

Rashtriya Mill Mazdoor Sangh

Vs

National Textile Corporation (South Maharashtra) Ltd. And Others

Civil Appeal No. 5633 of 1995

(G. B. Pattanaik, S. C. Agarwal JJ)

24.11.1995

JUDGMENT

S. C. AGRAWAL, J. –

1. The question which falls for consideration in this appeal is whether in respect of a textile undertaking whose management has been taken over under the provisions of the Textile Undertakings (Take Over of Management) Act, 1983 (for short 'the Act'), the National Textiles Corporation (South Maharashtra) Ltd. - Respondent 1 (for short 'NTC') is liable for the gratuity payable to an employee who had ceased to be in employment prior to the take-over of the management of the undertaking.

2. Mohan Sambhaji Parab, Respondent 2 herein, was in the employment of M/s. Finlay Mills Ltd. - Respondent 3 from 1-1-1954 till 22-3-1983 when he resigned. He made a claim of Rs. 16,730 towards gratuity payable under the Payment of Gratuity Act, 1972 and submitted an application in Form I with Respondent 3. Since Respondent 3 failed to pay the amount of gratuity, Respondent 2 moved the Controlling Authority under the Payment of Gratuity Act seeking for the recovery of the said amount of Rs 16,730. On 18-10-1983, the President of India promulgated the Textile Undertakings (Taking Over of Management) Ordinance, 1983 whereby the management of the Cotton Textile Undertaking of Respondent 3 was taken over by the Central Government. The said Ordinance was subsequently replaced by the Act which was brought into force with effect from 18-10-1983. The Central Government vested the management of the textile undertaking of Respondent 3 with the NTC with effect from 18-10-1983. NTC was impleaded as a party to the proceedings before the Controlling Authority. Respondent 3 did not appear to contest the petition before the Controlling Authority but the NTC appeared and contested its liability for the payment of gratuity to Respondent 2. By order dated 31-10-1984, the Controlling Authority upheld the objection raised by NTC regarding its liability for the gratuity amount payable to Respondent 2 and held that the said gratuity amount was payable by Respondent 3. The Controlling Authority, therefore, directed Respondent 3 to deposit the amount of Rs. 16,730 towards gratuity in the Court of the Controlling Authority within one month from the date of the said order. Respondent 2 filed an appeal before the Industrial Court, Maharashtra against the said order of the Controlling Authority dated 31-10-1984 wherein he claimed that NTC was liable to pay the gratuity amount to him. The said claim of Respondent 2 was upheld by the Industrial Court and, allowing the appeal, the Industrial Court, by order dated 7-8-1985, directed that in the event of Respondent 3 failing to deposit the gratuity in the Court, the same shall also be recovered from NTC to the extent of the assets and other properties of the textile undertaking of Respondent 3 taken over by NTC. Feeling aggrieved by the said order of the Industrial Court, NTC filed a writ petition (Writ Petition No. 8 of 1986) in the Bombay High Court. The said writ petition was dismissed (sic disposed of) by the High Court, by the impugned

judgment dated 4-10-1990. The High Court has held that the liability to pay gratuity to Respondent 2 arose prior to taking over of the management of the textile undertaking of Respondent 3 on 18-10-1983 and the liability for the said gratuity was that of Respondent 3 and in view of Section 3(7) of the Act, NTC was not liable for the same. Since the appellant, namely, Rashtriya Mill Mazdoor Sangh, had been impleaded as a party in the proceedings, the appellant has filed this appeal, by special leave, against the said decision of the Bombay High Court.

3. The question regarding the liability of NTC has to be determined on the basis of the provisions contained in the Act. The relevant provision in that regard is contained in Section 3 which deal with the vesting of the management of the textile undertakings in the Central Government under the provisions of the Act. The said Section provides as under :

"3. Management of certain textile undertakings to vest in the Central Government. -

(1) On and from the appointed day, the management of all the textile undertakings shall vest in the Central Government.

(2) The textile undertaking shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges of the textile company in relation to the said textile undertaking and all property, moveable and immovable, including lands, buildings, workshops, projects, stores, spares, instruments, machinery, equipment, automobiles and other vehicles, and goods under production or in transit, cash balances, reserve fund, investments and book debts and all other rights and interests in or arising out of such property as were, immediately before the appointed day, in the ownership, possession, power or control of the textile company whether within or outside India and all books of account, registers and all other documents of whatever nature relating thereto.

