

R.S. Seth Shanti Sarup vs Union Of India & Ors on 26 November, 1954

Equivalent citations: AIR 1955 SUPREME COURT 624

Author: B. K. Mukherjea

Bench: B.K. Mukherjea, V. Bose, N.H. Bhagwati

CASE NO.:

Writ Petition (civil) 363 of 1954

PETITIONER:

R.S. SETH SHANTI SARUP

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 26/11/1954

BENCH:

M.C. MAHAJAN (CJ) & B.K. MUKHERJEA & S.R. DAS & V. BOSE & N.H. BHAGWATI & B. JAGANNADHADAS & T.L.V. AIYYAR

JUDGMENT:

JUDGMENT AIR 1955 SC 624 The Judgment was delivered by : B. K. MUKHERJEA B. K. MUKHERJEA, J. : This is a petition under Art. 32 of the Constitution presented by one Seth Shanti Sarup, a partner of the firm of Messrs, Lallamal Hardeodas Cotton Spinning Mills Company, Hathras praying for appropriate writs to set aside and quash two orders, one dated 21-10-1952, made by respondent 1, the Government of India, under S. 3(4), Essential Supplies (Temporary Powers) Act of 1946, and the other an earlier one passed by the second respondent on the 21-7-1949, under S. 3(f), U. P. Industrial Disputes Act, 1947.

There is a further prayer for consequential relief in the shape of restoration of possession of the properties from which the petitioner and his co-partners are alleged to have been dispossessed in pursuance of the impugned orders and recovery of damages for the loss sustained in consequence thereof.

2. To appreciate the contentions that have been raised before us it would be necessary to narrate briefly the material facts in chronological order. The partnership firm known as Lallamal Hardeodas Cotton Spinning Mills Company, of which the petitioner is a partner, was started some time in the year 1921 at Hathras within the State of U. P. and it carried on, since then, the business of production and supply of cotton yarn.

The partners numbering 16 in all were members of the same family and the capital supplied by them amounted to about 24 lakhs of rupees. The business was a fairly profitable one since its inception; but in 1944 differences arose between the partners and one of them named Raghunath Pershad instituted a suit, being suit No. 67 of 1944, for dissolution of the partnership, in the Court of the Civil Judge, Agra.

That suit was dismissed on the preliminary ground that it was not maintainable by reason of there being an arbitration clause in the partnership agreement. Against this judgment an appeal was taken to the High Court at Allahabad and this appeal, being Appeal No. 121 of 1952, is still pending hearing. During the pendency of the suit and the appeal Receivers were appointed by the trial Judge and at a late stage by the High Court also who worked the mills under the directions of the Court and the business did yield some profits up to the year 1948.

In February, 1949, the Receiver reported that the mills could thenceforth be run only at a loss and thereupon on 19-3-1949, the Court ordered the mills to be closed. It appears that on 23-4-1949, a letter was received by the Court from the Deputy Secretary, Labour Department of the, U. P. Government wherein the Government expressed their desire of taking over these mills and running the same themselves under the Industrial Disputes Act, 1947.

This fact was recorded by the Court in its order dated 2-6-1949, and the learned Judge expressed his opinion that although Government was entitled to take over the mills if they so desired, yet as the parties raised objections to Government management the Government should keep in view the objections of the parties before they made any final decision in the matter.

On 21-7-1949, the Government of U. P. which figures as respondents 2 in the petition, passed an order purporting to be made under S. 3 (f), U. P. Industrial Disputes Act, 1947 by which they appointed respondent 3 one of the partners of the firm, as "authorised controller" of the undertaking apparently in terms of the provision of that sub-section.

The order directed the said respondent to take over possession of the mills to the exclusion of the other partners, the Receiver and the managers and run the undertaking himself subject to the general supervision of the District Magistrate, Aligarh. He was allowed a pay of Rs. 1, 000 per month and a commission of 12 annas per cent. on the sale of goods produced and was given the power to dispose of the funds and assets, both movable and immovable.

It may be mentioned here that this order of appointment was assented to by 9 out of the remaining 15 partners and the consenting partners admittedly owned between themselves more than 50 per cent. of the share capital. The respondent 3 took possession of the mills on the strength of this order and carried on the undertaking for about a year which resulted in loss.

In July 1950 the petitioner instituted a suit in the court of the Subordinate Judge at Aligarh praying for a declaration that the order of the U. P. Government mentioned above was illegal and ultra vires and not warranted by the provisions of the U. P. Industrial Disputes Act, 1947. There were prayers also for injunction and damages against the U. P. Government and respondent 3.

