N.T.C. (South Maharashtra) Limited vs Rashtriya Mill Mazdoor Sangh And Ors. on 24 November, 1992

Equivalent citations: (1993)ILLJ954SC, 1992(3)SCALE276, (1993)1SCC217, [1992]SUPP3SCR229, AIRONLINE 1992 SC 30, 1993 (1) SCC 217, 1993 SCC (L&S) 178.2, (1992) 3 SCR 229, (1993) 1 LAB LJ 954, (1993) 49 DLT 283, (1993) 2 SCT 255, (1993) 1 SERV LR 32, (1993) 1 CUR LR 602, (1993) 1 APLJ 77, (1993) 82 FJR 462, (1992) JT (SUPP) 202, 1993 UJ(SC) 1 247, 1993 UJ(SC) 247, (1992) 3 SCR 229 (SC)

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Bench: Kuldip Singh, P.B. Sawant, N.M. Kasliwal

JUDGMENT

P.B. Sawant, J.

1. Leave granted in all the special leave petitions and the transfer petitions are allowed.

The facts common to all the appeals/cases are as follows:

> On 14th January, 1982, the workmen of all textiles mills in Bombay went on strike. The strike was declared illegal on 8th February, 1982. On 18th October, 1983, the Textile Undertakings [Taking-Over of Management] Act, 1983 [the 'Act'] came into operation.
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> On 10th February, 1984, the management of the respondent-mills was taken-over by the National Textile Corporation Limited [NTC] under the provisions of the Act.

2. It is not necessary to go into the details of the facts involved in each of the above appeals/ cases. The point of law which is common to all the matters is whether the workmen have ceased to be the workmen of the textile mills and, therefore, of the NTC after the management of the mills was taken-over by the NTC w.e.f. 10th February, 1984. Both, the Labour Court while granting interim relief and the High Court when confirming the same by the impugned order have taken the view that they continue to be the workmen of the mills and, therefore, of the NTC.

3. The contention of the appellant-NTC is that in the 13 mills which have been-taken over, in all 54,338 employees were working on the date of the strike. On the date of the take-over, there were only 40,039 left. They had ceased to be the workmen of the mills when the mills were taken-over. In all, 10,002 of them resigned voluntarily and the appellants paid them gratuity. Of the remaining, the appellants look-over only 20,394 leaving 9,643. The present dispute concerns the said 9,643 employees. The appellants' contentions that the appellants had power both implicit and explicit to choose which of the employees and how many of them they would take over. The is obvious, according to the appellants, from the provisions of the Act.

4. To support his contention, the learned Attorney General appearing for the appellants, invited our attention first to the preamble of the Act which states, among other things, that the need to enact the legislation in question for taking-over the management of the textile mills arose because there was mismanagement of their affairs on account of which their financial condition had become wholly unsatisfactory even before the commencement of the strike in January 1982. Their financial condition had thereafter further deteriorated. The public financial institutions had already advanced large sums of money to the companies owning the textile undertakings and a further investment of very large sums was necessary for reorganising and rehabilitating them. Pending the acquisition of the undertakings, it was, therefore, felt expedient in the public interest to take over their management. The reorganisation and rehabilitation of the undertakings was to be done by the appellants in whom the management of the mills was vested by the Act. Since the task was of making the undertakings viable, the appellants were given a free-hand to reorganise their affairs which impliedly included also the reorganisation of the labour as they thought fit and necessary.

5. According to him, further, the provisions of Section 3(3) to (7) of the Act make the powers of the appellants in this connection clear. The said provisions read as follows:

> (3) Any contract, whether express or implied, or other arrangement, in so far as it relates to the management of the business and affairs of the textile undertaking and in force immediately before the appointed day, or any order made by any court in so far as it relates to the management of the business and affairs of the textile undertaking and in force immediately before the appointed day shall be deemed to have terminated on the appointed day.
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> (4) All persons in charge of the management, including persons holding offices as directors, managers or any other managerial personnel, of the textile company in relation to the textile undertaking, immediately before the appointed day, shall be deemed to have vacated their offices as such on the appointed day.
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> (5) Notwithstanding anything contained n any other law for the lime being in force, no person in respect of whom any contract of management or other arrangement is terminated by reason of the provisions contained in Sub-section (3), or who ceases to hold any office by reason of the provisions contained in Sub-section (4), shall be entitled to claim any compensation for the premature termination of the contract of management or other arrangement or for the loss of office, as the case may be.

