
(1972) 05 DEL CK 0035

In the Delhi High Court

Case No : Civil Writ Appeal No. 17 of 1972

Vijay Kumar Mundhra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-05-1972

Acts Referred:

Citation : (1972) ILR Delhi 483

Hon'ble Judges : Hardayal Hardy, C.J.;Rajinder Sachar, J;Prakash Narain, J

Bench : Full Bench

Advocate : Soli J. Sorabjee, Ravnder Narain, J.N. Aggarwal, S. Pappu, M.S. Ganesh, B. Rana, S.K. Dholakia and Rishikesh, for the Appellant;

Judgement

Hardayal Hardy, C.J.

(1) This judgment will dispose of two petitions viz.. Civil Writ No. 17 of 1972 and Civil Writ No. 63 of 1972 under Article 226 of the Constitution. The petitioner in the first writ is Shri Vijay Kumar Mundhra of Calcutta who claims to be a registered share-holder, and director of the Osmanshahi Mills Limited situate in Nanded, State of Maharashtra, hereafter referred to as the company, while the petitioner in civil writ No. 63 is a partnership firm which claims to be a creditor of the said company.

(2) The common question in both the cases is whether respondents 1 to 3 were bound to hear the petitioners before an order dated the 29th December, 1971, u/s 18AA of the Industries (Development and Regulation) Act, 1951 as amended, could be passed whereby the respondent No. 1 could authorise the taking over of the management of the whole of the industrial undertaking viz. the textile mill owned by the said company.

(3) The company has been in existence since several years past. After the termination of the managing agency, the management of the company passed into the hands of a Board of Directors. In 1963, the Committee of management appointed by the Board was dissolved and the management finally passed into

the hands of Shri J. P. Maroo who was appointed Managing Director of the company for a period of three years with effect from 8th June 1963. His term was extended up to 7th June 1970 but owing to ill health he resigned from office as the Managing Director on 28th April, 1970 and acted in his capacity as Director till 14th August, 1970. On the resignation of Shri J. P. Maroo as Managing Director, the company was being managed by the Board of Directors through a Committee of management consisting of three persons of whom the petitioner Shri Vijay Kumar Mundhra was a member.

(4) Till the year 1961 the company made small profits but from 1962 till March 1971 the company sustained losses except that during the years 1964 and 1965 it made a sizable profit. The financial position of the company went on deteriorating and on 31st March, 1971 one of the creditors of the company M/s. Mistry Fozdar & Co. filed a petition in the High Court of Bombay for an order of winding up of the company. By an order dated April 28, 1971 a provisional Liquidator of the Company was appointed. He took charge of the assets of the company including the mill on 7th May, 1971 and immediately closed down the said mill on that very day. Since then the mill has remained completely closed. Many other creditors of the company, including M/s. Jhunjhunwala & Co. also filed winding up petitions in the Bombay High Court but although their petitions were admitted no further orders were passed on their petitions.

(5) At the relevant time the total labour strength employed by the company in its mill was about 4000 workers of whom 300 were daily employed and the remaining were "badliwalas". Besides the said workers there were on the muster rolls of the company clerks and officers etc. numbering 250.

(6) The closure of the mill, particularly in a backward area of Maharashtra was a source of anxiety to all concerned. From October 1969 to December 1970 the company (both through the said J. P. Maroo & its Directors) submitted to Government of Maharashtra several schemes for modernisation of the machinery of the mill in order to run the mill economically. In October 1970 the prices of cotton showed an up-ward trend even at the start of the season and in view of the continued losses and increased cotton prices, it became difficult to run the mill smoothly with full production without getting necessary finances. Negotiations were Therefore started with the Government of Maharashtra. The company approached its bankers, the State Bank of Hyderabad on or about 5th January, 1971 for a loan of about Rs. 75,00,000.00. Although the Government had agreed to guarantee the loan the bankers turned down the company's request on the ground that they had very heavy commitments to the priority sector which would not permit them to grant the loan to the company.

(7) Meanwhile the cotton prices were still rising and the company submitted an alternative proposal to Government of Maharashtra for issue of debentures of Rs. 95.00 lacs and requested the Government to stand guarantee for the same. Negotiations were also carried on by the company to persuade the government to take the mill on lease but meanwhile as we have already said, the provisional

Liquidator ordered the mill to be closed down.

(8) On 5th August, 1971 the Government filed a petition u/s 397 of the Companies Act, 1956 in the High Court of Judicature at Bombay but before that on 31st May 1971, the Central Government in purported exercise of its powers u/s 15 of the Industries (Development & Regulation) Act 1951, hereafter to be referred to as the Industries Act, appointed a committee to make a full and complete investing