

Maharashtra State Textile Corporation Limited

Vs

Official Liquidator and Others

Civil Appeal No. 777 of 1975

(Syed Fazal Ali, Jaswant Singh JJ)

04.01.1978

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave turns upon the interpretation of an interim order passed by this Court on September 28, 1973 in a writ petition challenging the validity of the Sick Textile Undertakings (Taking-over of Management) Act, 1972 as also the impact of the Sick Textile Undertakings (Nationalisation) Act, 1974 on the proceedings taken in this case both before and after the passing of the interim order by this Court.

2. For short we shall refer to the appellant Maharashtra State Textile Corporation as M.S.T.C., the Official Liquidator as O.L., the Sick Textile Undertakings (Taking Over of Management) Act of 1972 as the Management Act and in case of the Ordinance which had preceded that Act as the Management Ordinance. The Sick Textile Undertakings (Nationalisation) Act, 1974 will be referred to as the Nationalisation Act.

3. The point involved lies within a very narrow compass and the High Court appears to have travelled unnecessarily into the wealth of details regarding the history of the proceedings and has entered into meticulous details regarding the provisions of the Acts concerned although for the purposes of this case it was necessary to refer only to a few provisions of the Management Act and the Nationalisation Act.

4. In order to appreciate the point in controversy in the instant case it may be necessary to give brief survey of the facts leading up to the impugned order. The appellant M.S.T.C. had taken a lease of the original company known as R. B. Bansilal Abhir Chand Spinning and Weaving Mills (P) Ltd., Hinganghat (Maharashtra). By an order dated October 1, 1965 the said company was ordered to be wound up and an Official Liquidator of the company was appointed. On February 3, 1967 a lease for the running of the mill was taken by the Government of Maharashtra which was handed over to M.S.T.C. for running the mill on behalf of the State. At the time of taking over the appellant M.S.T.C. did not take possession of all the materials which it considered unnecessary as it did not want to pay higher compensation. Consequently several items were segregated and handed over to the O.L. but the rest of the assets were taken over by the appellant M.S.T.C. Sometime in 1971 the Official Liquidator sold 16 lots of store items, out of which three lots were not taken delivery of by the purchasers M/s. Akash Traders who had to pay Rs. 67,000. We would like to mention here that we are not concerned with this item of three lots in the instant case and the equities of the same will have to be worked out between the purchasers and the Official liquidator.

5. On October 31, 1972 the Management Ordinance was promulgated by the President of India which followed by the Management Act which was passed on December 31, 1972 and was given retrospective operation with effect from October 31, 1972. In January, 1973 a writ petition was filed in this Court challenging the constitutionality of the Management Act and while the writ petition was pending an interim order dated September 28, 1973 was passed in the following terms:

Upon hearing Counsel, the court directed that maintenance of status quo shall continue pending disposal of the writ petition except that the liquidation proceedings will go on, but there will be no distribution of money amongst the creditors or contributors until further orders.

6. On November 16, 1973 meeting were held before the Official Liquidator to consider the effect of the interim order and ultimately the Official Liquidator with the concurrence of the representatives of the erstwhile directors of the company decided that the assets of the company may be realised by the Office Liquidator. It was further decided that the three lots of which delivery was not taken by M/s. Akash Traders should be sold. In pursuance of this decision the Official Liquidator reported to the Court for permission to sell the three lots and the Court granted the said permission as a result of which the said three lots were sold in February 14, 1974, and were purchased by Raj Trading Company the second respondent. An appeal was filed against the order of the Court dated February 12, 1974 to the Division Bench but the same was dismissed.

7. On April 19, 1974 another report was made by the Office Liquidator for sale of certain moveables such as furniture, duplicating machine and machinery scrap etc. The Court directed notice to the Additional Government Pleader on the aforesaid report of the Official Liquidator.

