hereinafter referred to as "the Relief Undertakings Act") came into force. It was amended in 1960. The Relief Undertakings Act makes temporary provisions for industrial relations and other matters to enable the State Government to conduct, or to provide loan, guarantee or financial assistance for the conduct of, certain industrial undertakings as a measure of preventing unemployment or of unemployment relief. Under Section 3(7), if at any time it appears to the State Government necessary to do so, the State Government may, by notification in the Official Gazette, declare that an industrial undertaking specified in the notification, whether started, acquired or otherwise taken over by the State Government and carried on or proposed to be carried on by itself or under its authority, or to which any loan, guarantee or other financial assistance has been provided by the State Government shall, with effect from the date specified in such notification, be conducted to serve as a measure of preventing unemployment or of unemployment relief. On such notification being made, the undertaking is to be deemed to be a relief undertaking for the purposes of the said Act. Section 3(2) prescribes the period for which such notification is to have effect and confers powers upon the Government to renew it by like notifications from time to time for further periods originally not exceeding six months at a time and by a subsequent amendment not exceeding twelve months at a time. The maximum aggregate period for which the notification can be renewed was originally two years. By subsequent amendments it is now fifteen years. In order to focus attention upon the controversy between the parties, it will be convenient at this stage to reproduce the material provisions of Sub-section (7) of Section 4:

Notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever, the State Government may, by notification in the Official Gazette, direct that-

(a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under Sub-section (2) of section 3-

(i) all or any of the laws in the Schedule to this Act or any provisions thereof shall not apply (and such relief undertaking shall be exempt therefrom), or shall, if so directed by the State Government, be applied with such modifications (which do not however affect the policy of the said laws) as may be specified in the notification ;

(ii) all or any of the agreements, settlements, awards or standing orders made under any of the laws in the Schedule to this Act, which may be applicable to the undertaking immediately before it was acquired or taken over by the State Government or before any loan, guarantee or other financial assistance was provided to it by, or with the approval of, the State Government for being run as a relief undertaking, shall be suspended in operation, or shall, if so directed by

the State Government, be applied with such modifications as may be specified in the notification ;...

Amongst the Acts mentioned in the Schedule to the Relief Undertakings Act are the Industrial Disputes Act, 1947 and the Bombay Industrial Relations Act, 1946.

5. On March 8, 1959, the State Government issued a notification under Sections 3 and 4 of the Relief Undertakings Act in respect of the said mills. Fresh notifications were issued from time to time. All except the first notification are in identical terms. In view of the arguments advanced at the Bar on the construction of these notifications, it will be convenient to reproduce the text of the first and one of the subsequent notifications. The notification dated March 8, 1959 provided as follows:

In exercise of the powers conferred by Sections 3 and 4 of the B. R. Undertakings (S.P.) Act, 1958

(Bom. XCVI of 1958)

the Government of Bombay hereby

(a) Declares that the Industrial Undertaking called the Narsing Girji Mills (U.R.S.) Sholapur, which has been taken over by the State Govt. and is carried on by itself, shall for a period of one year commencing on the 28th day of Feb. 1959 and ending on the 27th day of Jan. 1960 be carried on to serve as a measure of unemployment relief (the said undertaking being hereinafter referred to as the said relief undertaking) and

(b) Directs that in relation to the said relief undertaking and in respect of the said period of one year for which that relief undertaking continues as such the provisions of Chapter VA of the Industrial Disputes Act, 1947 (XIV of 1947) shall not apply and the said relief undertaking shall be exempt from the provisions of Chapter VA aforesaid.

By order and in the name of the Governor of Bombay.

The notification dated March 9, 1961, was in the following- terms:

In exercise of the powers conferred by Sections 3 and 4 of the B. R. Undertakings (S.P.) Act, 1958

(Bom. XCVI of 1958)

the Government of Maharashtra hereby

(a) Declares that the industrial undertaking called the Narsing Girji Mills (U.R.S.) Sholapur, which has been taken over by the State Govt., and is carried on by itself, shall for a period of one year commencing" on the 28th day of Feb. 1961 and ending on the 27th day of February 1962 be carried on to serve as a measure of unemployment relief (the said undertaking being hereinafter referred to as the said relief undertaking) and

(b) Directs that in relation to the said relief undertaking and in respect of the further period for which that relief undertaking continues as such the provisions of Sub-section (i) of Section 42, clauses (ai), (i), (ii) and (iii) of Sub-section (2) of Section 46 and Section 98 of the Bombay Industrial Relations Act, 1946 (Bom XI of 1947) and of Chapter VA of the Industrial Disputes Act 1947 (XIV of 1947) shall not apply and the said relief undertaking shall be exempt from the aforesaid provisions of the Bombay Industrial Relations Act and from the provisions of Chapter VA of the Industrial Disputes Act.

