

MADHYA PRADESH HIGH COURT

National Textile Corpn.

Vs.

M.P.E.B.Jabalpur

Misc. Petn. No. 550 of 1975
(G.P. Singh, C.J. and C.P. Sen, J.)

31.08.1979

JUDGMENT

G. P. Singh, C.J.

1. The Petitioner National Textile Corporation (M.P.) Ltd. is a Government Company registered under the Companies Act, 1956. The petitioner is subsidiary of the National Textile Corporation Ltd., also a Government Company registered under the Companies Act. The petitioner manages a number of textile undertakings including the following; (1) Indore Malwa United Mills, Indore, (2) Swadeshi Cotton and Flour Mills, Indore, (3) Burhanpur Tapti Mills, Burhanpur, (4) Hira Mills, Ujjain, (5) New Bhopal Textiles, Bhopal, and (6) Bengal Nagpur Cotton Mills, Rajnandgaon. These textile undertakings before nationalization were owned by a number of Companies, hereinafter referred to as the owners. The names of the owners are given in para 6 of the petition. The aforesaid undertaking immediately before nationalization were under the management either of the Authorized Controller appointed by the Government of India under Section 18 of the Industries (Development and Regulation) Act, 1951 or the Custodian appointed under the Sick Textile Undertakings (Taking Over of Management) Act, 1972. These undertakings were nationalized with effect from 1st April, 1974 by the Sick Textile Undertakings (Nationalization) Ordinance, 1974 which was repealed and replaced by the Sick Textile Undertakings (Nationalization) Act, 1974, hereinafter referred to as the Ad. The M. P. Electricity Board, which is respondent in this petition, demanded from the petitioner the electricity dues in respect of Periods prior to the appointed day and threatened to disconnect the supply of high tension electricity of the aforesaid undertakings. The petitioner then filed this petition praying for issuance of a writ, direction or order to restrain the respondent from disconnecting the high tension electricity supply to the petitioner in respect of the six

textile undertakings and other consequential reliefs.

2. The petitioner contends that under the scheme of the Act, only the right, title and interest of the owners in the aforesaid undertakings vested in the petitioner and that there was no vesting of the liabilities of the owners existing on the appointed day in the petitioner and therefore the respondent is not entitled to claim the electricity dues for any period prior to the appointed day from the petitioner under the threat to disconnect the supply of electric energy.

3. It is necessary first to refer to certain provisions of the Act. 'Appointed day' under the Act is defined in Section 2(1)(a) to mean 1st April, 1974. Section 2(j) defines 'sick textile undertaking' to mean 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. All the six undertakings with which we are concerned in this petition are specified in the First Schedule. Section 3(1) provides that on the appointed day, every sick textile undertaking and the right, title and interest of the owner in relation to every such sick textile undertaking shall stand transferred to, and shall vest absolutely in, the Central Government. Section 3(2) further provides that every sick textile undertaking which stands vested in the Central Government by virtue of Section 3(1) shall immediately after it has so vested, stand transferred to and vested in the National Textile Corporation. The general effect of vesting is provided for Section 4 of the Act. The material provision is Section 4(1) which reads as follows :

"4(1) The sick textile undertaking referred to in Section 3 shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balance, cash on hand, reserve funds, 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 owner of the sick textile undertaking, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto and shall also be deemed to include the liabilities and obligations specified in Sub-Section (2) of

Section 5."

A reading of Section 4(1) goes to show that the general effect of vesting is to vest in the Central Government only the assets, rights and interest etc. of the owner and not the liabilities and obligations of the owner, except the liabilities and obligations specified in Sub-Section (2) of Section 5. This is further made clear in Section 5(1) which says that every liability other than the liability specified in Sub-Section (2) or Section 5 of the owner of a sick textile undertaking 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 National Textile Corporation. We need not here refer to Section 5(2) because the liability of an owner for payment of electricity dues in respect of any period prior to the appointed day is not covered by it. Any doubt on the question of non-vesting of liability in the Central Government is further removed by Section 5(3), which reads as follows :

"5(3) For the removal of doubts it is hereby declared that, -

(a) save as otherwise expressly provided in this Section or in any other Section of this Act, no liability, other than the liability specified in Sub- Section (2), in relation to a sick textile undertaking in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the National Textile Corporation;

(b) no award, decree or order of any court, tribunal or other authority in relation to any sick textile undertaking passed after the appointed day in respect of any matter, claim or dispute, in relation to any matter not referred to in Sub-Section (2), which arose before that day, shall be enforceable against the Central Government or the National Textile Corporation;

(c) no liability of any sick textile undertaking or any owner thereof for the contravention, before the appointed day, of any provision of law for the time being in force, shall be enforceable against the Central Government of the National Textile Corporation."

A reading of Section 5(3) would go to show that except as otherwise expressly provided in Section 5 or any other Section, no liability other than the liability specified in Section 5(2) in relation to a sick textile undertaking in respect of any period prior to the appointed day is enforceable against the Central Government or the National Textile Corporation.

