

(1989) 01 BOM CK 0025
In the Bombay High Court
Case No : Writ Petition No. 666 of 1986

Vijay Kumar Agarwal and others

APPELLANT

Vs

National Textile Corporation (South Maharashtra) Ltd. and
another

RESPONDENT

Date of Decision : 18-01-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1989) 58 FLR 817 : (1989) 2 LLJ 431

Hon'ble Judges : Chittatosh Mookerjee, C.J.;Kania, J

Bench : Division Bench

Judgement

Mookerjee, C.J.—On and from the 18th day of October, 1983, the management of the textile undertaking by the name of Elphinstone Spinning and Weaving Co. Ltd., Elphinstone Road, Bombay, under sub-section (1) of Section 3 of the Textile Undertakings (Taking Over of Management) Act, 1983, had vested in the Central Government. Prior to the appointed day i.e. 18th October, 1983 the petitioners were working in the registered office of the Elphinstone Spinning and Weaving Mills Co. Ltd., the respondent No. 2, who was the owner of the said undertaking. The principal point in this writ petition is whether or not one and from the said appointed day of 18th October, 1983, the petitioners had continued to remain employees of the said undertaking which is now being managed and administered by respondent No. 1, National Textile Corporation (South Maharashtra) Limited.

2. It is not disputed that after 18th of October, 1983 for the remaining days of the month of October and also for November, 1983, the petitioners had received their pay from respondent No. 1. The petitioners, however, had not been paid their pay since December, 1983. The respondent No. 1 has contested the claim of the petitioners that with the taking over of the management of the undertaking, Elphinstone Spinning and Weaving Mills Co. Ltd., they were not to be treated as employees of the said undertaking of respondent No. 1 on the following three

broad grounds.

3. The first contention on behalf of the respondents is that while by operation of sub-sections (1) and (2) the management of the undertaking including all assets, rights, leaseholds, powers, authorities and privileges of respondent No. 2, 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 vested in the Central Government, the contract of employment of the petitioners stood terminated. According to the respondents, by the operation of law the petitioners did not become the employees of respondent No. 1. The second contention urged on behalf of the respondents was that the petitioners were allegedly serving before the appointed day not in the mill premises of the undertaking, but they were working in the registered office and the said office did not form part of the undertaking. The third submission on behalf of the respondents was that at the time of the taking over of the management of the said undertaking the petitioners had continued to work for the second respondent company and, therefore, the petitioners cannot be construed to have become or continued as the employees of respondent No. 1.

4. So far as the first two contentions raised on behalf of the respondents are concerned they are no longer *res integra* so far as this court is concerned. By the Textile Undertakings (Taking Over of Management) Act, 1983, 13 textile undertakings were taken over. One Miss Yasmine Rustum Lentin who was employed as a clerk in the office of Finlay Mills Ltd., which was also taken over, had filed in this court Writ Petition No. 1240 of 1985 *inter alia* contending that on and from the appointed day the undertaking vested in the Central Government, the National Textile Corporation to which the management of the said undertaking was transferred was bound to continue her in the employment. After contested hearing Pendse J. made the rule obtained by Miss Yasmine Rustum Lentin absolute in terms of prayer (a). The learned Judge *inter alia* rejected the contention on behalf of the National Textile Corporation that on and from the appointed day employment of all workmen employed in the undertaking had automatically come to an end. The learned Judge who decided Writ Petition No. 1240 of 1985 also rejected the contention made on behalf of the National Textile Corporation that the mere fact that at the relevant time the petitioner in the said petition was working in the department would not lead to the conclusion that she was not in the employment of the textile undertaking. The Textile Corporation was not entitled to contend that the services of the petitioner had automatically been terminated on and from the appointed day.

5. Being aggrieved by the judgment and order in Writ Petition No. 1240 of 1985, the National Textile Corporation of India had preferred an appeal being Appeal No. 177 of 1986. S. K. Desai and S. P. Kurdukar. JJ. summarily dismissed the appeal and confirmed the order and judgment of Pendse J. in Writ Petition No. 1240 of 1985. We understand that the appellant Corporation has preferred an

appeal in the Supreme Court against the decision in Appeal No. 177 of 1986 and the same is still pending.

6. Miss Buch, the learned counsel, for the petitioners also placed reliance upon the decision of a Division Bench of this Court (Bharucha & Sugla, JJ.) in *National Textile Corporation v. Rashtriya Mill Mazdoor Sangh & Others*. 1982 CrI.L.R. 482. The Division Bench inter alia rejected the contention raised on behalf of the National Textile Corporation that the workmen of the undertakings taken over under the aforesaid Taking Over of Management Act, 1983, were ceased to be in the employment after the appointed day and they were entitled to only receive the retrenchment compensation u/s 25-F of the Industrial Disputes Act from the respective textile companies. The Division Bench in the said reported case held that Section 25-F of the Industrial Disputes Act was not attracted because the Act in question was enacted inter alia with the object to protect the interest of the workmen who were employed in the undertaking taken over by the Central Government. According to Mr. Shrikrishna, the learned counsel, appearing for respondent No. 1, his client has filed a SLP before the Supreme Court against the said decision. Until the Supreme Court takes a contra view, the decision of this Court cited hereinbefore is binding upon us and it is not open to take a contrary view regarding the effect of taking over of management of textile undertakings under the aforesaid Act. For the same reason we are unable to give any countenance to the submission made on behalf of respondent No. 1 that by operation of sub-section (3) and (4) of Section 4 of the Taking Over of Management Act, 1983, all contracts including the contract of the employment stood terminated on the appointed day and the petitioners shall be deemed to have vacated their posts. As already mentioned, these contentions cannot be accepted in view of the decision of this Court which constituted binding precedents. There is considerable substance in the submission made on behalf of the petitioners that by Section 13 of the Taking Over of Management Act the undertaking having vested in the Central Government, the custodian gets the power to terminate the contract of employment. The legal implication was that unless terminated, contract of employment in relation to the textile undertakings subsisting on the appointed day continued. In the instant case no termination of the contract of employment of the petitioners having been made, they have continued as employees of the undertaking, The Elphinstone Spinning and Weaving Mills Co. Ltd., Elphinstone Road, Bombay.