(3) Any contract, whether express or implied, or other arrangement, insofar as it relates to the management of the business and affairs of the textile undertaking and in force immediately before the appointed day, or any order made by any court insofar as it relates to the management of the business and affairs of the textile undertaking and in force immediately before the appointed day shall be deemed to have terminated on the appointed day.

(4) All persons in charge of the management, including persons holding offices as directors, managers or any other managerial personnel, of the textile company in relation to the textile undertaking, immediately before the appointed day, shall be deemed to have vacated their offices as such on the appointed day.

(5) Notwithstanding anything contained in any other law for the time being in force no person in respect of whom any contract of management or other arrangement is terminated by reason of the provisions contained in sub-section (3), or who ceases to hold any office by reason of the provisions contained in sub-section (4), shall be entitled to claim any compensation for the premature termination of the contract of management or other arrangement or for the loss of office, as the case may be.

(6) Notwithstanding any judgment, decree or order of any court, tribunal or other authority or anything contained in any other law (other than this Act) for the time being in force, every receiver or other person in whose possession or custody or

under whose control the textile undertaking or any part thereof may be immediately before the appointed day, shall, on the commencement of this Act, deliver the possession of the said undertaking or such part thereof, as the case may be, to the Custodian, or where no Custodian has been appointed, to such other person as the Central Government may direct.

(7) For the removal of doubts, it is hereby declared that any liability incurred by a textile company in relation to the textile undertaking before the appointed day shall be enforceable against the concerned textile company and not against the Central Government or the Custodian."

4. The expression "appointed day" is defined in Section 2(a) to mean the date on which the Act comes into force. In Section 2(d) the expressions "textile undertakings" or "the textile undertaking" are defined to mean an undertaking specified in the second column of the First Schedule to the Act.

5. A perusal of the aforementioned provisions would show that under sub-section (1), the management of the textile undertaking specified in the First Schedule to the Act vested in the Central Government on and from the appointed day i.e., on 18-10-1983, the date on which the Act came into force. In sub-section (2) are specified the assets and the rights which would be included in the textile undertaking, the management of which is vested in the Central Government. Sub-section (3) makes provision for termination on the appointed day of any contract, whether express or implied, or other arrangement insofar as it relates to the management of the business and affairs of the textile undertaking which was in force immediately before the appointed day as well as any order made by any court insofar as it relates to the management of the business and affairs of the textile undertaking which was in force immediately before the appointed day. Sub-section (4) provides that all persons in charge of the management, including persons holding office as directors, managers or any other managerial personnel, of the textile company in relation to the textile undertaking immediately before the appointed day, shall be deemed to have vacated their offices as such on the appointed day. Sub-section (5) lays down that no person in respect of whom any contract of management or other arrangement is terminated by reason of the provisions contained in sub-section (3), or who ceases to hold any office by reason of the provisions contained in sub-section (4), shall be entitled to claim any compensation for the premature termination of the contract of management or other arrangement or for the loss of office, as the case may be. Sub-section (6) requires that every receiver or other person in whose possession or custody or under whose control the textile undertaking or any part thereof may be immediately before the appointed day, shall on the commencement of the Act, deliver the possession of the said undertaking or such part thereof, as the case may be, to the Custodian, or where no Custodian has been appointed, to such other person as the Central Government may direct. Sub-section (7) is the provision, which has a bearing on the past liabilities of the textile company in relation to the textile undertaking, expressly declares that any liability incurred by a textile undertaking before the appointed day shall be enforceable against the textile company in relation to the textile company concerned and not against the Central Government or the Custodian.

6. Before the High Court, a contention was advanced that since the matter was pending before the Controlling Authority on 18-10-1983 when the management of the textile undertaking of Respondent 3 was taken over under the Act and the actual determination of the amount of gratuity payable to Respondent 2 was made by the Controlling Authority after 18-10-1983, the liability for gratuity was of NTC and Section 3(7) was not applicable. The High Court has rejected the said contention with the following observations :

"A dispute as to the quantum of gratuity or payment thereof may be determined at a later date, but the liability to pay the gratuity arises on the date of resignation in the present case or on the date of superannuation, retirement, etc. as the case may be. Since the liability in the present case has arisen prior to the date of take-over, this liability is the exclusive liability of the 2nd respondent, for the reasons set out by us in the above judgment."