4-5. The owner of every sick textile undertaking is paid in cash the amount specified in col. (4) of the First Schedule. This amount is to be paid in the manner specified in Chapter VI. Chapter VI provides for appointment of Commissioner of Payments for disbursing the amounts payable to the owner of each sick textile undertaking. The amount payable to the owner is paid to the Commissioner by the Central Government under Section 18. Section 20 provides for preferring of claims against the owner before the Commissioner. The Second Schedule divides these claims into two Sections, viz. Part A relating to Post-take-over management Period, and Part B relating to Pre-take-over management period. The claims are further divided in different categories to determine the priorities in which they are to be satisfied by the Commissioner. It may be noticed here that electricity dues payable to a State Electricity Board, such as the respondent, falls in Category V in Part B and in Category II (b) in Part A. If a claim is admitted by the Commissioner, payment is made by him under Section 24. If out of the monies paid to him in relation to a sick textile undertaking, there is a balance left after meeting the liabilities as specified in the Second Schedule the Commissioner is to disburse the balance to the owner of the undertaking (Section 25(1)). Section 27(1) provides that where any liability of the owner of a sick textile undertaking arising out of any item specified in category I of the Second Schedule is not discharged fully by the Commissioner out of the amount paid to him under the Act, the Commissioner shall intimate in writing to the Central Government the extent of the liability which remains undercharged and that liability shall be assumed by the Central Government. Section 27(2) provides that the Central Government may, by order, direct the National Textile Corporation to take over any liability assumed by that government under Section 27(1). On receipt of such direction it becomes the duty of the National Textile Corporation to discharge such liability. Section 27(1) is thus an express provision within the meaning of Section, 5 (3) which in certain events makes the Central Government liable for discharging the liability of the owner in respect of due specified in Category of the Second Schedule However, this provision also like Section 5(2) is not of any assistance to the respondent because its dues against the owners do not fall under Category I of the Second Sch.

6. It is thus clear that the electricity dues payable by the owners for any period prior to the appointed day are not the liabilities which can be enforced against the Central Government or the National Textile Corporation under any express provision of the Act. The Central Government or the National Textile Corporation, therefore, cannot be

called upon to discharge this liability. The respondent, realizing this difficulty, relies upon Section 30 of the Act which reads :

"30(1) Every contract entered into by the owner or occupier of any sick textile undertaking for any service, sale or supply and in force immediately before the appointed day, shall, on and from the expiry of one hundred and eighty days from the date on which this Act receives the assent of the President cease to have effect unless such contract is before the expiry of that period, ratified, in writing, by the National Textile Corporation and in ratifying such contract the National Textile Corporation may, with the previous approval of the Central Government make such alterations or modifications therein as it may think fit :

Provided that the National Textile Corporation shall not only to ratify a contract, and shall not make any alternation or modification in a contract, unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the interests of the sick textile undertaking.

(2) The National Textile Corporation shall not omit to ratify a contract and shall not make any alteration or modification therein, except after giving to the parties to the contract a reasonable opportunity of being heard and extent after recording in writing its reasons for refusal to ratify the contract or for making any, alteration or modification therein."

It may here be mentioned that the owners had entered into contracts for supply of electrical energy to the undertakings. These contracts, were ratified by the National Textile Corporation under Section 30. Clause 26 of these contracts reads as follows :

"26(a) In the event of any dispute or difference as to the correctness of any bill or bills prescribed under the terms thereof, the Consumer shall nevertheless pay such bill or bills, within the aforesaid period of thirty days. Any adjustment necessary due to incorrectness of such bill or bills shall be made by the Board in the next ensuing bill after the settlement of said dispute or difference.

(b) If the Consumer fails to pay any bill as provided in Clause 25 he shall be liable be pay a surcharge of one per cent per month from the date of the bill. If the bill is not paid within sixty days of the date of the bill, the Board shall give the Consumer seven days' notice of intention to discontinue the supply of electricity energy and at the expiry of such period if full payment has not been made, may forthwith disconnect the supply until full payment for all dues

outstanding and the charges for the work of disconnection and reconnection has been made."

Another relevant statutory provision is Section 24(1) of the Electricity Act, 1910 which is as under :

"24. Discontinuance of supply to consumer neglecting to pay charge. - (1) Where any person neglects to pay any charge for energy or any sum other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear day's notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply, are paid, but no longer".

