

Vishnu Dayal Jhunjhunwala and Another

Vs

Union of India and Others

Civil Appeal No. 481 of 1971

(D. A. Desai, A. P. Sen, R. B. Misra JJ)

18.04.1984

JUDGMENT

AMARENDRA NATH SEN, J. -

1. Whether the order of the Central Government taking over the management of the sugar mill of the appellant under Rule 125-A of the Defence of India Rules and appointing an authorised controller of the said mill thereunder is valid, is the principal question which falls for determination in this appeal by certificate.

2. The main contention of Mr S. T. Desai, learned counsel for the appellant, is that on a proper construction of Rule 125-A of the Defence of India Rules (hereinafter referred to as the Rules) the order taking over the management of the sugar mill under this rule is invalid, as on the date of the order the sugar mill was closed and the appellant had no intention of reopening the same. It has not been disputed that if the order of the take over of the management is held to be valid, the appellant will not be entitled to any relief and the appeal must fail.

3. We may observe that the question whether the mill was closed or not on the date the order taking over taking over the management and appointing an authorised controller under Rule 125 was passed, is in serious dispute. However, for the purpose of deciding the question raised in this appeal, it does not become necessary to go into any dispute with regard to the facts. We propose to proceed on the basis that the mill had remained closed and the appellant had shut it down permanently on the date the order came to be passed, as, in our opinion, the order in question, even if the same be held to have been passed at the time when the mill was lying so closed, must be held to be perfectly valid on a proper interpretation of Rule 125-A. As in our opinion, on a proper interpretation of Rule 125-A, the order in question is lawful and justified even if we accept the submission of Mr Desai that the mill was factually so closed, it does not become necessary for us to advert to the facts of this particular case. The real question is one of interpretation of Rule 125-A.

4. Rule 125-A was introduced by an amendment and inserted by G.S.R. 1813 dated December 28, 1962. The provisions of this Rule relevant for the purpose of this appeal are contained in sub-rules (1) and (2) which provided as follows :

125-A. (1) In this rule unless the context otherwise requires, 'undertaking' means -

(a) any undertaking (including an undertaking vested in, or controlled or managed by, a local authority) which is engaged in the production, generation, supply, distribution or provision of water, transport, fuel, light, electricity or other power, or

any other thing or service which is notified by the Government as essential to the life of the community;

(b) any system of public conservancy and sanitation and any hospital or dispensary; and also includes any part or property of an undertaking.

(2) If it appears to the Central Government or the State Government that for maintaining supplies an services essential to the life to the community, it is necessary to take over the management of any undertaking, that Government may, by notified order, authorise any person or body of persons to take over the management of any undertaking specified in the order and thereupon such undertaking shall be managed in accordance with the provisions of that order :

Provided that powers under this sub-rule shall be exercised by the State Government in respect of a company to which the Companies Act, 1956 applies.

5. Mr Desai referring to sub-rule (1)(a) of Rule 125-A of the Rules has argued that the mill of the appellant was not an undertaking within the meaning of this Rule, as the mill on the date of the order was not engaged in production, generation, supply, distribution, or provision of water, transport, fuel, light, electricity or other power or any other thing or service which is notified by the Government as essential to the life of the community because the mill had been lying closed. It is his argument that an order under Rule 125-A can only be validly passed in respect of an undertaking within the meaning of the rule and in terms of the definition of 'undertaking' in the rule, an undertaking to which this rule may apply, must be one which is engaged in the production, generation, supply, distribution or provision of water, transport, fuel, light, electricity or other power or any other thing or service which is notified by the Government as essential to the life of the community. He contends that the mill had been closed and had not been functioning and, therefore, the mill was not engaged in the production, generation, supply or distribution of any sugar or any other thing or service essential to the life of the community. It is his contention that as the appellant had long before the passing of the order and even before sugar was declared to be an essential commodity completely stopped the running of the mill with no intention to start it again, the mill had ceased to be engaged in the manufacture or production of sugar; and there was, therefore, no undertaking within the meaning of Rule 125-A and the order passed under Rule 125-A which was not attracted must be held to be bad and invalid. He has submitted that an order under Rule 125-A can only be passed in respect of an undertaking which is actually engaged in the activity of production at the time the order is passed. In support of the submissions made, Mr Desai has referred to the decision of this Court in *R.C. Cooper v. Union of India* ((1970) 3 SCR 530 : (1970) 1 SCC 248 : AIR 1970 SC 564) and also to the decision of the Delhi High Court in the case of *National Projects Construction Corporation Ltd. v. C.W.T.* ((1969) 74 ITR 465 (Del))