8. On April 30, 1974 the appellant M.S.T.C. appeared and wanted time for filing objections but no objection were filed and the Company Judge by its order dated June 25, 1974 directed the Official Liquidator to sell the aforementioned assets and realise the price therein. No appeal against this order was filed by the appellant M.S.T.S. On June 28, 1974 certain directions were sought by the Official Liquidator for approving the proposed purchasers which was granted. The items mentioned above were sold for Rs. 72,501. On July 3, 1974 the Court accepted the offer of respondent 2 and 3, and 9 days later on July 12, 1974 the Court granted permission for removal of the materials by the purchasers, but unfortunately because of some labour trouble the materials could not be taken physical possession of by the purchasers. The appellant M.S.T.C. filed an appeal before the Division Bench against the order of the Court directing the sale of the articles which was however dismissed by the Division Bench of Bombay High Court mainly on the ground that as this Court by virtue of its interim order dated September 28, 1973 had authorised the sale of the articles the Court was fully justified in ordering the sale of those articles. It is against this order of the High Court that the appellant has come up in appeal by special leave.

9. This is therefore in a nut-shell the sequence of events leading to the passing of the impugned order passed by the High Court dated February 27, 1975. We have heard Counsel for the parties and have also perused the judgement of the High Court and we feel that the High Court has not properly construed the interim order of this Court and was under erroneous impression of law that this Court by its interim order had in fact authorised the sale which in law was invalid. It is common ground that at the time when this Court passed the interim order dated September 28, 1973 the Management Act, 1972 has already come into force. In the writ petition in which the interim order of this Court was passed the vires of the Management Act was challenged and it would appear from the reliefs sought in the petition that there was an express prayer for suspending the provisions of the Act.

Despite this fact this Court did not at all suspend any of the provisions of the Act, but merely allowed the liquidation proceedings to go on and the only condition imposed was that there would be no distribution of money amongst the creditors or contributors until further orders. The High Court was of the view that the order of this Court directing the maintenance of status quo impliedly amounted to suspension of provision of the Management Act. We are however, unable to agree with the interpretation put upon the interim order by the High Court.

10. Section 8(1) of the Management Act runs thus :

No proceeding for the winding up of a textile company, within the meaning of this Act, shall lie in any Court or to be continued whether by or under the supervision, of any Court or voluntarily, except with the consent of the Central Government.

Analysing this provision it is manifest that though the section does not contain an absolute embargo on the continuance of the proceedings, it imposes an important condition for the continuance of the proceedings, namely, that the consent of the Central Government should be obtained. When this Court passed the interim order dated September 28, 1973 and allowed the liquidation proceedings to continue it only meant that the proceedings should continue in accordance with law and if the law enjoined any condition the same must be complied with. In view of the provision of Section 8 of the Management Act the consent of the Central Government was necessary, so the order of this Court would be interpreted as meaning that the proceedings could continue after the Official Liquidator obtained the consent of the Central Government under Section 8 of the Management Act. The order passed by this Court did not give any free license to the parties to act in disobedience of the mandatory provision of the Act and continue the proceedings without complying with the conditions enjoined by Section 8 of the Management Act. In these circumstances, therefore, the inference is irresistible that without the consent of the Central Government the liquidation proceedings could not continue and the Company Judge was not legally justified in ordering the sale of the moveables without obtaining the sanction of the Central Government.

11. It was however suggested on behalf of the respondents that Section 8 would have no application to the facts of the present case inasmuch as that section applied merely to proceedings for the winding up of a textile company. In the instant case, the company had already been wound up and the proceedings had however passed beyond the scope contemplated by Section 8 of the Management Act. A delicate and ingenious distinction was sought to be drawn by Counsel for the respondents between "the winding up" proceedings and the proceedings which started after a company had been wound up. In our opinion, it is not possible to counter the words "winding up" in such a narrow sense as to defeat the very object of the Management Act. In our opinion, the words "winding up" must be given the widest possible amplitude in order to serve the purpose of the Act, namely, to control the proceedings of a textile company which is in liquidation, by the Central Government. Whether the company had been wound up or whether the proceedings for the winding up of the company had been continuing would make no difference so far as the application of Section 8 of the Management Act is concerned. In these circumstances, we are unable to accede to the argument put forward by the Counsel for the respondents.

