

Rashtriya Mill Mazdoor Sangh through its President

Vs

State of Maharashtra and Others

Civil Appeal No. 11 (NL) of 1989

(J. S. Verma, B. N. Kirpal JJ)

03.09.1996

JUDGEMENT

J. S. VERMA, J. :-

1. This appeal by special leave is against the judgment of the Bombay High Court dismissing a writ petition filed by the appellant to challenge the validity of Sections 9(2), 10(2), 12(1), and 26 of the Central India Spinning, Weaving and Manufacturing Company Limited, the Empress Mills, Nagpur (Acquisition and Transfer of Undertaking) Act, 1986 (Maharashtra Act No. XLVI of 1986).

2. The Empress Mills, Nagpur, a textile undertaking, has been nationalised by the Central India Spinning, Weaving and Manufacturing Company Limited, the Empress Mills, Nagpur (Acquisition and Transfer of Undertaking) Act, 1986 (for short "the Act"). The constitutional validity of Sections 9(2), 10(2), 12(1) and 26 of the Act was questioned in a writ petition filed by the appellant claiming to be a representative union of the workmen employed in the Empress Mills on the ground that these provisions violate Articles 14, 19 (1) (c) and 21 of the Constitution. The Bombay High Court has rejected the challenge.

3. The Empress Mills, Nagpur consists of five textile units and a paper division. It was the first venture of Jamsethji Tata, a pioneer in the field of industry. The background in which it was nationalised as mentioned in the Statement of Objects and Reasons accompanying the Bill is as under :

"The Central India Spinning, Weaving and Manufacturing Company Limited was established at Nagpur as far back as 1874, and was engaged in the production and manufacture of yarn, cloth and paper through an industrial undertaking "The Empress Mills", Nagpur. It has installed capacity of 1,10,500 spindles and 2,140 looms and a paper manufacturing unit, capable of manufacturing 2,000 tonnes of paper per annum. The performance of the company till 1984, showed that it was earning profits and gainfully employed more than 6,000 workers. Its working results showed losses during 1984, and it was also anticipated that the operation of the undertaking would result in huge loss in 1985. In 1985, the Industrial Development Bank of India, (IDBI) initiated the efforts, at the request of the company, to rehabilitate the undertaking . The Industrial Development Bank of India, studied viability thereof and concluded that its operations could be made viable. A rehabilitation package, consisting of reliefs from institution, banks and State

Government was also prepared. The Industrial Development Bank of India, in fact sanctioned the loan of Rs. 3 crores in March 1986, but management did not avail of this facility because it felt that on account of further deterioration in condition of working of the mills, additional assistance was required. While the Industrial Development Bank of India and some other banks were prepared to consider revised package, the response of the management was not positive. Attempts were made to persuade the management to resume normal operations, by availing of concessions. It, however, did not resile from its attitude and declared lock-out on 3rd May, 1986. As its earlier application for closure of the unit was rejected the Government under Section 25-O of the Industrial Disputes Act. 1947, on the ground that its operations are viable, the company and its creditors took recourse to voluntary and compulsory winding up of the company. Though the creditors withdraw the petition for winding up, the company persisted in its course for voluntary winding up.

2. The company had filed, the petition No. 183 of 1986, for voluntary winding up under the Companies Act, 1956, in the Bombay High Court, on the ground that on account of continuous losses, the company was unable to run and manage the industrial undertaking further. The Bombay High Court, passed an order on 14th May, 1986, in the said petition, appointing provisional liquidator. The liquidator has been in possession of the properties of the industrial undertaking.

3. The undertaking had sizeable facilities to manufacture substantial production of yarn, cloth and paper. Its Closure would have resulted in keeping idle these facilities and would have meant waste of national wealth, which could have been utilised viably for production of above-mentioned articles. Further, the industrial undertaking is the largest of its size in Nagpur and in the entire Vidarbha region, which is industrially backward area in the State and therefore, economy of this region is linked up with the continuance of this undertaking. In order to avoid adverse consequences of closure of this undertaking on the economy of the region and on more than 6,000 workers, it was expedient to acquire the undertaking of the said company to ensure that the interest of the general public and of the employee of the undertaking are served by the continuance, by the undertaking of the said company, of the manufacture, production and distribution of textile and paper products which are essential to the needs of the country. Such acquisition was for giving effect to the policy of the State towards securing the principle specified in clause (b) of Article 39 of the Constitution of India."

The Preamble of the Act is an under :

"An Act to provide for acquisition and transfer of undertaking of the Central India Spinning, Weaving and Manufacturing Company Limited, with a view to securing the proper management of such undertaking so as to subserve the interest of the general public by ensuring the continued manufacture, production and distribution of textile and paper products which are essential to the needs of the economy of the country and for matters connected therewith or incidental thereto.