Soon after this suit was filed the U. P. Legislature passed an amending Act, being Act No. 23 of 1950, by which the provision of S. 3(c). Industrial Disputes Act, 1947 was amended by addition of cl. (cc) and two other sections to wit Ss. 3-A and 3-B, were added. Section 3-A lays down :

"Where the trade or business of an public utility service or any subsidiary undertaking has closed or is likely to be closed, the State Government, may, on the application of more than one-half of the total number of partners and owning between them more than fifty per cent share therein, by order, published in the Gazette, authorise any person to carry on the trade or business, for the period, in the manner and to the extent provided in the 'order.'"

Under this section very wide powers could be given to the person thus appointed and although he is to act as an agent of the service or undertaking, he is practically exempted from all obligations and responsibilities normally attaching to an agent.

Section 3-B further provides that where on the date immediately preceding the date of the amended Act, any person was, in pursuance of an order made under S. 3(f), exercising control over any such undertaking, he shall notwithstanding anything in the said clause or S. 3-A, be deemed from the commencement of the said Act to have been a person vandy authorised under and in accordance with S. 3.A. The Petitioner asserts, and not without reason, that the amending Act was passed only to regularise the appointment of respondent 3 as authorised controller of the undertaking with retrospective effect from the date when the order of appointment was passed.

3. In 1951 the petitioner filed in the High Court of Allahabad a petition under Art. 226 of the Constitution praying for appropriate writs to quash the order of the U. P. Government mentioned above.

During the pendency of this proceeding the Union of India (Ministry of commerce and industry) passed an order purporting to be made under S. 3(4). Essential Supplies (Temporary Powers) Act of 1946 by which the Central Government appointed the same person, namely respondent 3, as an authorised Controller under the provisions of that section and directed him to run the said undertaking on the same remuneration as before to the exclusion of all the other partners. managers, agents and Receivers, and respondent 3, was further authorised to dispose of the funds of the undertaking and to transfer properties, both movable and immovable, in such way as he considered proper.

The petitioner's case is that not only the undertaking has not earned any profits under the management of respondent who is in exclusive possession of the mills and all the properties under the orders of respondents 1 and 2, but all the liquid assets of the firm have been dissipated altogether and huge debts have been incurred for which an order for attachment and sale of the mills has already been passed by the Hathras court.

After the passing of the above order the Central Government was impleaded as respondent to the writ petition pending before the Allahabad High Court and a prayer was added for quashing of that

order also. The U. P. Government it may be noted, gave an undertaking that if the order made by the Central Government was quashed, they would not claim possession of the mills.

4. By an order dated 19-7-1953, the High Court dismissed the writ petition, being of opinion that in the circumstances of the case the discretionary powers under Art. 226 of the Constitution should not be exercised in favour of the petitioner who should be left to his remedy in the civil suit already filed by him and pending in the Aligarh Court.

The petitioner has now come to this Court under Art. 32 of the Constitution praying for quashing of the orders mentioned above and restoration of the properties and damages, alleging inter alia that the suit which is pending before the Aligarh Court, cannot afford him adequate, effective and expeditious remedy.

5. Mr. Misra appearing in support of the petition has contended before us that both the orders complained against are illegal and inoperative by reason of their not being warranted at all by the provisions of law under which they respectively purport to have been passed. They are invalid also as conflicting with the fundamental rights of the petitioner under Art. 31 of the Constitution as they in substance had the effect of depriving the petitioner of his properties without complying with the provisions of that article,

6. Now S. 3(f). U. P. Industrial Disputes Act, under which the first order was passed, is in the following terms :

"3. Power to prevent strikes, lock-outs, etc. : If in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision

(f) for exercising control over any public utility service, or any subsidiary undertaking by authorising any person (hereinafter referred to as an authorised controller) to exercise, with respect to such service, undertaking of part thereof such functions of control as may be specified in the order; and, on the making of such order the service undertaking or part as the case may be, shall so long as the order continues, be carried on in accordance with any directions given by the authorised controller in accordance with the provision of the order, and every person having any functions of management of such service, undertaking or part thereof shall comply with such direction.

7. It is pointed out by the learned counsel that the powers under this sub-section could be exercised, as the long title and preamble to the Act show and the marginal note to the section itself indicates, only for the purpose of preventing strikes and lock-outs and for the settlement of industrial disputes and other incidental matters.

As the mills had already had been closed prior to the passing of the order, there was no. industrial dispute either existing or apprehended and no. question of preventing any strike or lock-out could arise. It is said next that the provision of the sub-section could apply only with regard to a public utility services or any subsidiary undertaking.

