

Vidarbha Mills Berar Limited and Another

Vs

Union of India and Others

Transferred Case No. 33 of 1983 in Transfer Petition (Civil) No. 196 f 1983

(M. M. Dutt, O. Chinnappa Reddy JJ)

08.04.1987

JUDGMENT

DUTT, J. -

1. In this case the petitioners have challenged the acquisition of the textile mill of the petitioner-company under the Sick Textile Undertakings (Nationalisation) Act, 1974, hereinafter referred to as the Nationalisation Act.
2. It appears that the mill of the petitioners-company suffered a heavy loss in the year 1965-66 as a result of which the running of the mill had to be stopped with effect from June 10, 1966. While the mill remained closed, by virtue of an agreement between the petitioner-company on the one hand and the State of Maharashtra on the other, a lease of the textile mill was granted by the petitioner-company to the State of Maharashtra at an annual rent of Rs. 7 lakhs for a period of seven years with effect from July 1, 1966.
3. After the promulgation of the Sick Textile Undertakings (Taking Over of Management) Ordinance, 1972, hereinafter referred to as the Take Over Ordinance, on October 31, 1972, the management of the textile undertaking of the petitioner-company was taken over by the State Government as a sick textile undertaking. The Take Over Ordinance was replaced by the Sick Textile Undertakings (Taking Over of Management) Act, 1972, hereinafter referred to as the Take Over Act. On September 21, 1974, the sick textile undertakings vested in the government under the Nationalisation Act.
4. The first point that has been urged by Mr. Lalit, learned counsel appearing on behalf of the petitioners, is that the acquisition of the textile mill of the petitioner-company under the Nationalisation Act is illegal inasmuch as the mill is not a "sick textile undertaking" within the meaning of the expression as defined in Section 2(1)(j) of the Nationalisation Act. Section 2(1)(j) provides as follows :

2(1) In this Act, unless the context otherwise requires, -

(j) "sick textile undertaking" means a textile undertaking, specified in the First Schedule, the management of which has, before the appointed day, been taken over by the Central Government under the Industries (Development and Regulation) Act, 1951, or as the case may be, vested in the Central Government under the Sick Textile Undertakings (Taking Over of Management) Act, 1972;

5. Under the definition two conditions have to be fulfilled before a textile undertaking can be termed "a sick textile undertaking", namely, (1) the undertaking has been specified in the First Schedule to the Nationalisation Act and (2) the management of such undertaking has been taken over under the Industries (Development and Regulation) Act, 1951 or has vested in the government under the Take Over Act. The undertaking of the petitioner-company has been specified in the First Schedule to the Nationalisation Act. It is, however, urged on behalf of the petitioners that as it was not a sick textile undertaking within the meaning of the Take Over Act, the management of the undertaking could not be said to have vested in the Central Government. In other words, it is submitted that the second condition of the definition has not been fulfilled and, as such, the acquisition is illegal and invalid.

6. It has now to be seen whether the textile mill of the petitioner-company was a sick textile undertaking within the meaning of the definition of the expression as given in Section 2(d)(iii) of the Take Over Act. Section 2(d)(iii) reads as follows :

2(d) "sick textile undertaking" means the textile undertaking which falls within one or more of the following categories, namely :

(iii) which has been leased to government or any other person or the management of which has been taken over by government or any other person or the management of which has been taken over by government or any other person under any leave or licence granted by any Receiver or Liquidator by or under the orders of, or with the approval of, any court,

7. It has already been noticed that the textile mill had been leased to the government by the petitioner-company and, accordingly, it fulfills the requirement of the definition of "sick textile undertaking" under Section 2(d)(iii). It is, however, submitted by the learned counsel for the petitioners that under the definition, the lease must be given the approval of, any court and, as the lease, in the instant case, has been given by the petitioner-company and not by any Receiver or Liquidator by or under the order of, or with the approval of, any court, the textile mill cannot be held to be a sick textile undertaking within the meaning of Section 2(d)(iii) of the Take Over Act. We are unable to accept this contention. The first part of the definition relates to the grant of lease to government or any other person and the second part relates to the taking over of management by the government or any other person under any leave or licence granted by any Receiver or Liquidator etc. The first part of the definition is not linked up with the second part as to the grant of the lease. The position will be clear if we refer to the definition of "sick textile undertaking" as given in Section 2(c) (iii) of the Take Over Ordinance which was replaced by the Take Over Act. Section 2(c)(iii) provides as follows :

2. In this Ordinance, unless the context otherwise requires, -

(c) "sick textile undertaking" means the textile undertaking which falls within one or more of the following categories, namely :

(iii) which has been leased by the textile company to government or any other person or the management of which has been taken over by government or any other person under any leave or licence granted by any Receiver or Liquidator by or under the orders of, or with the approval of, any court,

8. It is apparent from Section 2(c)(iii) extracted above that the lease has to be granted by the textile company to government or any other person. We do not think that because of the absence of the words "by the textile company" after the words "which has been leased" in Section 2(d)(iii) of the Take Over Act, it should be held that the lease must be granted to the government or any other person by any Receiver or Liquidator by or under the orders of, or with the approval of, any court. The definition as given in Section 2(d)(iii) of the Take Over Act is, in our opinion, clear even in the absence of the said words and cannot be read as referring to a lease granted by the Receiver or Liquidator etc. There is, therefore, no substance in the contention advanced on behalf of the petitioners. We, accordingly, hold that the textile mill in question answers the description of a "sick textile undertaking" within the meaning of the expression under Section 2(1)(i) of the Nationalisation Act read with Section 2 (d)(iii) of the Take Over Act.

9. The next point that has been urged on behalf of the petitioners is that some of the properties having been excluded from the lease granted by the petitioner-company to the government, such properties could not be acquired as part and parcel of the sick textile undertaking. The contention is wholly without any substance. It is not disputed that these properties were in the ownership, possession, power and control of the owner of the sick textile undertaking, that is, the petitioner-company and, in view of Section 4(1) of the Nationalisation Act, the sick textile undertaking shall be deemed to include these properties. Acquisition of the sick textile undertaking in question was, therefore, quite legal and valid. No other point has been urged in this case.

10. For the reasons aforesaid, the writ petition, as transferred to this Court from the High Court, is dismissed. There will, however, be no order as to costs.

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