

National Textile Corporation (Maharashtra North) Ltd.

Vs

Commissioner of Payments, Ministry of Commerce and Another

Civil Appeals Nos. 982-983 of 1990

(S.P. Bharucha, K. Venkataswami, S.R. Babu JJ)

15.10.1998

ORDER

1. The claim made by the appellant-Corporation before the Assistant Commissioner of Payments, Bombay, under Section 19 of the Stick Textile Undertakings (Nationalisation) Act, 1974 (hereinafter called "the Act"), was partly rejected. The appeal filed against the rejected portion of the claim to the appellate authority (Joint Judge, Akola) and the further revision to the Bombay High Court were dismissed. Thereafter, these appeals are preferred by special leave.
2. By this Court's order dated 6-8-1998, it was made clear that unless the copies of agreements entered into between the erstwhile textile undertaking and the State Bank of India and also the Central Bank of India are produced, the claim of the appellant under the category of "bills discount" cannot be considered and disposed of.
3. Learned Senior Counsel appearing for the appellant frankly stated before us that those agreements are not available at this distance of time. Therefore, he confined rightly his arguments only to the claim under the category "adjustments made by the Indian Cotton Mills' Federation" amounting to Rs. 2,22,586.
4. The case of the appellant before the Assistant Commissioner, before the appellate authority and also before the High Court was that the said claim for Rs. 2,22,586 fell under priority category of 1(d) of the Second Schedule of the Act. All the authorities rejected such a claim on the facts of the case. The High Court, while rejecting the claim for priority, found that such a claim could fall under Section 20 of the Act. The High Court observed as under :

"The question, therefore, is whether in regard to such claim made by the NTC against the original owner for the pre-nationalisation dues, priority can be claimed under category 1(d) or for that matter, under any of the priorities in the Second Schedule.

In my view, although the NTC may be able to lay such a claim against the erstwhile owner under Section 20 of the Nationalisation Act because it is a debt payable by the erstwhile owner, it cannot claim any priority in that regard because the priorities are restricted to the payments made by the custodian during the period from 1-4-1974 to 21-9-1974, as provided under Section 19(2) of the Nationalisation Act."

However, the High Court did not consider the claim under Section 20 of the Act. Learned Senior Counsel rightly contended before us that the High Court could have considered itself the claim for Rs. 2,22,586 under Section 20 of the Act or could have remanded the matter. We find substance in

the argument.

5. We, therefore, set aside the order of the High Court insofar as it relates to the claim of Rs. 2,22,586. We also consider it appropriate to direct the Assistant Commissioner of Payments, Bombay, to consider the said claim under Section 20 of the Act as none of the authorities have considered the claim from that angle. Therefore, we set aside the orders of the appellate authority and of the Assistant Commissioner of Payments insofar as the said claim for Rs. 2,22,586 is concerned. We restore the claim of the appellant before the Assistant Commissioner of Payments, Bombay, to the extent of Rs. 2,22,586 and direct the authority to consider this claim under Section 20 of the Act expeditiously in accordance with law. The parties are at liberty to file evidence before the authority.

6. The appeals are accordingly disposed of with no order as to costs.