SUREME COURT OF INDIA

Tea Trading Corporation of India Ltd.

Vs.

Pashok Tea Co. Ltd.

(A Koshal, R Mishra, V B Eradi JJ.)

11.08.1981

ORDER

A.D. KOSHAL, J.

1. In pursuance of two orders dated 11th October, 1976 passed by the Central Government in exercise of the powers conferred on it by Clause (a) of Sub-section (1) of Section 16E of the Tea Act, 1953 (hereinafter referred to as the Act) the Tea Trading Corporation of India Ltd. (for short, the Corporation) took over the management of the whole of two units known as Pashok Tea Estate and Looksan Tea Estate, both owned by the Pashok Tea Company Ltd. (hereinafter called the Company). The legality of the orders was challenged by the Company through two petitions under Article 226 of the Constitution of India before the Calcutta High Court, a learned Single Judge of which accepted both of them by a judgment dated 9th April 1979. The Union of India and the Corporation re-agitated the matter in separate appeals which were, however, dismissed by a Division Bench of the High Court whose judgment dated 2nd July 1980 is now sought to be reversed by the Union of India in Civil Appeals Nos. 2691 and 2692 of 1980 and by the Corporation in Civil Appeals Nos. 1728, 1729 and 2132 of 1980. All these five appeals have been instituted on the strength of a certificate granted by the High Court and are being heard together.

2. The impugned judgment is based on the interpretation of Clause (a) of Sub-section (1) of Section 16E of the Act and its application to the facts of the case. That Sub-section is reproduced below:

16E (1) Without prejudice to any other provisions of this Act, if, from the documentary or other evidence in its possession, the Central Government is satisfied, in relation to a tea undertaking or tea unit, that-

(a) the persons in charge of such tea undertaking or tea unit have, by reckless investments or creation of incumbrances on the assets of the tea undertaking or tea unit, or by diversion of funds, brought about a situation which is likely to affect the production of tea, manufactured or produced by the tea undertaking or tea unit, and that immediate action is necessary to prevent such a situation;

or (b) it has been closed for a period of not less than three months (whether by reason of the voluntary winding up of the company owning the tea undertaking or tea unit or for any other

reason) and such closure is prejudicial to the concerned tea undertaking or tea unit and that the financial condition of the company owning the tea undertaking or tea unit and the plant and machinery of such tea undertaking or tea unit are such that it is possible to restart the tea undertaking or tea unit and such restarting is necessary in the interests of the general public, it may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of the tea undertaking or tea unit or to exercise in respect of the whole or any part of the tea undertaking or tea unit such functions of control as may be specified in the order.

3. The main conclusions arrived at in the impugned judgment were:

(a) In passing the two orders dated the 11th October 1976 the Central Government considered material which was extraneous to the dictates of Clause (a) of Sub-section (1) of Section 16E of the Act. Such material consists of figures of average tea produced during the period 1972-74 in the districts in which the two Estates are situate and the fact of unrest in the labour force employed at the two Estates by reason of the non-payment to them of their provident fund, wages, gratuity, etc. Both the orders were, therefore, illegal.

(b) It was not necessary for the Central Government to give the Company any opportunity of being heard. This follows from that part of Clause (a) of Sub-section (1) of Section 16E of the Act which entitles Government to take immediate action in exercise of its powers conferred thereunder.