By order and in the name of the Governor of Maharashtra.

6. After the Government restarted the said mills, for the first three months it paid the workmen employed by it basic wages and dearness allowance which was two-third of what the workers would have received under the aforesaid awards. Later, however, the difference in the basic wages was made good to the workmen while a slight increase in the dearness allowance was made. An increase at the rate of Rs. 6 per month in the basic wages was also made with effect from January 1, 1960 and an additional increase at the rate of Rs. 2 per month with effect from January 1, 1962. This aggregate increase of Rs. 8 per month was, however, discontinued with effect from October 1963. By a notice dated October 28, 1965, the Government intimated to the workmen of the said mills that the dearness allowance payable to the workmen would not exceed Rs. 2.76 P. with effect from October 1965. By the said notice it was further intimated that when the mills started making adequate profits, the Government would consider restoring the reduction made in the dearness allowance by the said notice. The effect of this notice is that dearness allowance for one working day is reduced by one rupee. It is the case of the respondent that the financial position of the mills was such that the respondent had to effect this measure of economy, as otherwise the mills would have been compelled to close down and the workmen again rendered unemployed.

7. Meanwhile, the State Government decided to purchase the Immovable properties, plant and machinery of the said mills and to run it as its own mills instead of continuing to run it either as a licensee or as a lessee. By an order dated November 18, 1965, made in Company Application No. 13 of 1965, the Company Judge authorised the Official Liquidator to accept the State Government's offer to purchase the assets of the Company for a sum of Rs. 50,00,000, and by a conveyance dated August 12, 1966, all the Immovable properties of the said Company situate in the city of Sholapur and all the fixtures, fittings and machinery and plant, etc. of the said mills were conveyed and transferred to the Government by the Official Liquidator.

8. The petitioners in both these petitions challenge the action of the Government in making the aforesaid reductions in basic wages and dearness allowance. The petitioners in Special Civil Application No. 1945 of 1966 are two workmen employed in the said mills, while the petitioners in Special Civil Application No. 2023 of 1966 are the Girni Kamgar Union which represents the workmen of the

said mills as also two other workmen of the said mills. By these petitions, the petitioners seek a declaration that they are entitled to the restoration of the cut of rupee one in the dearness allowance introduced by the said notice dated October 28, 1965, as also the restoration of the cut of Rs. 8 per month made from October 1963 in their basic wages, and for consequential orders and directions.

9. The main contention of the petitioners is that u/s 114(7) of the Bombay Industrial Relations Act, an award is binding not only upon all persons who are parties thereto but in the case of an employer, who is a party to such award, also upon his successors in interest, heirs or assigns in respect of the undertaking as regards which the award is made. As the Company was a party to the said awards, the said awards also became binding upon the Official Liquidator and by a necessary corollary upon the State of Maharashtra, and therefore the State of Maharashtra was not entitled to reduce the rate of dearness allowance provided under the said awards or to effect a cut in the basic wages, without issuing a notification u/s 4(i) of the Relief Undertakings Act suspending the operation of the said awards. As admittedly no such notification was issued, the reduction is without any authority of law and not binding upon the workmen, and the State Government is bound to pay to the workmen basic wages at the rates prevailing prior to October 1963 and dearness allowance in accordance with the rates provided by the said awards.

10. This contention is based upon two erroneous assumptions, neither of which have any foundation in facts. These assumptions are that (1) the services of the workmen with the Company continued even after the Company was ordered to be wound up, and (2) the business of the Company was continued by the Official Liquidator. u/s 4(1)(a) of the Relief Undertakings Act, the agreements and awards whose operation the State Government is empowered to suspend are the agreements and awards which were applicable to the undertaking in question immediately before it was acquired or taken over by the State Government for being ran as a relief undertaking. Thus, before the State Government can modify or suspend by a notification u/s 4 the operation of an award, the award should have been in operation immediately before the undertaking was acquired or taken over by the State Government for being run as a relief undertaking-. The first question which then arises for consideration is whether the said awards continued to be operative after the Company was ordered to be wound up so as to bind the Official Liquidator. The answer to this question depends upon whether the workmen of the Company continued in service of the Official Liquidator. The said awards postulate continuance of employment, for a provision for payment of wages and dearness allowance cannot apply after a contract of employment has come to an end. Under Sub-section (3) of Section 445 of the Companies Act, 1956, a winding up order is to be deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued. Thus, unless the business of a company is continued, the winding up order as from its date would operate as a notice of discharge to its