> (6) Notwithstanding any judgment, decree or order of any court, tribunal or other authority or anything contained in any other law [other than this Act] for the time being in force, every receiver or other person in whose possession or custody or under whose control the textile undertaking or any part thereof may be immediately before the appointed day, shall, on the commencement of this Act, deliver the possession of the said undertaking or such part thereof, as the case may be, to the Custodian, or where no Custodian has been appointed to such other person as the Central Government may direct.
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> (7) For the removal of doubts, it is hereby declared that any liability incurred by a textile company in relation to the textile undertaking before the appointed day shall be enforceable against the concerned textile company and not against the Central Government or the Custodian.

6. He also relied upon the fact that towards that purpose, under Section 6(1) of the Act, the Central Government was given the power to declare by notification that all or any of the . enactments specified in the Second Schedule of the Act shall not apply or shall apply with such modification, additions or omissions to the undertakings taken-over, as may be specified in the notification. One of the Acts mentioned in the Schedule is the Industrial Disputes Act, 1947 [ID Act]. Under Section 6(2), the Central Government was also given the power to suspend the operation of all or of any of the rights, privileges, obligations, submissions, settlements or standing orders or other instruments in force to which the concerned textile undertakings were a party or which were applicable to them immediately before the issue of the notification. The notification issued both under Section 6(1) and Section 6(2) shall have effect notwithstanding anything to the contrary contained in any other law, agreement or instrument or any decree or order of a court, tribunal, officer or other authority, settlement or standing order etc. Relying on the aforesaid provisions, the learned Attorney General contended that the contract of employment with the workmen came to an end from the appointed day, viz., 18th October, 1983 on which day the Act came into force, and since the appellants had taken-over the management under the Act on 10th February, 1984, there was no subsisting contract of. employment between the appellants and the workmen on that day.

7. His second contention was that since the Government had not issued any notification under Section 6(1)(a) of the Act, the provisions of the ID Act mentioned in the Second Schedule of the Act, were applicable to the appellants. Section 25-FF of the ID Act makes provision for compensation to workmen in case of transfer of undertakings. The said section reads as follows:

> 25-FF. Compensation to workmen in case of transfer of undertakings. - Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched; Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the

transfer, if:

(a) the service of the workman has not been interrupted by such transfer;

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

(c) the new employer is under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

In view of the aforesaid provisions, it is the textile mills which were under an obligation to give the notice and pay the compensation to the workmen in accordance with the provisions Section 25-F of that Act, as if the workmen had been retrenched since, admittedly, in the present case the management of the textile mills was transferred by operation of law, i.e., by virtue of the provisions of the Act, to the appellants. The Act further made no provision for the transfer of the workmen to the appellants or for imposing a liability on the appellants to pay them wages/salaries on the basis that their services had been continuous and not interrupted by the said transfer, as required by the provisions of Clause (c) of the proviso to Section 25-FF.

8. The learned Attorney General contended that the provisions of Section 25-FF in effect terminated the contract of employment of the workmen on account of the transfer of management of the textile mills to the appellants, and all that the workmen were entitled to was the notice and compensation from the textile mills in accordance with the provisions of J Section 25-F of the I.D. Act as if the workmen were retrenched. The workmen could not remain in service in continuance of the contract of employment after the transfer, and in any case not with the appellants. Hence, there was no obligation on the appellants to continue the services of the workmen after the take over of the management. In this connection, he relied also on a decision of this Court in Gurmail Singh and Ors. v. State of Punjab and Ors. .