WHEREAS, the Central India Spinning. Weaving and Manufacturing Company Limited, being an existing company as defined in Clause (ii) of sub-section (1) of Section 3 of the Companies Act, 1956, had been engaged in the manufacture and

production of yarn, cloth and paper through its undertaking which was composite textile mill and paper manufacturing unit, styled as the Central India Spinning, Weaving and Manufacturing Company Limited, "The Empress Mills", Nagpur;

AND WHEREAS, in Petition No. 183 of 1986, filed by the company for voluntary winding up, the High Court of Bombay had made an order for appointment of the provisional liquidator and the proceedings for its liquidation were pending;

AND WHEREAS, the company had declared lock-out throwing about more than 6,000 workers out of employment and the undertaking has not been functioning since 3rd May, 1986.

AND WHEREAS, it was expedient to acquire the undertaking of the said company to ensure that the interest of the general public and of the employees of the undertaking were served by the continuance, by the undertaking of the said company, of the manufacture, production and distribution of textile and paper which are essential to the needs of the country and to provide for matters connected therewith or incidental thereto;

AND WHEREAS, such acquisition is for giving effect to the policy of the State towards securing the principle specified in clause (b) of Article 39 of the Constitution.

4. The provisions contained in the Act have to be appreciated in the above background. At the outset, it may be stated that the challenge based on Article 14, or Article 19 would not be available by virtue of Article 31C, if the enactment is for giving effect to the policy of the State towards securing the directive principle specified, in Clause (b) of Article 39 of the Constitution. A declaration to this effect is contained in the Act itself.

5. However, as held in *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*, (1989) 3 SCC 709:(AIR 1990 SC 123), judicial review is not excluded to examine the nexus between the impugned law and Article 39. In our opinion, the permissible judicial scrutiny to this extent reveals that the enactment undoubtedly is for effectuating the directive principle in Clause (b) of Article 39 towards securing that the ownership and control of the undertaking are so utilised as best to subserve the common good. The declaration made to this effect in the Act is fully supported by the undisputed facts mentioned in the Statement of Objects and Reasons and the Preamble. The alternative to the nationalisation of this industry in the manner it is done by this Act is liquidation and unemployment of all the employees of the undertaking. The Act ensures continuance of the undertaking as a productive unit and continuation in employment of as many as possible. It was stated at the bar that more than fifty per cent of the employees have been retained in service after nationalisation of the undertaking. There cannot be any doubt that the requisite nexus of the Act with Article 39 (b) is clear and duly established. This being so, the Act is immune to challenge on any ground based on Article 14 or Article 19 by virtue of Article 31 C.

6. The contention of learned counsel for the appellant relating to absence of nexus of the Act with Article 39 (b) being rejected, it is unnecessary to refer to his contentions based on Article 14 and Article 19(1) (c) because of the immunity conferred by Article 31 C. The only surviving challenge now is based on Article 21. Learned counsel for the appellant contended that there is violation of Article 21, inasmuch as a large number of workmen have been rendered unemployed because every

employee has not been continued in service. He submitted that this has resulted from the powers given unilaterally to the new management by Section 9(2) to reorganise the functioning of the different units and offices of the undertaking and the employees employed therein and thereby restructure such units and offices with such strength of employees as it deems fit. It was urged that this provision prescribes a procedure different from the provision for retrenchment under the Bombay Industrial Relations Act which is the general law applicable in the State of Maharashtra for the retrenchment of workmen; and since it results in unemployment of the employees not continued in service as a result of this exercise of restructure of the units, it violates Article 21. This contention has no merit for several reasons.

7. In the first place, this argument is really based on Article 14 on the ground of difference in the procedure from the prescribed in the Bombay Industrial Relations Act, the general law which is not available because of Article 31C. Secondly, it overlooks the effect of the legislation which is to save as many employees as possible from unemployment since the only other option is liquidation which would result in all the employees being rendered unemployed. It is not a case, in effect of retrenchment. The argument is, therefore, based on a misappreciation of the effect of the enactment. Moreover, the unemployment of those who could not be continued in service is not because of the act of nationalisation since unemployment of all employees was the logical consequence otherwise. The act of nationalisation in this manner saves majority of the employees from unemployment. The argument based on Article 21 is misplaced.

8. In our opinion, the above reasons alone are sufficient to reject the challenge made by the appellant to the constitutional validity of the aforesaid provisions in Maharashtra Act No. XLVI of 1986.

9. Consequently, the appeal is dismissed. Appeal dismissed.