employees resulting in termination of their services. In the present case, admittedly the mills were closed and were not running since August 8, 1957. The Company was ordered to be wound up as it was unable to pay its debts and was insolvent and had failed to comply with the statutory notices served upon it. At the date of the winding up order, not only was there no business of the Company in existence for the Official Liquidator to continue but no possibility of the business of the Company being revived. The Official Liquidator did not restart the mills. Thus the business of the Company was not continued by the Official Liquidator. This position was accepted by the workmen themselves as is borne out by the fact that the workmen filed with the Official Liquidator a claim which was registered in liquidation proceedings as claim No. 323 in the aggregate sum of Rs. 41,91,599-0-3 made up of a sum of Rs. 1,31,009-5-3 for wages from August 1, 1957, to August 6, 1957; Rs. 5,24,103-0-3 for one month's notice pay; Rs. 32,42,812-0-4 for retrenchment compensation; Rs. 2,93,651-11-10 for earned leave with pay and a sum of Rs. 23-4-7 for some extras. It is admitted that these claims have been accepted by the Official Liquidator. The very fact that the workmen claimed one month's notice pay as also retrenchment compensation and the claims were allowed would show that the workmen's services were treated as having come to an end on the date of the winding up order. As the business of the Company was not continued by the Official Liquidator and as the workmen's services stood discharged as from the date of the winding up order, the said awards did not subsist or continue to be binding upon the Company in Liquidation or the Official Liquidator.

11. It is, however, contended on behalf of the petitioners that the business of the Company was continued by the aforesaid orders of the High Court made on January 16, 1958 and November 19, 1959. In support of this contention, reliance is placed upon Section 457 of the Companies Act, 1956, which defines the powers of the Official Liquidator, and in particular upon cl. (6) of Sub-section (7) thereof. Under that clause, the Court may sanction the carrying on of the business of a company by the Official Liquidator so far as may be necessary for the beneficial winding up of the company. There can be no dispute that such a power is provided for by the Companies Act, but the existence of a power in the Official Liquidator to carry on a company's business does not mean that in this particular case the business of the mills was in fact carried on by the Official Liquidator. The business had been closed down effectively for all purposes as from August 8, 1957, without any hope or expectation of the mills ever resuming operations, and there was no business of the mills left for the Official Liquidator to carry on. Under the said order dated January 16, 1958, what was sanctioned to be let out to the Government was not the running business of the mills but merely certain properties, moveable and immovable, belonging to the mills. The real object of sanctioning the grant of the lease, and subsequently the licence, to the Government was to provide to the workmen relief from unemployment, and there was no benefit accruing therefrom to the assets of the Company in liquidation. Save and except that the Government agreed to pay the rates, taxes,

assessments and outgoings, all that the Government had to pay to the Liquidator was a sum of rupee one by way of consideration. It is no doubt true, as urged by the petitioners, that the Government also agreed to pay to the Official Liquidator a certain amount by way of depreciation after setting off, as provided in the said orders, the expenditure on major items of repairs and replacements. This, however, was not part of the consideration received by the Official Liquidator nor any benefit accruing to the assets of the Company, but as the Government would be using the properties of the mills, they would depreciate in value and the sale price which they would ultimately fetch would be thus reduced and it was this resultant reduction in the price which was sought to be made good by this payment. It is also pertinent to bear in mind that on being handed over possession, the Government was unable immediately to start the mills. It had to spend a large amount for repairs to the plant and machinery as well as for replacing several parts of it. It was only thereafter that the mills could be started on and from March 1, 1958. This was then the restarting of the business by the Government itself and not a continuation of the business of the Company. On these facts, it is impossible to hold that either the Official Liquidator or the State of Maharashtra was the successor in interest of the Company.