6. On behalf of the Union of India, it has been submitted that stoppage of production and non-functioning of the mill even with an intent to close it down permanently does not, in any way, affect the power to take over the management under Rule 125-A and the jurisdiction and authority to pass an order even in respect of an undertaking closed and intended to be permanently shut down, can validly be exercised under Rule 125-A. The submission is that merely because an undertaking has been shut down with no intention of being reopened it will not on that ground only cease to be an undertaking within the meaning of the rule. The learned counsel argues that for a proper appreciation of the true import and meaning of the word 'undertaking' and for understanding the true

scope and effect of Rule 125-A, it is necessary to refer to Rule 125. It is his argument that in the light of the provision contained in Rule 125, Rule 125-A which was introduced by way of amendment to confer further power of take over of the management of an undertaking will have to be understood and construed; and on proper interpretation it is clear that in the larger public interest the power and authority conferred under Rule 125-A can undoubtedly be exercised in respect of an undertaking which may not be functioning and may have even been closed with intent of not reopening the same.

7. The relevant provisions of Rule 125 read :

125. General control of industry, etc. - (1) In this rule, unless the context otherwise requires, -

(a) any reference to any article or thing shall be construed as including a reference to electrical energy;

(b) the expression 'undertaking' means any undertaking by way of any industry, trade or business and includes the occupation of handling, loading or unloading of goods in the course of transport.

(2) If the Central Government or the State Government is of opinion that it is necessary or expedient so to do for securing the defence of India and civil defence, the efficient conduct of military operations or the maintenance or increase of supplies and services essential to the life of the community or for securing the equitable distribution and availability of any article or thing at fair prices, it may, by order, provided for regulating or prohibiting the production, manufacture, supply and distribution, use and consumption of articles or things and trade and commerce therein or for preventing any corrupt practice or abuse of authority in respect of any such matter.

(3) Without prejudice to the generality of the powers conferred by sub-rule (2), an order made thereunder may provide -

(a) for regulating by licences, permits or otherwise the production, manufacture, treatment, keeping, storage, movement, transport, distribution, disposal, acquisition, use or consumption of articles or things of any description whatsoever;

(aa) for regulating or prohibiting any class of commercial or financial transactions in respect of any article or thing which in the opinion of the Government are, or, if not regulated or prohibited, are likely to be, detrimental to any of the purposes specified in sub-rule (2);

(b) for prohibiting the withholding from sale, either generally or to specified persons or class or classes of persons, of articles or things ordinarily kept for sale and for requiring articles or things ordinarily kept for sale to be sold either generally or to specified persons or class or classes of persons or in specified circumstances;

(c) for requiring any person holding in stock any article or thing to sell the whole or a specified part of the stock to the Government or to an officer or agent of the Government or to such other person or class or classes of persons and in such

circumstances as may be specified in the order and if the order relates to foodgrains, at such prices as may be specified in the order having regard to -

(i) the maximum price, if any, fixed by order under clause (e) or by or under any other law for the time being in force for the grade or variety of foodgrains to which the order under this clause applies; and

(ii) the price for that grade or variety of foodgrains prevailing or likely to prevail during the post-harvest period in the area to which the order applies;

(d) for securing the production or manufacture of specified articles or things in specified quantities and for effecting modification in the pattern of production or manufacture of such article or things;

(dd) for securing the production, manufacture, supply or sale according to the prescribed standards and specifications, of any article or thing appearing to the Government essential to any of the purposes specified in sub-rule (2);

(ddd) for the minimum and maximum stock of any article or thing appearing to the Government essential to any of the purposes specified in sub-rule (2), to be held by any consumer or by any producer, manufacture, distributor, dealer or other person;

(e) for controlling the prices or rates at which articles or things of any description whatsoever may be sold or hired or for relaxing any maximum or minimum limits otherwise imposed on such prices or rates;