4. Conclusion (b) reached by the High Court has been attacked before us by learned Counsel for the respondents who relied in this connection on a recent judgment of this Court in Swadeshi Cotton Mills v. Union of India, Civil Appeal No. 1629 of 1972, decided by this Court on January 13, 1981 by a Bench of three Judges consisting of Sarkaria, Desai and Chinnappa Reddy, JJ. In that case the main question which arose for decision was as to whether it was incumbent on the Central Government before passing an order under Clause (a) of Sub-section (1) of Section 18AA of the Industries (Development and Regulation) Act (hereinafter referred to as the IDR Act) to afford to the party adversely affected thereby, an opportunity of being heard. The Clause last mentioned is in precisely the same terms as Clause (a) of Sub-section (1) of Section 16E of the Act except that the former relates to an industrial undertaking and the production of articles manufactured or produced therein while the subject-matter of the latter are tea undertakings or tea units and the tea manufactured or produced thereby. Sarkaria and Desai, JJ., held that the principle of natural justice embodied in the rule of audi alteram partem was applicable to action under Clause (a) of Sub-section (1) of Section 18AA of the IDR Act arid the provision authorising the Central Government to take "immediate action" did not stand in the way of such application. Chinnappa Reddy, J., however, rendered a dissenting judgment on the point and was of the opinion that the principles of natural justice are not attracted to the situation contemplated by Section 18AA of the IDR Act. It is on the majority judgment of that case that the Company banks for the argument that the orders issued by the Central Government on the 11th October 1976 and struck down by the Calcutta High Court for the reason that a decision to issue those orders was taken after consideration of matters not germane thereto must also be held to be nullities because they contravened the principle of natural justice above mentioned. If that judgment is held to lay down a correct exposition of the law as contained in Section 18AA of the IDR Act, it must equally apply to the case in hand because the provisions which call for interpretation here are precisely the same. After hearing learned Counsel for the parties, however, we have our doubts about the correctness of that judgment, although we have neither made up our mind finally on the subject nor are expressing any conclusive opinion thereon. The case, therefore, has inevitably to be referred to a larger Bench.

5. There is yet another difficulty posed by the majority judgment above mentioned. While taking note of the view consistently held by this Court that a quasi-judicial or administrative decision rendered in violation of the audi alteram partem rule (wherever it can be read as an implied requirement of the law) is null and void, that judgment proceeds:

In the facts and circumstances of the instant case there has been a non-compliance with such implied requirement of the audi alteram partem rule of natural justice at the pre-decisional stage. The impugned order, therefore, could be struck down as invalid on that score alone. But we refrain from doing so, because the learned Solicitor-General in all fairness, has both orally and in his written submissions dated August 28, 1979, committed himself to the position that under Section 18F, the Central Government in exercise of its curial functions, is bound to give the affected owner of the undertaking taken over, a "full" and effective hearing on all aspects touching the validity and/or correctness' of the order/or action of take-over", within a reasonable time after the takeover. The learned Solicitor has assured the Court that such a hearing will be afforded to the appellant Company if it approaches the Central Government for cancellation of the impugned order. It is pointed out that this was the conceded position in the High Court that the aggrieved owner of the undertaking had a right to such a hearing.

In view of this commitment/or concession fairly made by the learned Solicitor-General, we refrain from quashing the impugned order, and allowing Civil Appeal No. 1629 of 1979 send the case back to the Central Government with the direction that it shall, within a reasonable time, preferably within three months from today give a full, fair and effective hearing to the aggrieved owner of the undertaking, i.e., the Company, on all aspects of the matter, including those touching the validity and/or correctness of the impugned order and/or action of takeover and then after a review of all the relevant materials and circumstances including those obtaining on the date of the impugned order, shall take such fresh decision, and/or such remedial action as may be necessary, just, proper and in accordance with law.

On the strength of these observations it has been contended before us on behalf of the appellants that even if it be held that the two orders of 1lth October, 1976 could be passed only after the Company had been given a fair opportunity to be heard, the attributes of a nullity attaching to the two orders make them only voidable and not non-est and that their 'voidability' would also vanish if the opportunity is given ex post facto. This contention has also been seriously contested and we think that this matter may also properly fall for the subject-matter of determination by a larger Bench.

6. Lengthy arguments have also been addressed to us on conclusion (a) arrived at by the High Court which again posed complicated questions of law of quite some importance and we feel that it would be appropriate if those questions are also decided by the larger Bench to be hereinafter seized of the case.

7. In the result we direct that the records of the case be placed before 55 the Hon'ble the Chief Justice with a request that a larger Bench may be constituted for deciding these five appeals.