12. In *Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen*, , the Supreme Court enumerated the following important relevant factors to be considered in determining whether the purchaser of an industrial concern can be said to be the successor in interest of the vendor, namely (p. 1492):

...Did the purchaser purchase the whole of the business? Was the business purchased as a going concern at the time of the sale transaction? Is the business purchased carried on at the same place as before? Is the business carried on without a substantial break in time? Is the business purchased carried on the same or similar to the business in the hands of the vendor ? If there has been a break in the continuity of the business, what is the nature of the break and what were the reasons responsible for it? What is the length of the break? Has goodwill been purchased? Is the purchase only of some parts and the purchaser having purchased the said parts purchased some other new parts and started a business of his own which is not the same as the old business but is similar to it?

The Supreme Court held that the decision of the question must ultimately depend upon the valuation of all relevant factors and it cannot be reached by treating any one of them as of overriding or conclusive significance.

13. Now, are any of the factors held by the Supreme Court to be relevant present in the instant case? The business of the Company was not leased to the Government nor was a licence given to the Government to conduct the business of the Company. The lease agreed to be given to the Government and the licence granted to it was in respect of the Immovable properties, plant and machinery of the mills described in the said orders. The Government also did not purchase the business of the Company as a going concern. When the purchase was made, the

concern was being run by the Government as a licensee and what the Government purchased was the Immovable properties, plant and machinery belonging to the Company. It is true that the Government carried on business at the same place, but that was only natural since it had taken the Immovable properties of the mills on lease and later under a licence. The business was not carried on without a substantial break in time. The break in the continuity of the business was such as to lead to a complete cessation of the business of the Company for a period of seven months and an effective termination of the relationship of employer and employee between the Company and its workmen by reason of the operation of the winding up order. The question of purchase of the goodwill of the Company hardly arises in the present case. The Company was heavily indebted and in insolvent circumstances and its business had closed down. In these circumstances the mills could hardly be said to have any goodwill, let alone goodwill which anyone would pay for and purchase. What really the Government did was to take on licence and subsequently to purchase the properties of a mill which had gone in liquidation, and after effecting repairs and replacements to carry on its own business with such properties. Applying, therefore, the test laid down by the Supreme Court, we find that neither the Official Liquidator nor the State Government was a successor-in-interest of the Company.

14. By way of illustration of the application of the tests laid down by the Supreme Court, we may also refer to a decision of a Division Bench of this Court which was cited at the Bar, namely, *Maharashtra State Electricity Board v. Industrial Tribunal, Bombay* [1965] ii L.L.J. 458. In that case, certain disputes with regard to service conditions between the Poona Electric Supply Company, Ltd., the management of an electric supply undertaking, and its workmen were referred for adjudication to the Industrial Tribunal. During the pendency of the adjudication proceedings the licence of the said company under the Indian Electricity Act, 1910, was revoked by the State Government, and as provided by the Indian Electricity Act, 1910 a substantial portion of the machinery and assets of the said company were purchased by the Maharashtra State Electricity Board and the price thereof was determined in accordance with the provisions of the Indian Electricity Act. The terms of the sale agreement expressly provided that the Board would not be under any obligation to honour or fulfil any contracts in regard to supply of electricity entered into by the said company. Similarly the Board had the option to get the benefit or assignment of contracts and import licences which it might select. The assets were sold free from encumbrances. The Board was under no obligation to take over or employ any of the employees of the said company. The said company alone had to meet all the claims of the employees. On revocation of its licence, the said company terminated the services of all the employees and settled their accounts and paid them retrenchment compensation. The Board, however, had the option to take into service any of the old employees on terms and conditions to be fixed by it. One of the trade unions representing the employees in the said adjudication

proceedings applied that the Board should be impleaded as a party to the said proceedings on the ground that it was a successor-in-title of the company having purchased the business of the said company as a going concern. Overruling the objection of the Board the Industrial Tribunal impleaded the Board as a party to the dispute holding that the agreement between the said company and the Board was in substance a transfer of the company's business to the Board as a going concern and there was continuity and identity of the business and that practically the entire business and all the equipment and machinery were sold to the Board. The Board thereupon filed a petition under Article 227 of the Constitution contending that it could not be held to be a successor-in-interest of the said company. The contention of the Board was upheld by the Court and the order of the Tribunal summoning the applicant to appear as a party to the dispute was set aside. This Court pointed out that the various clauses of the agreement showed that the Board was not the successor in interest of the said company even though there was identity of business and sale of substantial portion of the machinery of the said company. The Board had not taken over the liabilities of the said company or the services of its employees and it had the option to select contracts and orders entered into by the said company. We are fortified by this authority in the conclusion we have reached. In the present case also the terms upon which the mills' properties were authorised to be leased to the Government expressly provide that the Government would not be held responsible for payment of any liability by way of retrenchment compensation or any other compensation to the previous labourers or employees of the Company nor would it be bound to re-employ any such labourers or employees, it was further expressly provided that if the Government did take over the services of any previous labourer or employee, the taking over of such services would be on the basis of a new contract of employment between the Government and such labourer or employee.

