

(1986) 02 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 1240 of 1985

Yesmin Rustum Lentin

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-02-1986

Acts Referred:

Textile Undertakings (Taking Over of Management) Act, 1983 — Section 2, 3(1)

Citation : (1987) 54 FLR 169 : (1994) 3 LLJ 396

Hon'ble Judges : Pendse, J

Bench : Single Bench

Advocate : F.D. Damania and S.K. Talsania, instructed by, Harilal Thakar and Co, for the Appellant; R.C. Master and B.N. Shrikrishna, for the Respondent

Final Decision : Allowed

Judgement

Pendse, J.—The petitioner was employed by the Finlay Mills Ltd. on March 7, 1970 as a Clerk. The petitioner was re-appointed as a Junior Clerk in the Office of the Mills by letter, dated October 1, 1971. a copy of which is annexed as Ex. "I" to the affidavit of Virendra Ambalal Inamdar. Constituted Attorney of Respondent no. 2 and sworn on February 7, 1986. The petitioner continued to be in employment till October 19, 1983 when the Management of the Textile Undertaking was taken over by the Ordinance issued by the Government of India. Subsequently, the Parliament passed the Textile Undertakings (Taking Over of Management) Act, 1983 (hereinafter referred to as the "Act") and u/s 2(d) of this Act, the expression "textile undertaking" means an undertaking specified in the second column of the First Schedule, while u/s 2(c), the expression "textile company" means a company specified in the third column of the First Schedule, as owning the undertaking specified in the corresponding entry in the second column of that Schedule. Item 2 in the First Schedule refers to the Finlay Mills as Textile Undertaking which was taken over, while the name of the owner is shown as "The Finlay Mills Ltd." having its registered office at Chartered Bank Building, Fort, Bombay, Section 3(1) of the Act prescribes that on and from the appointed

day, the management of all the textile undertakings shall vest in the Central Government. The management of the Finlay Mills has been transferred by the Central Government in favour of Respondent no. 2 National Textile Corporation of India.

2. It is the claim of the petitioner that when she, along with other employees of the Finlay Mills, went to the Office on October 19, 1983 they were advised to go back and were informed that communication would be sent to them as to when they should report back for work. The Petitioner complains that all 35 employees working in the Office were taken back in the employment save and except the petitioner and other two employees. The Petitioner, on several occasions approached the management but did not receive any favourable response. The Petitioner further claims that in July, 1984, when she approached one Shri Sen, an Officer of the Corporation, she was told to apply for a job giving her bio-data. The petitioner obliged the Officer and thereafter received a letter that she should come over on July 16, 1984 for an interview. The petitioner did go for interview without realising the implications, but was made to wait till 6 p.m. and thereafter asked to type out several pages which the Petitioner declined. The Petitioner was informed on the next day that Respondent no. 2 cannot consider her application for appointment. Realising the illegal attitude adopted by respondent no. 2, the Petitioner approached this Court by filing this petition on June 24, 1985.

3. Shri Damania, learned counsel appearing on behalf of the petitioner, submitted that the Act was enacted by the Parliament to protect the interest of the workmen employed in the sick undertakings and that object is clearly set out in the preamble to the Act. The learned counsel urged that Section 13 of the Act prescribes that the Custodian may terminate any contract of employment entered into by the company in relation to its Undertaking provided the Custodian is satisfied that such contract is unduly onerous. The Learned Counsel urged that the perusal of the Act unmistakably establishes that all the employees of the Undertaking continue to remain in service and the Custodian could terminate the contract of employment provided it is found to be unduly onerous. The learned counsel urged that the employment of the Petitioner could not have been terminated, nor could Corporation decline to give work to the petitioner who was admittedly an employee of the Undertaking on the date of take-over. There is considerable merit in the submission of the learned counsel. Shri Damania urged that the petitioner being a poor employee was driven to make an application for fresh appointment because of the illegal attitude adopted by the Corporation claiming that the employment of the petitioner stood automatically terminated and because of the insistence of Shri Sen to give such an application. It was urged that the Corporation cannot take advantage of that fact and suggest that the Petitioner had accepted that her employment stood terminated. This submission of the learned counsel also deserves acceptance.