9. The reliance placed by the learned Attorney General on the provisions of Sections 3(3) to 3(7) of the Act to contend that the said provisions put an end to the contract of employment of the workmen is not well-founded. The preamble of the Act shows, among other things, that the statute was enacted because the affairs of the textile mills were mismanaged and it was necessary to invest savory large sums of money or for re-organising and rehabilitant the said undertakings and, thereby, to protect the interests of the workmen employed therein and to augment the production and distribution at fair prices of different varieties of cloth and yarn so as to subserve the interests of the general public" [emphasis supplied]. This recital in the preamble makes it clear that one of the principal objects of the Act is to protect the interests of the workmen who were already employed in the textile mills. Consistent with this objective, the Act nowhere refers to the termination of the contract of employment of the workmen. The word 'workman' has not been specifically defined in the Act. However, it cannot be disputed that looking at the nature, scope and the object of the Act, the said word will carry the same meaning as is attributed to it under Section 2(s) of the ID Act

which is also specifically mentioned in the Second Schedule of the Act and has in no way been modified by the Government under the provisions of Section 6 of the Act although a specific power is vested in the Government to do so. On the other hand, the provisions of Section 3(3) of the Act state that any contract in so far as it relates to "the management of the business and affairs of the textile undertaking" shall be deemed to have terminated on the appointed day. Similarly, Section 3(4) states that "all persons in charge of the management, including persons holding offices as directors, managers or any other managerial personnel" shall be deemed to have vacated their offices as such on the appointed day. Section 3(5) then provides that notwithstanding anything contained in any other law, no compensation will be payable either on account of the termination of the contract of management of the business under Section 3(3) or on account of the termination under Section 3(4) of the offices of the persons concerned. It cannot be argued that the contract of employment of the workmen is covered either by the provisions of Section 3(3) or Section 3(4) of the Act. The said contract docs not relate "to the management of the business and affairs of the textile undertakings" nor can the workmen be said to be persons "in charge of the management" and "holding offices as directors, managers or any other managerial personnel". The legislature has taken precaution to abolish only certain contracts and provide for the vacation of the offices of only those persons who were in charge of management. That was, as it should have been, since, as the preamble of the Act shows, the legislation had become necessary because there was mismanagement of the affairs of the textile undertakings. The contracts of managements and the persons who were in charge of the management had, therefore, necessarily to go if the mills were to be re-organised and rehabilitated both to protect the interests of the workmen employed as well as to augment the production and distribution of the cloth at fair prices to subserve the interests of the general public.

10. That the provisions of Sections 3(3) and 3(4) do not refer to the contract of employment of the workmen but have in their view contracts other than the contracts of employment of workmen, is made amply clear by the provisions of Section 13 of the Act which reads as follows:

> If the Custodians are of opinion that any contract of employment entered into by any textile company or managing or other director of the company in relation to its textile undertaking at any time before the appointed date is unduly onerous, he or it may, by giving to the employee one month's notice in writing or salary or wages for month in lieu thereof, terminate such contract of employment.
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> The aforesaid provisions specifically provide for contract of employment with workmen as is clear by the language thereof. The said provisions state that if the contract of employment of a workman is to be terminated the custodian can do so if he is of the opinion that it is unduly onerous, However, while terminating the contract, he has to give one months' notice in writing or salary or wages, as the case may be, for one month in lieu of the notice. This provision is consistent with the object of the Act and also with the provisions of the ID Act. It is, therefore, amply clear that Sections 3(3) and 3(4) do not have the effect of terminating the contract of; employment of the workmen. It is also not disputed that neither the custodian nor the appellants who stepped into his shoes had at any time put an end to the contract of employment of any of the workmen involved in the present dispute pursuant to the

provisions of Section 13. The first contention of the learned Attorney General has, therefore, to be rejected.