7. The argument of the learned counsel for the respondent is that after ratification by the National Textile Corporation of the contracts which were entered into between the respondent and the erstwhile owners, the legal effect is as if the contracts were entered into with the Corporation from the very inception and therefore the liabilities for any period prior to the appointed day also become the liabilities of the Corporation under the contract. The learned counsel argues that the effect of ratification is retrospective so as to make the liabilities of the owners the liabilities of the Corporation. In our opinion, this argument cannot be accepted. We have already noticed that under the scheme of the Act the liabilities of the owners, except those specified in Section 5(2) and Section 27, do not vest and cannot be enforced against the Central Government or the National Textile Corporation. It is for this reason that provision is made for discharging these liabilities from the amount which is payable to the owner we have earlier noticed that under Section 5(1) it is clearly mentioned that every liability of the owner in respect of any period prior to the appointed day is not enforceable against the Central Government or the National Textile Corporation. We have also noticed that Section 5(3)(a) most emphatically says that, save as otherwise expressly provided, no liability in respect of any period prior to the appointed day shall be enforceable against the Central Government or the National Textile Corporation. In face of Section 5(1) and (3) we cannot fasten any liability of the owner for any period prior to the

appointed day on the Central Government or the National Textile Corporation by mere inference, for fastening a pre-appointed day liability on the Central Government or the Corporation one has to find an express provision to that effect in the Act. This is the effect of the words save as otherwise expressly provided as they occur in Section 5(3). Now, a reading of Section 30 on which the learned counsel for the respondent relies goes to show that there is no express provision in it that a contractual liability of the owner for any period prior to the appointed day shall after the contract is ratified by the National Textile Corporation, become the liability of the Corporation. The argument of the learned counsel for the respondent is only inferential that when the Corporation ratifies a contract, the effect of ratification must lead to the fastening of liability from the inception of the contract on the Corporation. This inferential argument, in our opinion, is not available in face of Section 5(3)(a) which requires that there should be an express provision for fastening liability on the Central Government or the National Textile Corporation. A contract entered into by the owner continues for 180 days from the date the Act received the Presidential assent. The effect of ratification by the National Textile Corporation is that the contract does not cease to have effect after 180 days and continues to be in force. Thus the effect of ratification is to continue the contract even after the expiry of 180 days from the date of the Presidential assent. The effect of ratification is not to make the Corporation liable from the date of inception of the contract but only from the date of ratification. The learned counsel for the respondent drew our attentions to Section 196 of the Indian Contract Act and submitted that the effect of ratification is retrospective in that the personal ratifying becomes a party from the date of the contract. Section 196 of the Contract Act provides that where acts are done by one person on behalf of another without his knowledge or authority, he may elect to ratify or to disown such acts; but if he ratifies them, the same effects will follow as if they had been performed by his authority. The words "the same effect will follow as if they had been performed by his authority" make the ratification retrospective; but Section 196 here has no application. Ratification under Section 196 is possible only where acts are done by one person on behalf of another without his knowledge or authority. It is then that the person on whose behalf the acts are done can ratify them. Now the owner of a sick textile undertaking did not enter into any contract prior to the appointed day on behalf of the Central Government or the National Textile Corporation and therefore the Central Government or the National Textile Corporation could not ratify the contracts under Section 196. The ratification provided for under Section 30 of the Act is not a ratification of the nature contemplated by Section 196 of the Contract Act. Section 196

or the principle of retroactivity of ratification as contained therein will, therefore, have no application to a ratification under Section 30 of the Act. In ordinary signification, ratification means just "confirmation" - See *Sir A.D. Stewart, Bart v. J.S. Kennedy*, (Lord Macnaghten).¹ The ratification under Section 30 is confirmation of the contract so as to enable its continuance after 180 days from the date of the Presidential assent to the Act. It has not the effect of vesting the pre-appointed day liabilities under the contract in the National Textile Corporation or of making the Corporation in any way liable for these liabilities.

8. For the reasons given above, it is clear to us that the respondent was not entitled to demand from the petitioner pre-appointed day dues of the owners. The respondent was, therefore, not authorized to discontinue the supply of electricity either under clause 26 of the Contract or Section 24 of the Electricity Act. The words "if the bill is not paid within sixty days" within the meaning of Clause 26(b) of the contract must, in our opinion, refer to the bill which can be served on the consumer. A bill for payment of pre-appointed day dues could not be served on the petitioner and, therefore, the respondent could not take any action to discontinue the supply of electric energy on failure by the petitioner to pay such a bill. Similarly, Section 24 of the Electricity Act authorises the respondent to cut off the supply "where any person neglects to pay any charge for energy or any sum other than a charge for energy, due from him to a licensee in respect of the supply of energy to him." The word 'him' here is important. The supply of energy prior to the appointed day was not to the petitioner. The dues in respect of that supply cannot be said to be a charge for energy due from him to the licensee within Section 24. The Board, therefore, cannot discontinue supply of energy to the petitioner for pre-appointed day dues in respect supply of electric energy.

9. The petition is allowed. The respondent is prohibited from disconnecting supply of the high tension electricity to the petitioner in respect of the six textile undertakings for non-payment of dues for any period prior to the appointed day. The petitioner shall get costs of this petition from the respondent. Counsel's fee Rs. 200/-, if certified. The security amount shall be refunded to the petitioner.

Petition allowed.

Cases Referred.

1. 1890-15 AC 75 at p. 107 (HL)