15. It was, however, sought to be argued on behalf of the petitioners in Special Civil Application No. 1945 of 1966 that in para. 9 of their petition it is expressly averred that the said awards were binding upon the Government and that this averment is admitted by the respondent in the affidavit in reply. The passage from para. 9 relied upon is the following:

During the first three months the Respondent paid to the workers 2/3 of their total emoluments (viz. basic wages and dearness allowance) in terms of the Award of the Industrial Court at Bombay in Reference No. 10 of 1940 and published in the B.G.G. Part I dated 24th August 1948 at pages 3904 to 3919 and of the Award of the Wage Board for the Cotton Textile Industry in the then Province of Bombay in Reference Nos. 3 to 8 of 1948 as applicable to the employees in the Clerical department.

Paragraph 7 of the affidavit in reply states that the statements made in the said para. 9 are substantially correct. On a perusal of the above passage from the said para. 9 we fail to find any such averment as is contended for. To say that for

the first three months the Government paid to the workers less than what was provided by the said awards would not only not show that the Government accepted the said awards as binding but would on the contrary show that the Government did not accept the provisions of the said awards and made payments at a rate different from that provided under the said awards. In fact, in para. 13 of the affidavit in reply it is expressly averred by the respondent that the respondent having merely purchased the mills and not being the successors-in-title of the previous employers was not bound by the previous awards applicable to the Company which had gone in liquidation. It was next argued that the declaration made by the Government in the notifications under the Relief Undertakings Act contains the statement that "the industrial undertaking called the Narsinggirji Mills (U.R.S.), Sholapur, which had been taken over by the State Government and was carried on by itself" and that this shows that it was not merely the properties of the mills which were taken on lease or licence by the Government but that the Government had taken over the business of the Company. Now, what the Government in fact took over was what was sanctioned to be leased to it by the said order dated January 16, 1958. From the fact that the Government designated as an undertaking the properties, which were to be leased to it and in respect of which licence was given to it, it does not follow that the Government took over from the Official Liquidator the running business of the Company. The Relief Undertakings Act does not provide for taking over of industrial undertakings by the Government. The Act becomes applicable only when the Government has already started, acquired or has otherwise taken over an industrial undertaking and is carrying it on or proposes to carry it on by itself or under its authority. It is only when there is already such an industrial undertaking that the Government is empowered to issue a notification u/s 3 declaring that such undertaking shall be carried on as a measure of preventing unemployment or of unemployment relief. A notification u/s 3 can be issued not only in respect of industrial undertakings taken over by the Government but also industrial undertakings started by it. It can also be issued in respect of industrial undertakings started by the Government with the properties, machinery and plant of an industrial undertaking taken over by it on lease or licence or purchased by it. What the Government takes over must depend upon the terms of the document under which it derives its rights. In the present case, neither under the terms of the lease nor the licence nor the conveyance did the Government take over the running business of the Company or take over the mills as a going concern.

16. Two other authorities were also cited in support of the petitioners' contention that the Official Liquidator was authorised by the Court to continue the business of the Company. These authorities are *In the matter of In Re: Mahalaxmi Cotton Mills Ltd. (in liquidation)*, and *In Re: Kerala Water Transport Corporation Ltd.*, . We fail to see how these cases are in any way relevant, but since they have been referred to and relied upon, we must perforce deal with them. In the case of *Mahalaxmi Cotton Mills Ltd.*, the Official Liquidator of a company was expressly

authorised to carry on the business of the company and to sell it as a going concern. The Regional Provident Fund Commissioner called upon the Liquidator to pay the employer's contribution as provided by the Employees' Provident Funds Act, 1952 and the scheme framed thereunder. The liquidator applied to the Court to determine his liability in that behalf. The Calcutta High Court held that since the Official Liquidator was expressly ordered to carry on the factory and to sell it as a going concern, he must be considered as the person in ultimate control over the affairs of the establishment and thus came within the definition of "employer" contained in Section 2(2) of the Employees' Provident Funds Act, 1952. In the instant case no such direction was given to the Official Liquidator and the Official Liquidator did not in fact carry on the business of the Company. The effect of the absence of any such special directions has also been thus stated in the judgment in that case (p. 201) :