(f) for controlling the rates at which any vessel registered in India may be hired and the rates at which persons or goods may be carried in or on any such vessel;

(g) for requiring any employers or class or classes of employers to supply to all or any class of their employees or to any class of dependents of such employees such articles or things in such quantities and at such price as may be specified in the order and to provide such accommodation and other facilities for taking meals at or near the place of employment as may be so specified;

(h) for controlling the recruitment and employment of labour in such areas as may be specified in the order, with a view to securing that efficient workers are available for undertakings which, in the opinion of the Government, are essential undertakings;

(i) for regulating the carrying on of any undertaking engaged in, or capable of doing, work appearing to the Government, essential to any of the above-mentioned purposes, and, in particular, -

(i) for requiring work to be done by an undertaking;

(ii) for determining the order of priority in which, and the period or periods within which work shall be done by an undertaking;

(iii) for controlling or fixing the charges which may be made by undertaking in respect of the doing of any work by it;

(iv) for requiring, regulating or prohibiting the engagement in the undertaking of any employees or class or classes of employees;

(v) for requiring the undertaking to provide adequate safeguards against sabotage;

(j) for requiring persons engaged in the production, manufacture, supply or distribution of, or trade and commerce in any article or thing, to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto and to employ such accounting and auditing staff as may be specified in the order;

(k) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;

(l) for requiring persons carrying on any industry, trade or business or employed in connection with any undertaking to produce to such authority as may be specified in the order, any books, account or other documents relating thereto; and for requiring such persons to furnish such authority as may be specified in the order such estimates, returns or other information relating to any industry, trade or business or any undertaking as may be specified in the order or demanded thereunder;

(m) for the grant or issue of licences, permits or other documents, the charging of fees therefore, the deposit of such sum, if any, as may be specified in the order as security for the due performance of the conditions of any such licence, permit or other document, the forfeiture of the sum so deposited or any part thereof for contravention of any such conditions, and the adjudication of such forfeiture by such authority as may be specified in the order;

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(4) If it appears to the Central Government or the State Government that in the interests of the defence of India and civil defence, or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community, it is necessary to exercise control over the whole or any part of an existing undertaking, that Government may by order authorise any person (hereinafter referred to as an authorised controller) to exercise, with respect to the undertaking or any part thereof specified in the order, such functions of control as may be provided by the order; and so long as an order made under this sub-rule is in force with respect to any undertaking or part of an undertaking -

(a) the authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government or the State Government, so, however that he shall not have power to give any directions inconsistent with the provisions of any Act or other instrument determining the functions of the undertakers except in so far as may be specifically provided by the order; and

(b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller in accordance with the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions;

(5) The Central Government, so far as it appears to it to be necessary or expedient for securing the defence of India and civil defence or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community, may direct the employment of persons subject to the Army Act, 1950 or the Air Force Act, 1950, or the Navy Act, 1957 -

(a) in any public utility service as defined in Section 2 of the Industrial Disputes Act, 1947, or

(b) in any undertaking or part thereof,

(i) which is being carried on by the Central or a State Government, or

(ii) which, in the opinion of the Central Government, is engaged in any trade or business essential to the life of the community, or

(iii) with respect to which an order made under sub-rule (4) is in force.

and thereupon it shall be the duty of every person so subject to obey any command given by any superior officer in relation to such employment and every such command shall be deemed to be a lawful command within the meaning and for the purpose of the Army Act, 1950, or the Air Force Act, 1950, or the Navy Act, 1957, as the case may be.

(6) A direction under sub-rule (5) may be made with or without the consent of the person carrying on the undertaking or part thereof to which the direction relates but if made without his consent shall be communicated to such person who shall thereupon be deemed to have contravened an order made under this rule if he obstructs or fails to facilitate the employment of persons subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy Act, 1957, in pursuance of the direction.

