

Fine Knitting Co. Ltd. And Ors. vs Union Of India (Uoi) And Ors. on 17 September, 1986

Equivalent citations: AIR1987SC167, [1986]60COMPCAS1083(SC), JT1986(1)SC450, 1986(2)SCALE442, (1986)4SCC276, 1986(2)UJ610(SC), AIR 1987 SUPREME COURT 167, (1986) JT 449 (SC), 1986 2 UJ (SC) 610, (1986) 53 FACLR 615, 1986 (4) SCC 276, (1986) 3 SCJ 586, (1986) 4 SUPREME 115, (1986) 3 SUPREME 427, (1986) 60 COMCAS 1083, (1986) 2 CURCC 875

Author: O. Chinnappa Reddy

Bench: M.M. Dutt, O. Chinnappa Reddy

JUDGMENT

O. Chinnappa Reddy, J.

1. The Fine Knitting Mills owned by the Fine Knitting Company Limited was notified as a sick textile undertaking under the Sick Textile Undertakings (Taking Over of Management) Act, 1972 and included in the First Schedule to the Act as Item No. 13. The Company was incorporated in 1908 and its principal activity was then the manufacture of hosiery. In 1924, the company installed spinning machinery, with 9000 spindles with a view to ensure suitable and even supply of yarn for its hosiery manufacture. A question arose in 1961 whether for the purposes of Section 11 of the Bombay Industrial Relations Act, the hosiery and spinning sections of the Company's establishment were a single concern or two separate undertakings. It was the contention of the Company that the undertaking was one and not two. The Supreme Court accepted the finding of the Industrial Court that there were two distinct and independent undertakings. The judgment of the Supreme Court is reported in *The Fine Knitting Company Limited v. The Industrial Court, Bombay* 1962 Supp (3) SCR 196. Subsequently, on August 1, 1970, the Spinning unit was closed down. Thereafter, the management of the undertaking was taken over first under the Sick Textile Undertakings (Take over of management) Ordinance and then under the Sick Textile Undertakings (Take over of management) Act. This was followed by its nationalisation under the Sick Textile Undertakings (Nationalisation) Act. The take over of management and the subsequent nationalisation are questioned in this writ petition which was originally filed in the High Court of Gujarat and which was later withdrawn to this Court for final disposal as it was thought to involve some important questions of Constitutional Law which, however, have not been pressed before us. Other questions have been raised which we shall presently consider.

2. The first submission of Shri Tarkunde was that the hosiery section of the undertaking had never ceased working and, therefore, it would not be considered that the undertaking had stopped

working for more than three months so as to bring it within Clause (ii) of Section 2(d) of the Sick Textile Undertakings (Taking over of Management) Act. The second submission of Shri Tarkunde was that the spinning and hosiery sections of the undertaking were two separate and distinct undertakings and, therefore, the hosiery undertaking which would not fall within the definition of a textile undertaking could not be taken over and nationalised. Another submission of Shri Tarkunde was that by the Judgment dated September 17, 1986 in Transfer Case No. 29 of 1983. date of the commencement of the Sick Textile Undertakings (Taking over of Management) Ordinance, the spinning undertaking had become useless beyond redemption and as there was no chance of re-starting the undertaking with reasonable inputs the undertaking could not be considered to be a sick textile undertaking within the meaning of the definition in Section 2(d)(ii) of the Sick Textile Undertakings (Taking over of Management) Act.

3. In support of his last submission that the spinning section had been completely closed with no hope of being revived, Shri Tarkunde invited our attention to the agreement entered into by the management with the workmen in 1972, the affidavits of the representatives of the management and the workmen, the cancellation of the licence by the Assistant Controller, the deletion of the entry relating to 'Fine Knitting Company Limited (excluding hosiery section)' from the register maintained under the Gujarat Industrial Relations Act and the circumstances that a major portion of the machinery had been sold. All these circumstances are consistent with a permanent closure of the spinning section as well as with a closure in the hope of reviving the spinning section with perhaps some new machinery. In fact we find in one of the letters dated June 16, 1972 from the Fine Knitting Company Limited to the Additional Textile Commissioner, it is stated, "In connection with this letter, I now inform you that we have decided to run our spinning section after replacing the spinning machinery, by newer model." It cannot possibly be said that replacement of old machinery by new machinery results in the coming into existence of a new undertaking in the place of the old undertaking. The sale of some of the old machinery was perhaps with a view to replace it with new machinery. In fact we notice that what has been produced before us is an agreement of sale only. Whether the sale has in fact taken place pursuant to the agreement of sale is not clear as neither a receipt for the money received nor a receipt for the machinery delivered has been placed before us. We also notice that under Rules 12-B and 12-C of the Cotton Textile Control Order, neither a spinning frame nor a side frame can be disposed of except with the previous permission of the Textile Commissioner. No such permission was ever obtained. We are unable to accept the submission that the closure of the spinning section in August 1970 was intended to be a permanent closure.

4. Going back to the first two submissions of Shri Tarkunde, it is true that in the Fine Knitting Company Limited v. the Industrial Court, Bombay. it was held that the hosiery and the spinning department were distinct undertakings. But that was for the purposes of Section 11 of the Bombay Industrial Relations Act under which two industrial activities carried on by one concern or company could be treated as two separate undertakings. In the present case, we have to reckon with the definitions of 'textile,' 'textile company' and 'textile undertaking' contained in Section 2(e), (f) and (g) of the Sick Textile Undertakings (Taking Over of Management) Act and the deeming provision in Section 4(3) of that Act. 'Textile' is defined as including "yarn or fabrics made either wholly or partly of cotton, wool, jute, synthetic and artificial (man-made) fabrics." 'Textile company' is defined as

meaning "a company specified in the third column of the First Schedule as owning the textile undertaking specified in the corresponding entry in the second column of that schedule." 'Textile Undertaking' as meaning "an undertaking engaged in the manufacture of textile and to which the provisions of the Factories Act 1948 applied". Now under Section 4(3) of the Act, "The sick textile undertaking shall be deemed to include all assets, rights, powers, authorities and privileges of the textile company, in relation to the said sick textile undertaking, and all property, movable and immovable, including lands, buildings, workshops, stores, instruments machinery, automobiles and other vehicles and goods under production or in transit, cash balances, reserve fund, investments 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." Reading the definitions of the three expressions together with the deeming provision, we see no escape from treating the hosiery section as included in the sick textile undertaking. It is an asset of the textile company in relations to the sick textile undertaking. It is also property which was in the ownership, possession, power and control of the textile company,

5. The next question is whether the circumstance that the hosiery section never stopped functioning is sufficient to hold that the textile undertaking had not remained closed for a period of not less than three months immediately before the appointed day. In the *Fine Knitting Company Limited v. The Industrial Court, Bombay*, this Court noticed that the spinning activity of the company had taken a place of pride in the industrial activity of the company, as revealed by the production figures and the number of employees engaged in the two sections. There can be, no possibility of doubt that the spinning section of the undertaking was by far the more important activity of the company and with its closure it may legitimately be said that the major and substantial activity of the textile undertaking came to an end. In our opinion that was sufficient to constitute closure of the textile under taking. The circumstance that an insubstantial part of the undertaking continued to be run could not militate against the conclusion that the undertaking had in substance closed down. In this view, we think that the circumstance that the hosiery section of the undertaking did not close down cannot lead to the conclusion that the textile undertaking as such had in substance closed down for the purposes of Section 2(d)(ii) of the Sick Textile Undertaking (Taking Over of Management) Act. In the result the writ petition is dismissed.