I shall not be understood as holding that where the Liquidator is asked to wind up a factory and close it down, he would still be liable for contribution under this Act. In fact, I have already said that in such an event the Liquidator will not be liable under the Act for contribution because it will no longer be a factory "engaged" in the specified industry. In fact, it will then be disengaged from the industry and closed down.

These observations are directly against the contention of the petitioners. In the Kerala Water Transport Corporation's case also the Official Liquidator was expressly authorised to continue the business of the company, and the question that arose was whether he was liable to pay bonus under the Payment of Bonus Act, 1965.

17. Now that we have held that the said awards did not continue to subsist from the date of the order of winding up and were not binding on the Official Liquidator or the Government, the further contention that the operation of the said awards could only be suspended by the Government by a notification u/s 4 of the Relief Undertakings Act does not arise for consideration. The workmen employed by the Government were new employees engaged by the Government, even though some or all of them may have been previously working in the mills. The terms of the Court's sanction makes it clear that this is not a case of the Government taking over the services of previous employees. In the case of each of the employees engaged by the Government there would be a new contract of employment. The mutual rights and obligations of the parties would be those flowing from such new contract of employment except in so far as they are affected by any statutory provisions. By the relevant notifications issued by the Government u/s 4 of the Relief Undertakings Act, the Government directed that during the period for which these mills were to be run as a relief undertaking the provisions of Chapter VA of the Industrial Disputes Act, 1947 and of Sub-section (1) of Section 42, Clauses (ai), (i), (u) and (in) of Sub-section (2) of Section 46 and Section 98 of the Bombay Industrial Relations Act, 1946 shall not apply in relation to the said mills and the said mills shall be exempt from the aforesaid

provisions. Chapter VA of the Industrial Disputes Act deals with lay-off and retrenchment. Section 42(7) and Section 46(2) of the Bombay Industrial Relations Act prohibit an employer from making any change in any industrial matter mentioned in Schedule II to the said Act. Amongst the industrial matters mentioned in the said Schedule II is "wages including the period and mode of payment". Section 98 of the Bombay Industrial Relations Act sets out the cases in which the commencement or continuance of a lockout would be illegal. The exemption of the mills from the above provisions of Sections 42(7) and 46(7) of the Bombay Industrial Relations Act leaves the Government free to alter the terms of service of any employee engaged by it inter alia with respect to his wages without following the procedure and without complying with the conditions contained in the said sections. Once the mills are exempt from the operation of these statutory provisions, a notice by the Government to the workmen of the mills of a prospective change in the wages would in substance and effect be a notice to the employees that if they desire to continue in the service of the Government, they can only do so upon the new terms as offered and that if they do not so desire to continue, their services would be terminated. Since the provisions of Chapter VA of the Industrial Disputes Act are also directed not to apply, in the event of such termination the rights which the workmen would have against the Government would only be the rights which an ordinary servant, not protected by this industrial legislation, would have against his master on the termination of his contract of employment. It was, however, argued on behalf of the petitioners that Section 4 of the Relief Undertakings Act would apply even to a contract of employment entered into after an undertaking was started or taken over by the Government and even after it was declared as a relief undertaking and, therefore, the terms of such contract of employment could only be varied by a notification issued under the provisions of Section 4. Now, a plain reading of the relevant provisions of Section 4 is sufficient to negative this contention. Sub-clause (n) of Clause {a) of Sub-section (7), upon which reliance is placed in support of this contention, unequivocally speaks of an agreement applicable to the undertaking immediately before it was acquired or taken over by the State Government. It does not speak of an agreement entered into by the State Government after an undertaking is acquired or taken over by the State Government. Further, the agreement which is referred to under the said Sub-clause (ii) is not any agreement but an agreement made under any of the laws specified in the Schedule to the Relief Undertakings Act, which Schedule sets out several Central and State Industrial Acts. The contracts of employment between the Government and the workmen of the mills were entered into after the Government took possession of the properties of the mills and restarted the mills. These contracts of employment were also not made under any of the Acts specified in the Schedule to the Relief Undertakings Act. In this connection, reliance was placed on behalf of the petitioners upon a judgment of a Division Bench of this Court in *Rashtriya Mill Mazdoor Sangh Vs. State of Maharashtra*, . Far from advancing the petitioners' case, this judgment in express terms negated a similar contention which was advanced in that case. The facts of that