7. Our attention has also been drawn to a recent decision of the Supreme Court in *National Textile Corpn. Ltd. Vs. Sitaram Mills Ltd. and Others*, . In the said reported decision sub-section (2) of Section 3 of the Textile Undertaking (Taking Over of Management) Act, 1983, was given a wider meaning to include a piece of land upon which the textile company had erected Industrial galas for sale for the purpose of utilisation of their sale proceed for running the textile undertaking. Emphasis was laid upon the interpretation of the Act in a manner which would subserve and carry out its purpose and object. This decision also supports the contention made on behalf of the petitioners that they were employed in the

registered office which was necessary for carrying out the work of the textile undertaking taken over under the Act and, therefore, by operation of law they had continued to be the employees of the said undertaking.

8. Mr. Shrikrishna, the learned counsel appearing on behalf of respondent No. 1 has strenuously urged before us that in the facts of this case, the petitioners cannot be deemed to be continued in the employment and cannot be deemed to be any longer employees of the undertaking managed by respondent No. 1 because according to respondent No. 1, the petitioners have continued to work for the respondent. This contention is seriously disputed by the petitioners. It is unnecessary for us to undertake a prolonged trial to satisfactorily resolve this issue. One facet of this question is that even if the petitioners continued after the appointed day as the employees of the undertakings, they were disentitled from receiving their pay during the period they were allegedly serving with respondent No. 2 or any other third party. Since we do not propose to make any other directing the respondent No. 1 to pay any specific sum, it is unnecessary for us to decide whether with effect from December, 1983 full wages should be paid to each one of the petitioners. In appropriate forum such a claim for payment of the said alleged arrears of pay can be made by the petitioners and it would be open to respondent No. 1 to take appropriate defence as regards its liability to pay to the petitioners full or proportionate amount of pay.

9. We are now unable to allow respondent No. 1 to urge that after the appointed day the petitioners had abandoned and/or left their employment in the undertaking in question. In the first place, such a plea of abandonment or termination by reason of the petitioners allegedly accepting employment elsewhere was not taken in the affidavit-in-reply. Mr. Shrikrishna, the learned counsel, appearing for respondent No. 1 drew our attention to certain annexures to the affidavit-in-reply affirmed by Basant Kumar Kedia on behalf of respondent No. 1. Reliance was also sought to be placed upon the averments and in some of the paragraphs of the said affidavit-in-reply. We are not unmindful of the fact that in paras 3 to 6 of the affidavit-in-reply the deponent had submitted that the petitioners' services had come to an end. In our view, such a plea of abandoning or voluntarily giving up of the services by the petitioners would not arise because of the fact that respondent No. 1 had persistently denied employment to the petitioners after the appointed day. Series of letters and representations, copies of which have been annexed to the petition, were submitted by the petitioners, No written reply was given on behalf of respondent No. 1 till the attorney for respondent No. 1 by letter dated February 7, 1986, denied justice to the petitioners. In the said letter significantly, the plea taken on behalf of respondent No. 1 was that the contracts of the petitioners were deemed to have been terminated under the provisions of the Taking Over of Management Act. No assertion, however, has been made on behalf of respondent No. 1 that inspite of the offer made by respondent No. 1 the petitioners had declined to serve in the undertaking. If respondent No. 1 refused to employ the petitioners who repeatedly had offered their services, assuming that the petitioners had received

remuneration from any other source, the same by no stretch of imagination can be treated as intentionally and voluntarily giving up of their employment with respondent No. 1.

10. Before we conclude, we may refer to another important factor. The textile company along with several other textile companies had filed writ petition in this Court challenging the vires of the Taking Over of the Management Act being Writ Petition No. 2401 of 1983. So far as the Elphinstone Spinning and Weaving Mills Co. Ltd., was concerned, the rule was made absolute. The National Textile Corporation Ltd., has filed an appeal in the Supreme Court against the said decision and the same is pending. We understand that during the pendency of the writ petition in this Court in Textile Company was allowed to occupy in its registered office two rooms. The Supreme Court has passed an order on the footing that the impugned Taking Over Act was valid and that the assets of the textile undertakings, belonged to the owners, came to be vested in the Central Government on the undertakings being taken over. In the above view, we have also decided this writ petition on the footing that the impugned Taking Over Act is valid and the assets of the textile undertaking in questions had vested in the Central Government and that the Central Government has transferred the same for the management by respondent No. 1. We may also note that by interim order the Supreme Court has directed the National Textile Corporation to take over along with several other assets the office premises of the textile company. The same is obviously subject to final decision in the appeal.

11. For the foregoing reasons we make the rule absolute. We allow the prayer (a) in part of the writ petition and direct to issue a writ of mandamus directing the respondents to treat the petitioners as the employees of respondent No. 1 on and from the appointed day i.e. October 18, 1983, and to pay such emoluments as may be admissible and may be adjudicated in appropriate proceedings under the law.

12. We further command the respondents not to treat the services of the petitioners as having been terminated by operation of law in terms of the provisions of the Taking Over the of the Management Act.

13. The first respondent shall pay the costs of this petition to the petitioners.

14. The operation of this order is stayed for two months.