7. We are in agreement with the view of the High Court because under Section 4 of Payment of Gratuity Act, gratuity becomes payable to an employee on the termination of his employment, on his retirement or resignation and since Respondent 2 had resigned on 22-3-1983, gratuity under the Act became payable to him on 23-3-1983 i.e., before the taking over of the management of the textile undertaking of Respondent 3 on 18-10-1983.

8. The learned counsel for the appellant has invited our attention to Section 6 of the Act which deals with the power of the Central Government to make certain declarations in relation to certain textile undertakings. In sub-section (1) of Section 6 it is provided :

"6. Power of the Central Government to make certain declarations in relation to certain textile undertakings. - (1) The Central Government may, if satisfied, in relation to any of the textile undertakings or any part thereof, the management of which has vested in it under this Act, that it is necessary so to do in the interests of the general public with a view to preventing any fall in the volume of production of such undertaking, by notification, declare that -

(a) all or any of the enactments specified in the Second Schedule shall not apply or shall apply with such adaptations, whether by way of modification, addition or omission (which does not, however, affect the policy of the said enactments) to such undertaking as may be specific in such notification, or

(b) the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force (to which such textile undertaking or the textile company owning such undertaking is a party or which may be applicable to such textile undertaking or textile company) immediately before the date of issue of the notification shall remain suspended or that all or any of the rights, privileges, obligation and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable subject to such adaptations and in such manner as may be specified in the notification."

9. The learned counsel has submitted that under the said provision, liabilities accruing or arising under the enactments referred to in the Second Schedule alone can be suspended and since the Payment of Gratuity Act is not an enactment mentioned in the Second Schedule, there is no suspension of the liability in relation to payment of gratuity under the Payment of Gratuity Act. The said provisions contained in sub-section (1) of Section 6 of the Act are not attracted in the present case. Clause (a) of sub-section (1) deals with the applicability of the enactments referred to in the Second Schedule to the textile undertakings whose management has been taken over and empowers the Central Government to apply the said enactments with adaptations and modifications. Clause (b) empowers the Central Government to issue a notification declaring that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force to which the textile undertaking or the textile company owning such

undertaking is a party or which may be applicable to such a textile undertaking or textile company immediately before the date of issue of the notification shall remain suspended. Under clause (b) the Central Government can also declare that all or any of the rights, privileges, obligations and liabilities accruing or arising under such contracts, agreements, settlements, awards, standing orders etc., before the date of the issue of notification aforementioned, shall remain suspended or shall be enforceable subject to such adaptations and in such manner as may be specified in the notification. These provisions are referable to the period subsequent to the taking over of the management of the textile undertaking and the liabilities accruing subsequent to the taking over of the management under the contracts, agreements, settlements, awards, standing orders, etc. The said provisions do not apply to liabilities that had accrued prior to the taking over of management. We are, therefore, unable to construe the provisions contained in sub-section (1) of Section 6 as having the effect of curtailing the applicability of clause (7) of Section 3 referred to above so as to exclude the liability arising under the Payment of Gratuity Act from its ambit.

10. The learned counsel for the appellant has submitted that sub-section (7) of Section 3 should be construed in the light of the preamble to the Act wherein it is stated :

"AND WHEREAS further investment of very large sums of money is necessary for reorganising and rehabilitating the said undertakings and thereby to protect the interests of the workmen employed therein and to augment the production and distribution at fair prices of different varieties of cloth and yarn so as to subserve the interests of the general public."

The submission is that since the Act has been enacted to protect the interests of the workmen employed in the textile undertakings whose management has been taken over, sub-section (7) of Section 3 should be construed in a manner that the interests of the workmen are protected and are not jeopardised and therefore, sub-section (7) of Section 3 should be confined in its application to liabilities other than the liabilities relating to the dues of the workmen in respect of the gratuity payable under the Payment of Gratuity Act. We find it difficult to accept this contention. It is one of the cardinal principles of the statutory construction that where the language of an Act is clear, the preamble cannot be invoked to curtail or restrict the scope of the enactment and only where the object or meaning of an enactment is not clear the preamble may be resorted to explain it. [See : *Burrakur Coal Co. Ltd. v. Union of India* SCR at p. 49 and *Motipur Zamindary Co. (P) Ltd. v. State of Bihar* SCR at p. 504.] Here we find that the language of sub-section (7) of Section 3 is clear and unambiguous inasmuch as in the said provision it has been declared that any liability incurred by the textile company in relation to the textile undertaking before the appointed day shall be enforceable against the textile company concerned and not against the Central Government or the Custodian. The words "any liability" in sub-section (7) of the said Section 3 are of wide amplitude to cover every liability that was incurred by the textile company in relation to the textile undertaking before the appointed day. Moreover, the statement in the preamble on which reliance has been placed by the learned counsel for the appellant, regarding giving protection to the interests of the workmen employed therein, also indicates that what was intended was to reorganise and rehabilitate the textile undertakings whose management was being taken over with a view to present the closure of such undertakings and consequent unemployment of workmen and thereby protect the interests of the workmen who were employed in the textile undertaking at the time of the taking over of the management of the said undertaking. The said statement in the preamble does not refer to persons who had ceased to be in employment of the textile undertaking on the date of such taking over of the management. We are, therefore, unable to hold that sub-section (7) of Section 3, must be so construed as to exclude its applicability in respect of liability for payment of gratuity under the