case were that under the Industrial Development and Regulation Act, 1951, an authorised controller was appointed of the Model Mills, Nagpur. Thereafter, on March 25, 1960, notifications under Sections 3 and 4 of the Relief Undertakings Act were issued by the State Government as the State Government had provided a loan to the said mills. By these notifications certain provisions of the C.P. and Berar Industrial Disputes Settlement Act, 1947 and Chapter VA of the Industrial Disputes Act, 1947 were directed not to apply for a period of one year. These notifications were continued year after year. In 1948 an award had been made in respect of all textile mills in Nagpur by which dearness allowance at a certain rate was directed to be paid. By an agreement dated November 7, 1964, arrived at as a result of a notice of change given by the employees u/s 32(1) of the O.P. and Berar Act, the terms as to payment of dearness allowance were varied by mutual consent. While this agreement was subsisting, the Government issued a notification on September 23, 1965, purporting to do so under Sections 3 and 4 of the Relief Undertakings Act by which the provisions of Sub-section (1) of Section 42 and Clauses (ai), (i), (ii) and (Hi) of Sub-section (2) and Sub-sections (2), (3) and (5) of Section 46 of the Bombay Industrial Relations Act so far as they related to change in the terms of the award or, as the case may be, the agreement applicable to the said relief undertaking relating to payment of dearness allowance were directed not to apply. The petitioners challenged the validity of the said notification. They contended that there was no power in the State Government to suspend the operation of an agreement entered into after an undertaking was declared a relief undertaking by a notification u/s 3. It was argued on behalf of the Government that though the original loan was advanced by the Government prior to March 1960 and the first notification was issued thereafter on March 25, 1960, prior to the issue of the impugned notification dated September 23, 1965, a further loan had been advanced by the Government and this entitled the Government to suspend the operation of an agreement entered into prior to the date of such fresh loan. This contention was negatived by the Division Bench. The Division Bench held that the point of time referred to in Section (4)(1)(a)(ii) is the date of acquisition or taking over of the undertaking or payment or guarantee of the financial assistance which may be provided to it by or with the approval of the State Government, and this must necessarily refer to the first time when such loan, guarantee or assistance was given or approved of by the State Government. In that case the Division Bench construed Sub-clause (ii) of Clause (a) of Section 4(7) in the same way as we have done. Further, in that case the agreement in question was not an ordinary contract entered into between the employer and the employee but was an agreement to which Section 32 of the C.P. and Berar Industrial Disputes Settlement Act applied. The notification under Sections 3 and 4 did not exempt the provisions of that section. On this ground also, the Division Bench held that said notification to be invalid. In the case before us, the agreements which have been varied are the agreements of employment entered into between the Government and the employees after the Government took over the properties of the mills and restarted the mills and not agreements which were in existence at

the date of the taking over of the mill's properties. Nor were these agreements protected agreements as the agreement in the case of *Rashtriya Mill Mazdoor Sangh v. State of Maharashtra* was.

18. It was next argued on behalf of the petitioners in Special Civil Application No. 2023 of 1966 that under the ordinary law of master and servant, an employer has no right to alter the terms of service though he may terminate the contract of employment and that such a right was for the first time conferred upon an employer by Section 42(7) of the Bombay Industrial Relations Act and that since by the notifications issued from time to time by the respondent the provisions of Section 42(7) were directed not to apply and the relief undertaking was exempt from the said provisions, the State Government had no right to alter the terms and conditions of the service of its employees. "We fail to understand this argument. It is not as if Section 42(7) of the Bombay Industrial Relations Act for the first time created a right in an employer to alter or vary the terms and conditions of service of an employee. What that sub-section does is to put restrictions on the exercise of that right and prohibits any change in the terms and conditions of the service of a workman with respect to matters specified in Schedule II to the Bombay Industrial Relations Act except in accordance with the procedure prescribed by the Bombay Industrial Relations Act. As we have pointed out above, a notice intimating to the employees that they would be continued in service after a particular date upon altered terms really amounts to an offer to them of a new employment upon different terms which the workmen are at liberty either to accept or reject. If they choose not to accept, they will have their rights under the ordinary law of master and servant against the employer to receive damages for termination of their services which, on well-settled principles, would ordinarily be one month's salary.