The mills in question could not be regarded as a public utility service within the meaning of S. 2 of the Act, nor was there any notification to that effect published by the Government. The third and the most material objection raised by the learned counsel is that the powers of control exercisable under the sub-section cannot extend to dispossessing the owners from the undertaking and vesting the same in the authorised controller giving him unfettered discretion to dispose of and transfer the assets.

It is argued by the learned counsel that once it is held that S. 3(f), Industrial Disputes Act, 1947 does not contemplate an order of this description S. 3B, which was introduced by the amending Act of 1950, could not improve the position and be of any assistance to the respondents.

8. Coming now to S. 3(4), Essential Supplies Act under which the order of the Central Government is passed, the language used is as follows :

The Central Government, so far as it appears to it to be necessary for maintaining or increasing the production and supply of an essential commodity, may by order authorise any person (hereinafter referred to as an authorised controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order, such functions of control as may be provided by the order and so long as an order made under sub-section is in force with respect to any undertaking or part thereof.

(a) the authorised controlling shall exercise his functions in accordance with any instruction given to him by the Central Government, so however that he shall not have any power to give any direction inconsistent with the provisions of any Act or other instrument determining the functions of the undertaken except in so far as may be specifically provided by the order; and

(b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller in accordance with the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions."

9. Here again what the Central Government is empowered to do is to authorise any person to exercise, with respect to any undertaking engaged in the production and supply of essential commodity such functions of control as may be provided by the order and which are necessary for maintaining or increasing the production and supply of the commodity.

The exercise of control, it is said connotes the issuing of directions under which the management is to do or refrain from doing something. It cannot under any circumstance amount to divesting the management or the owners of the property and, taking it over from them. As the mills were already closed and were not functioning at all, strictly speaking no. question of exercising control of maintaining or increasing supplies of any essential commodity could possibly arise.

10. These arguments of the learned counsel appear to us to be prima facie well founded and we are relieved from the task of examining them in detail as the learned Attorney General appearing for the Central Government has fairly conceded that the impugned orders do not come within the purview of and are not warranted by the provisions of the Acts, under which they purport to have been passed.

He has, therefore, made no. attempt to support the orders or the acts of possession exercised by the Government or their agents in pursuance thereof. The only point taken by him is a technical one and his contention is that even though the orders are invalid the petitioner cannot come before this Court under Art. 32 of the Constitution inasmuch as there was no. fundamental right in existence when the first order of the U. P. Government was passed in July 1949 and no. fresh act of dispossession has taken place since the Constitution came into force.

We do not think that there is any substance in this contention. In the first place, the order against which this petition is primarily directed is the order of the Central Government passed in October 1952 and whether or not the earlier order of the U. P. Government was formally withdrawn, it is this later order upon which the respondent 3 bases his right to retain possession of the properties.

The order of the Central Government must therefore, be deemed to have deprived the petitioner of his property within the meaning of Art. 31 of the Constitution as construed by this Court. As has been said already, the U. P. Government made it clear before the Allahabad High Court in connection with the hearing of the writ petition that they were not asserting any rights of their own under the Industrial Disputes Act, 1947 as soon as the Central Government took over the undertaking under the provisions of the Essential Supplies Act.

But even assuming that the deprivation took place earlier and at a time when the Constitution had not come into force, the order effecting the deprivation which continued from day to day must be held to have come into conflict with the fundamental rights of the petitioner as soon as the Constitution came into force and become void on and from that date under Art. 13(1) of the Constitution.

We have no. hesitation therefore in holding that the petitioner is quite within his rights in making this application under Art. 32 of the Constitution.

11. The result is that in our opinion the order of the Central Government dated 31-10-1952, as well as the earlier order passed by the U. P. Government on 21-7-1949, should be set aside and quashed. The respondents are certainly bound to restore the properties taken possession of by them under these orders to the petitioner and his co-partners. A difficulty, however, arises in this connection by

reason of the fact that this petition is not on behalf of all the partners, nor is there any joint prayer by all of them claiming delivery of possession. In these circumstances we think that the proper order to pass would be that the respondents shall deliver over the possession of the properties to such person or persons as the High Court of Allahabad, before which appeal No. 121 of 1952, is pending may direct. It will be open to the High Court to appoint any one or more of the partners or any neutral person to take possession of the properties and hold the same in such manner and in such terms as it directs.

The grievance of the petitioner is that a considerable amount of the assets have already been dissipated and liabilities created by the Controller appointed by the Governments under the illegal orders. The petitioner will have the liberty to take such legal steps as he may be advised to do to recover damages by way of compensation for the loss of such properties or assets in an appropriate civil Court. The petition is allowed on the terms mentioned above. The petitioner will have costs of this hearing against all the respondents.