12. It was rightly submitted by Counsel for the appellant that the High Court appears to have completely lost sight of the effect of the Nationalisation Act which had been given retrospective effect. In this connection, our attention was drawn to Section 35 of the Nationalisation Act which runs thus :

No proceeding for the winding up of a textile company, the right, title and interest in relation to the sick textile undertaking owned by which have vested in the Nation Textile Corporation under this Act or for the appointment of a receiver in respect of the business of the sick textile undertaking shall lie or be proceeded with any Court except with the consent of the Central Government.

This section produced the provisions of Section 8 of the Management Act in a different form. The Nationalisation Act was passed on December 21, 1974 and was given retrospective effect from April 1, 1974. Thus, if the act was to be properly construed the permission of the Company Judge given to the Official Liquidator to sell the moveables would fall within the mischief of Section 35 of the Act.

13. Section 2(1) (a) of the Nationalisation Act runs thus :

"Appointed day" means the first day of April, 1974.

It is, therefore, clear that the Act after being passed would, by virtue of its statutory fiction, take effect from the first day of April, 1974 and all proceedings taken after this day without the permission of the Central Government would become void ab-initio. The High Court seems to have explained away this aspect of the matter on the ground that as the Nationalisation Act was in fact passed after the Court had granted permission to sell, it could not affect the sale at all. We are of the opinion that the High Court was in error in not giving effect to the statutory fiction contained in Section 2(1)(a) of the Nationalisation Act.

14. In the case of East End Dwellings Co. Ltd v. Finsbury Borough Council ((1952) AC 109) Lord Asquith observed as follows :

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it . ... The Statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

These observation were quoted with approval by this Court in the case of Boucher Pierre Andre v. Superintendent, Central Jail, Tihar, New Delhi (AIR 1975 SC 164 : (1975) 1 SCC 192 : 1975 SCC (Cri) 70) where Bhagwati, J. speaking for the Court observed as follows :

It is now well settled law that where a legal fiction is created, full effect must be given to it and it should be carried to its logical conclusion.

15. In view of the decision of this Court it is manifest that even though the Nationalisation Act may have come into force on a later date the statutory fiction contained in the Act must be fully given effect to by the Court even if the effect of the same is to nullify an order passed prior to the passing of the Act. For these reasons, therefore, we are clearly of the opinion that the express provision of Section 35 clearly voided the sale which took place under orders of the Company Judge after the Act would be deemed to have come into force.

16. Thus whichever way we look at this case the position is clear that the order by which the articles

were sold was void in law and completely destitute of any legal effect. The interim order passed by this Court on September 28, 1973 could not have had the effect of authorising the sale which was void under the statute. For these reasons, therefore, the observation of the High Court while interpreting the interim order of this Court which may be extracted thus :

In other words, the Supreme Court by its interim order has suspended the operation of Section 8 of the Management Act, but subject to the provisions that the vesting in management and the possession of the respective parties will be preserved undisturbed. are uncalled-for as they are based on a misconstruction of the interim order passed by this Court.

17. For the reasons given above the appeal is allowed, the order of the High Court is set aside and the sale held by the Official Liquidator in pursuance of the order of the Company Judge is annulled. In case the concerned respondents have deposited the purchase money in Court they would be entitled to refund of the same according to law as the sale made under the orders of the Company Judge has been held by us to be invalid and void. The decision of this appeal would not govern the order of three lots of items of moveable property which had been sold earlier and which do not form the subject matter of the present appeal. In the peculiar facts and circumstances of the case there will be no order as to costs.

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