11. As regards the second contention which is based on the provisions of Section 25-FF of the ID Act, we are afraid that the same proceeds on a wrong presumption of the law. As is clear from the provisions of the said section which are reproduced above, the section by itself does not put an end to the contract of employment on the transfer of the ownership or management of the undertaking to the new employer. There is nothing in the said provisions to indicate such a consequence on the transfer of the undertaking. The section only provides. for compensation to the workmen if such transfer aliunde results in the termination of the contract of employment. Whether the transfer results in the termination of the contract of employment or not, will deepened upon either the terms of the agreement of transfer or on the provisions of the law which effects the transfer. The section in terms states that if the terms of the agreement or the provisions of the law have the effect of terminating the contract of. employment, every workman in employment in the transferor undertaking would be entitled to notice and compensation in accordance with the provisions of Section 25-F as if the workmen had been retrenched. However, the proviso to the section makes clear as to when the transfer will have no effect on the contract of employed and the workmen would not be entitled to the notice and retrenchment compensation under Section 25-F. Those cases are where [a] the service -of a workman has not been interrupted by such transfer; [b] the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to him than those applicable immediately before the transfer; and [c] the new employer is, under the terms of the transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service had been continuous and had not been interrupted by the transfer. The three conditions under which the workman becomes ineligible to the notice and retrenchment compensation under Section 25-F, further make it abundantly clear that by itself neither Section 25-FF nor the transfer of the undertaking as such, puts an end to the contract of employment. In fact, the section envisages the continuation of employment, and makes provisions for the compensation, only if the transfer results in the termination of the contract of employment. These provisions show that where the employment continues in spite of the transfer of the undertaking, the workmen would not be entitled to notice and retrenchment compensation under Section 25-F fro the transferor-employer. It is only if there is a transfer of the undertaking and the said three conditions are not satisfied that a workman would be entitled to such notice and retrenchment compensation from the transferor employer.

It is, therefore, more than clear that neither Section 25-FF nor the transfer by itself has the effect of putting an end to the contract of employment of the workmen.

12. The history of Section 25-FF as it is found to-day is illuminating on the subject. The said section was introduced in the ID Act in 1956. Before the introduction of the Section, the industrial adjudicator had to consider the question as to whether on the transfer, the contract of employment continued with the transferee-employer by examining various facts. It was not possible to lay down inflexible rules in that behalf. The legislature, therefore, enacted Section 25-FF on September 4, 1956 which read as follows:

> Notwithstanding anything contained in Section 25-F, no workman shall be entitled to compensation under that section by reason merely of the fact that there has been a change of employers in any case where the ownership or management of the undertaking in which he is employed is transferred, whether by agreement or by operation of law, from one employer to another:
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> Provided that:
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> (a) the service of the workman has not been interrupted by reason of the transfer:
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> (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
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> (c) the employers to whom the ownership or management of the undertaking is so transferred is, under the terms of the transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

The section was conceived on the assumption that if the ownership of an undertaking was transferred, the cases of employees affected by the transfer would be treated as cases of retrenchment to which Section 25-F would apply. The validity of this assumption was successfully challenged in the case of Hariprasad Shivashankar Shukla v. A.D. Divikar (1957) SCR 121. In that case, the Court was called upon to consider the true scope and effect of the concept of retrenchment as defined in Section 2(oo) of the ID Act. The Court held that the . said definition had to be read in the light of the accepted connotation of the word, and as such, it could have no wider meaning than the ordinary connotation of the word according to which retrenchment meant the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and did not include termination of services of all workmen on a bona fide closure of industry or on change of ownership or management thereof. The effect of this decision was that though the definition of the word 'retrenchment' may have included also the termination of services caused by the closure of the concern or by its transfer, the termination of services on account of the closure or transfer could not be called retrenchment since retrenchment meant discharge of the surplus labour according to the ordinary accepted connotation of the word. As a result of this decision which was pronounced in November 1957, the present Section 25-FF was inserted and was brought into force retrospectively from 1st December, 1956. The first part of the Section is enacted to provide compensation to be workmen since the effect of the transfer of the undertaking to the new employer is ordinarily the termination of the contract of employment of the workmen engaged by the transferor-employer. In order that such termination of employment on transfer should be deemed to be retrenchment for the purposes of Section 25-F, the words "as if" were inserted in the last clause of the first part of the section. They state the effect of nullifying the interpretation placed by this Court in Hariprasad's case [supra]. The insertion of these words brought out clearly the legal distinction between "retrenchment" defined by Section 2(oo) as it was interpreted by this Court and "termination of service consequent upon transfer" with which Section