19. The petitioners in Special Civil Application No. 1945 of 1966 next challenged the constitutionality of Section 4 of the Relief Undertakings Act on the ground that it was violative of Articles 14, 19(1)(i) and 31. It was submitted that the power conferred upon the State Government by that section to direct that the provisions of certain industrial legislation should not apply to a relief undertaking was discriminatory as between the employees of that undertaking and employees in similar undertakings which were not relief undertakings. It is undoubtedly true that by Section 4. power is conferred upon the Government to treat the workers of a relief undertaking differently from the workers of other undertakings. We, however, fail to see this difference in the light of such discrimination as would be violative of Article 14. The workmen of a relief undertaking stand on a different footing from the workmen of an ordinary industry which is a running concern. But for the Government's intervention in taking over and running the undertaking, the workmen of a relief undertaking would have been jobless and without employment. The Relief Undertakings Act was passed specially to provide such workmen with a means of subsistence and livelihood. The Government is under no legal obligation to provide employment for such workmen. It does so as part of its scheme of social legislation and for the benefit of workmen. The

Government takes over and runs an undertaking as a relief undertaking—obviously only when, that undertaking is not in a financial position to run and, if not already closed down, would close down in course of time rendering all its employees without job. The provisions of Section 4 provide a safeguard to the Government against the demands of the workmen for whose benefit the relief undertaking is being conducted. The position of a relief undertaking is basically different from that of a normal ordinary undertaking run on business lines and for the earnings of profits. We have thus here a classification based on a rational distinction having a reasonable relation to the object sought to be achieved by the Relief Undertakings Act between the workmen employed in a relief undertaking and those employed in other similar undertakings, and there can be no discrimination in treating these two classes differently. So far as the contention that Section 4 is violative of Article 19(1)(i) is concerned, the submission is that Section 4 confers upon the Government the right to curtail or modify the benefits or rights to which the workmen would be entitled under an award or a contract. Since we have held in the present case that the awards did not continue to subsist, this point does not arise for consideration. Even otherwise, we see no force in this contention. Bearing in mind the true purpose for which the Relief Undertakings Act was passed and the object which it seeks to achieve, assuming there are any restrictions as contended, in our opinion, they are eminently reasonable. It is also argued that these restrictions are imposed without any compensation being paid to the workmen and, therefore, Article 31 is infringed because the workers are deprived of their right to continue to receive in future the wages which they were entitled to previously without any compensation being paid to them. Now, the workmen have no right to continue to receive the same wages for all times. It is not as if the Bombay Industrial Relations Act confers any such right upon the workmen. That Act also provides a machinery for altering the terms of service. All that a notification u/s 4 does is to relieve the Government of the necessity of resorting to this machinery. This cannot bring the case under Article 31. Even otherwise, we fail to see what relevance Article 31 has. It was next argued that Article 31 is infringed because by the notifications issued by the Government u/s 4, the workers are deprived of their right to receive retrenchment compensation in respect of the services put in by them with the Company. This argument is based on a fallacy. The notifications u/s 4 have nothing to do with the right of the workmen to receive from the Company's assets in the hands of the Official Liquidator retrenchment compensation in respect of the termination of their service with the Company. The workmen, in fact, have filed their claims with the Official Liquidator which includes a claim for one month's notice pay and for retrenchment compensation. These claims have been accepted by the Official Liquidator. The terms of the Court's order upon which the mills' properties were taken over by the Government expressly provided that the liability for retrenchment compensation would be that of the Company in liquidation. The service that is deemed to be retrenched is the service of the workmen with the Company and the workmen are entitled to receive retrenchment compensation from the Company's assets.

This term of the order was, therefore, merely a statement of what the position in law was. What the Government purchased under the deed of conveyance dated August 12, 1966, were also specific properties of the mills and not the entire concern of the Company together with its liabilities. The price paid by the Government constitutes the assets of the Company in liquidation in the hands of the Official Liquidator, and the workmen's claim would be against the said fund subject to the rules governing payment of debts in winding up.

20. Thus, all the contentions advanced before us in both the petitions fail. In the result, both these petitions are dismissed with costs and the rule issued in both these petitions will stand discharged.