4. On behalf of Respondent no. 2, return sworn on February 7, 1986 by Virendra Ambalal Inamdar has been filed in answer to the Petition. This gentlemen claims

to be a Constituted Attorney of Respondent no. 2 and the affidavit does not recite that the averments are made therein on perusal of any record. In paragraph 7 of the return, it is claimed that under the provisions of the Act, all contracts of employment entered into by and between the Mill prior to the take over came to an end and the Service of the petitioner came to an end on that date. The same claim is reiterated in paragraph II of the return where it is averred that it was not necessary for Respondent no. 2 to terminate services of the petitioner inasmuch as the employment came to an end by the enactment of the Act. Shri Shrik-rishna, learned counsel appearing on behalf of Respondent no. 2, very fairly did not advance any submission based on these averments. It is impossible to imagine how it can even be suggested on behalf of respondent no. 2 that the employment of all the workmen employed by the Undertaking would automatically come to an end by enactment of the Legislation. In case, the Corporation which has been set up to bring back to health the sick undertakings is permitted to take such stand, then it would not only defeat the purpose of the Legislation but would lead to total chaos. It is difficult to imagine how the Corporation could even suggest that all workmen employed by the undertaking would cease to be in the employment by the Act coming into operation. It is indeed very unfortunate that the Corporation set up by the Government of India for minimising the hardships caused to the workmen of sick undertakings should take such stand and by their attitude tried to defeat the interest of small workers.

5. Shri Shrikrishna urged that under the provision of Section 3(1) of the Act on and from the appointed day, the Management of the Textile Undertakings vests in the Central Government, but not the Textile Company. The submission is that what has been taken over is merely the textile undertaking and not the textile company. It was further urged by the learned counsel that the petitioner was employed by the Textile company and not by the textile undertaking and, therefore, there was no occasion for Respondent no. 2 to treat the petitioner as in the employment of the textile undertaking and continue her employment. The submission proceeds on the assumption that the petitioner was employed by the company and not by the textile undertaking, but the assumption is without any basis. In the first instance, prior to the date of take over, there was no distinction between the Textile Undertaking and the Textile Company because Finlay Mills Ltd. which is a company had only one Textile Undertaking being Finlay Mills. Secondly, the Respondent no. 2 is unable to establish that the name of the petitioner did not appear on the muster roll of the Textile Undertaking on the date of take over. I enquired from Shri Shrikrishna as to whether in the affidavit filed by Virendra Ambalal Inamdar on February 7, 1986 and on February 14, 1986, there is a single averment to indicate that the name of the petitioner was not on the muster roll of the Textile Undertaking and the learned counsel fairly stated that such averment is not made but claimed that he may be able to produce the Muster roll to establish that fact. It is not possible to permit Shri Shrikrishna to produce such document at this late stage. The affidavits on behalf of respondent no. 2 have been filed by a person claiming to be a Constituted

Attorney and both the affidavits do not disclose that the said Constituted Attorney has made the averment after perusal of the record. In my judgment, the claim now advanced on behalf of Respondent no. 2 that the petitioner was borne on the Roll of the company and not on the Textile Undertaking is nothing but a figment of imagination and a desperate attempt to avoid the liability which has come to the corporation.

6. Shri Shrikrishna then submitted that the petitioner was working in the Share Department and the employees in the Share Department could not be said to be the employees of the Textile Undertakings. The submission cannot be accepted because it was not for the petitioner to decide in which department she should work, as the Finlay Mills has several Departments and as the Petitioner was a Junior Clerk was liable to be transferred from one Department to the other. The mere accident that the Petitioner was working in the Share Department cannot lead to the conclusion that the Petitioner was not in the employment of the Textile Undertaking. The submission of Shri Shrikrishna that the Share Department has no concern with the Textile Undertaking is also not correct because the assets of the Textile Undertakings include not only the lands, buildings and workshops, but also the reserve fund, investment and booklets and all other rights and interests arising out of such property. The Share Department deals with the balance sheets and investment of the Textile Undertaking and, therefore, was directly connected with the Textile Undertaking. In my judgment, the Corporation could not have refused to give work to the petitioner at any time and the assumption of the corporation that the service of the petitioner automatically terminated is entirely misconceived. The petitioner is entitled to the reliefs sought.

7. Accordingly, petition succeeds and rule is made absolute in terms of prayer (a). The Respondent no. 2 is further directed to pay to the petitioner all the arrears of salary and wages from October 19, 1983 till today, within a period of one month from today. The Respondent no.2 shall also pay the costs of the Petitioner.