Payment of Gratuity Act.

11. That the liabilities in respect of the period prior to the taking over of the management of the textile undertaking are not taken over by the NTC is also borne out by the Textile Undertakings (Nationalisation) Ordinance 6 of 1995 promulgated by the President on 27-6-1995. The said Ordinance provides for the acquisition and transfer of the textile undertakings specified in the First Schedule of the said Ordinance. Respondent 3 is one of the textile undertakings referred to in the said Ordinance. Under Section 3 of the said Ordinance, the right, title and interest of the owner in relation to every textile undertaking mentioned in the First Schedule to the Act stands transferred and vests absolutely in the Central Government on the appointed day, i.e., 1-4-1994. Under Section 5 of the said Ordinance, every liability, other than the liability specified in sub-section (2), of the owner of a textile undertaking, in relation to the textile undertakings in respect of any period prior to the appointed day shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the NTC. Clause (c) of sub-section (2) of Section 5 refers to liability arising in respect of wages, salaries and other dues of the employees of the textile undertaking in respect of any period after the management of such undertaking had been taken over by the Central Government. Clause (a) of sub-section (3) of Section 5 of the said Ordinance is similar to that contained in sub-section (7) of Section 3 of the Act and declares that as expressly provided in the said section or any other section of the said Ordinance, no liability other than the liability as specified in sub-section (2) in relation to a textile undertaking in respect of any period prior to the appointed day shall be enforceable against the Central Government or the NTC. Section 8 of the said Ordinance provides that the owner of every textile undertaking shall be given by the Central Government, in cash and in the manner as specified in Chapter VI, for the transfer to and vesting in it, under sub-section (1) of Section 3, of such textile undertaking and the right, title and interest of the owner in relation to such textile undertaking, an amount equal to the amount specified against it in the corresponding entry in column (4) of the First Schedule. Section 20 of the said Ordinance requires every person having a claim against the owner of a textile undertaking to prefer such claim before the Commissioner and Section 21 prescribes the principles regarding priority of claims arising out of the matters specified in the Second Schedule. In the Second Schedule to the said Ordinance the liability in respect of the textile undertakings are divided in two parts; Part A deals with post-take-over management period and contains Categories I and II; and Part B relates to pre-take-over management period and contains Categories III to VI. Category III relates to arrears in relation to provident fund, salaries and wages and other amounts due to the employee. By clause (a) of Section 21 Categories I and II have been given precedence over Category III which means that the liabilities for the post-take-over management period have priority over the arrears in relation to provident fund, salaries and wages and other amounts due to the employee in relation to the pre-take-over management period. These provisions are similar to those contained in Section 21 of the Sick Textile Undertakings (Nationalisation) Act, 1974. In *M. Asghar v. Union of India*, the said provisions giving lower priority to the amounts due to the employees in relation to the pre-take-over period, was challenged before this Court. The said challenge was negated by the Court and it was observed :

"The distinction made between the liabilities of the post-take-over management period and the pre-take-over management period is prima facie sound as the former liabilities are those incurred pursuant to the public management of the undertaking under the statute, while the latter liabilities are those incurred in the course of the private management by the owner of the undertaking."

The provisions of Ordinance 6 of 1995 also show that the liabilities for the period prior to the take-

over of the management are to be discharged from the amount payable to the owner of the textile undertaking for the acquisition of the undertaking and not by the NTC. It is, therefore, not possible to uphold the contention urged on behalf of the appellant that NTC is liable in respect of the gratuity amount payable under the Payment of Gratuity Act to Respondent 2.

12. The appeal accordingly fails and is hereby dismissed. But in the circumstances, there will be no order as to costs.