8. Sub-rule (2) of Rule 125 makes it clear that for securing the defence of India and civil defence, efficient conduct of military operations or the maintenance or increase of supplies and services essential to the life of the community or for seeking equitable distribution and availability of any article or thing at fair prices very wide powers which are indicated in sub-section (3) without prejudice to the generality of the powers conferred by this sub-section have been provided for regulating or prohibiting production, manufacture, supply and distribution, use and consumption of articles or things and trade and commerce and for preventing any corrupt practice or abuse of authority in respect of any such matter. Rule 125(1)(b) which defines an undertaking makes it clear that the expression 'undertaking' means any undertaking by way of any industry, trade or business and includes the occupation of handling, loading or unloading of goods in the course of transport. Sub-rule 3(i) of Rule 125 makes provision for regulating the carrying on of an undertaking engaged in, or capable of doing work appearing to the Government essential to any of the purposes mentioned above in sub-rule (3) and in particular (i) for requiring work to be done by an undertaking and (ii) for determining the order of priority in which, and the period or periods within which the work shall be done by an undertaking. It has to be noted that the expression undertaking has been given a very wide meaning in Rule 125(1)(b) and is not limited to any undertaking which is functioning, or is a going concern. Sub-rule 3(i) confers powers and jurisdiction for regulating the carrying on of any undertaking not only engaged in but also capable of doing, work appearing to the

Government essential and this provision makes this position abundantly clear. In the larger interest of the country and particularly for the purpose specifically mentioned in Rule 125, power of general control of very wide amplitude is conferred under Rule 125 and there is nothing to indicate in the said rule that the powers conferred under Rule 125 cannot be exercised over any undertaking which has stopped functioning. Indeed, such a construction is clearly unwarranted on a plain reading of the section which clearly provides that such powers can be exercised not only in respect of an undertaking engaged but also capable of doing the kind of activity contemplated in the rule. Such a narrow construction is likely to defeat the very purpose for which the rule has been enacted. Although Rule 125 confers very wide powers for general control of an undertaking, there is no provision in the said rule to take over the management of any undertaking. Orders and directions under Rule 125 to exercise general control over an undertaking were not considered to be sufficient and the authority felt that further power to take over the management of an undertaking in appropriate cases was necessary, when such general control may not prove effective particularly in respect of certain undertakings. Rule 125-A by way of amendment was, therefore, inserted to confer further power of taking over the management of particular undertakings and of appointing authorised controllers for running such undertakings. The meaning of the word 'undertaking' in Rule 125-A has to be understood in this background and context. Rule 125-A makes it clear that the Rule 125-A is not intended to apply to each and every undertaking within the meaning of Rule 125. Special provision is made in Rule 125-A in respect of particular undertakings only. Rule 125-A describes and particularises the undertakings to which this rule will be applicable. The provision in this rule that "in this rule unless the context otherwise requires an 'undertaking' means any undertaking (including an undertaking vested in or controlled or managed by, a local authority) which is engaged in the production, generation, supply, distribution or provision of water, transport, fuel, light, electricity or other power or any other thing or service which is notified by the Government as essential to the life of the community", is merely descriptive of the undertaking to which this rule is applicable. The words "which is engaged in the production..." merely describes the kind of undertaking by referring to the nature of the activity of the undertaking for bringing it within the purview of Rule 125-A and they have no bearing on the question whether the activities are in the process of being carried don or have been stopped. The expression any undertaking which is 'engaged in' has been used to describe the nature of business of the undertaking and is merely descriptive of the undertaking to which this rule will apply. The take over of the management of an undertaking to which Rule 125-A is applicable may become all the more necessary in larger public interest and for effectively serving the purposes for which this rule has been incorporated, particularly when an undertaking engaged in any kind of activity coming within the purview of this rule stops functioning, to enable the undertaking to function for achieving the purposes for which these provisions have been made. The construction contended for by Mr Desai will be inconsistent with the provisions of the rule and will defeat the purposes which this rule seeks to serve. The decisions relied on by Mr Desai are of no assistance as the expressions 'undertaking' and 'engaged' which came to be considered in these cases, were used in different statutes and in entirely different context.

9. We must, therefore, hold that the taking over of the management of the sugar mill of the appellant and the appointment of the authorised controller were perfectly valid and lawful and the act done by the authorised controller in the course of management by virtue of the provisions of these rules must be held to be binding on the appellant.

10. The appeal, therefore, fails and is dismissed with no order as to costs.

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