25-FF deals. In other words, the present Section provides that though termination of services on transfer may not be retrenchment, the workmen concerned are entitled to compensation as if the said termination was retrenchment. The provision is obviously made for the purpose of calculating the amount of compensation payable ; to the workmen. Rather than providing for the measure of compensation over again, Section 25-FF makes a reference to Section 25-F for the limited purpose.

However, such transfer may not in all cases amount to the termination of employment. It was, therefore, necessary to provide as to in what circumstances the transfer by itself would not be considered as termination of employment and the workmen need not be paid the retrenchment compensation. Those conditions have been taken care of by the proviso to Section 25-FF. The reading of Section 25-FF as a whole, therefore, shows that unless the transfer falls under the proviso, the employees of the undertaking concerned are entitled to claim compensation against the transferor and they cannot make any claim for re-employment against the transferee of the undertaking. In other words, when the transfer falls under the said proviso the transfer does not result in the termination of the contract of employment, A reference in this connection may be made to the decision of this Court in Anakapalla Cooperative Agricultural and Industrial Society Limited v. Workmen (1963) Supp. 1 SCR 730.

13. The contention of the learned Attorney General that Section 13 of the Act does not repeal Section 25-FF is undoubtedly correct. Since, however, Section 25-FF, as pointed out; above, by itself does not terminate the contract of employment and only provides for compensation to be paid to the workmen if the transfer either by the terms of the transfer or by the provisions of the law results in the termination of the attract of employment, the contention does not take the appellants' case any further. We have also pointed out above that in fact the provisions of Sections 3(3) and 3(4) red with Section 13 of the Act make it abundantly clear that in fact the transfer of management in the present case has not resulted in the termination of the contract of employment of the workmen. Hence, there is no substance in the second contention either.

14. The reliance placed by the learned Attorney General on the decision of this Court in Gumail Singh's case [supra] in this connection is misplaced. There, the claim made by the employees who were retrenched on account of transfer, was for re-employment in the transferee establishment. The facts there clearly show that the contract of employment of the employees was with the State of Punjab which transferred all the tubewells under it to be Punjab State Tubewell Corporation - company wholly owned and managed by the State of Punjab.

On the facts of that case it was found that the State Government had acted arbitrarily towards the employees and had abridged their rights by purporting to transfer only the tubewells and had retrenched the employees as a consequence thereof. The tubewells had further continued to be run at the cost of the State since the Corporation was wholly owned by it. That was something which was grossly unfair and inequitable since it had deprived the employees of substantial benefits which had accrued to them as a result of their long service with the State Government. It was in these circumstances that the Court had directed the employment of the retrenched employees on certain conditions. The case does not advance the contention of the appellants in any manner.

15. Reliance placed by the learned Attorney General on yet another decision of this cases in Bira Kishore Naik v. Coal India Limited and Ors. is also not well-merited. In that case, there was no provision in the Coal Mines [Taking Over of Management] Act, 1973 for protecting the interests of the employees of the coal mines unlike the provisions of Section 14 of the Coal Mines [Nationalisation] Act 1973 or under the present Act. As we have pointed out above, in the present case Section 13 read with the preamble and Sections 3(3) and 3(4) of the Act give protection to the workmen.

16. In fact, we are surprised that the appellants should have taken the stand that the workmen had not continued in their employment. As has been pointed out at the outset, 10,002 workmen had resigned voluntarily and the appellants had accepted their resignation and had also paid them gratuity. If the workmen had not continued in employment, there was no question of accepting their resignation and paying them the gratuity.

17. In the result, we dismiss the appeals and transferred cases with costs. Since the matter is pending before the Labour Court, we direct the Labour Court to dispose of the same within two months of the receipt of this judgment. All interim orders passed by this court shall stand vacated.