

Supreme Court of India

Maharashtra State Textile ... vs The Official Liquidator And Ors on 4 January, 1978

Equivalent citations: 1978 AIR 476, 1978 SCR (2) 499

Author: S M Fazalali

Bench: Fazalali, Syed Murtaza

PETITIONER:

MAHARASHTRA STATE TEXTILE CORPORATION LTD.

Vs.

RESPONDENT:

THE OFFICIAL LIQUIDATOR AND ORS.

DATE OF JUDGMENT 04/01/1978

BENCH:

FAZALALI, SYED MURTAZA

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FAZALALI, SYED MURTAZA

SINGH, JASWANT

CITATION:

1978 AIR 476

1978 SCR (2) 499

1978 SCC (1) 490

ACT:

Sick Textile Undertakings (Taking over of Management) Act , 1972--S. 8, Scope of-Construction of the words "winding up" occurring in Sec. 8--Sick Textile Undertakings (Nationalisation) Act, 1974 S. 35, r/w S. 2(1)(a), Scope of-Effect of the interim order` of this Court dt. 28-9-1973 explained.

HEADNOTE:

The appellant M.S.T.C. had taken a lease of the original company known as R. B. Bansilal Abhir Chand Spinning and Weaving Mills (P) Ltd., Hinganghat (Maharashtra). The said company was ordered to be wound up by an order dated 1-10-1965 and an official Liquidator was appointed. On 3-2-1967, a lease for the running of the mill was taken by the government of Maharashtra which was handed over to the appellant for running the mill on behalf of the state. At the time of taking over, the appellant did not take possession of all materials which it considered unnecessary as it did not want to pay higher compensation. Consequently several items were segregated and handed over to the official Liquidator. On 31-12-1972 the Sick Textile Undertakings (Taking over of Management) Act, 1972 was passed and was given retrospective operation w.e.f. 31-10-

1972 the date of its earlier ordinance. In January 1973, a Writ Petition was filed in this Court challenging the constitutional validity of the Management Act of 1972 and while the Writ Petition was pending an interim order dated 28-9-1973 was passed viz.; "Upon hearing Counsel, the Court directed that the maintenance of status quo shall continue pending disposal of the Writ Petition except that the liquidation proceedings will go on, but there will be no distribution of money amongst creditors or contributors until further orders." On 16-11-73 meetings were held before the official liquidator to consider the effect of the interim order and ultimately the official liquidator, with the concurrence of the representatives of the erstwhile directors of the Company, decided that the assets of the company may be realised by the official liquidator. On 19-4-74 the official Liquidator reported to the court for granting permission for sale of certain moveable such as furniture duplicating machines and machinery scrap etc. on which the company 'court directed notice to the Additional Government Pleader. On 30-4-1974, the appellant appeared and wanted time for filing objections but no objections were filed and the company judge by its order dated 25-6-1974 directed the official liquidator to sell the said assets and realise the price thereon. On 28-6-1974, certain directors were sought by the official liquidator for approving the proposed purchasers which was granted and the items were sold for Rs. 72,501/-. On 3-7-1974 the court accepted the offer of respondents 2 and 3 and nine days later, the court granted permission for removal of the materials by the purchasers, but because of some labour troubles, the materials could not be taken physical possession of by the purchasers. The Division Bench of the Bombay High Court dismissed the appeal filed by the appellant against the order of the court directing the sale of the articles on the ground that as this court by virtue of its interim order dt. 28-9-1973 had authorised the sale of the articles, the court was fully justified in ordering the sale of these articles.

Allowing the appeal by special leave, the Court,  
HELD : 1. The High Court has not properly construed the interim order ,of this Court and was under an erroneous impression of law that this Court  
by its interim order had in fact authorised the sale  
which in law is invalid.

[503-B]

2.The interpretation put upon the interim order by the High Court is not ,correct. The order of this Court directing the, maintenance of status quo did not impliedly amount to suspension of the provisions of the Management Act. [503-D]

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3.Though S. 8(1) of the Management Act does not place an absolute embargo on the continuance of the proceedings for

the winding up of a textile company, it imposes an important condition for the continuance of the proceedings, namely, that the consent of the Central Government should be obtained. [503F]

4. When this Court passed the interim order dt. 28-9-1973 and 'allowed the liquidation proceedings to continue it, it only meant that the proceedings should continue in accordance with law and if the law enjoined any condition the same must be complied with. in view of the provisions of S. 8 of the Management Act, the consent of the Central Government was necessary, so the order of this Court would be interpreted as meaning that the proceedings. could continue after the official liquidator obtained the consent of the Central Government u/s 8 of the Management Act . [503F-G]

5. The order passed by this Court did not give any free licence to the parties to act in disobedience of the mandatory provisions of the Act and continue the proceedings without complying with the conditions enjoined by S. 8 of the Management Act. Without the consent of the Central Government the liquidation proceedings could not continue and the Company Judge was not legal,, justified in ordering the sale of the moveables without obtaining the sanction of the Central Government. [503G-H, 504A]

6. The words "winding up" in S. 8 of the Management Act must be given the widest possible amplitude in order to serve the purpose of the Act, namely, to control the proceedings of a textile company which is in liquidation, by the Central Government. Whether the company had been wound up or whether the proceedings for the 'winding up' of the company had been continuing would make no difference so far as the application of Section 8 of the Management Act is concerned. It is not possible, therefore to construe the words "winding up" in such a narrow sense, viz. that it applies merely to proceedings for the winding up of a textile company, so as to defeat the very object of the Management Act. [504B-D]

7. On a proper construction of S. 35 of the Nationalisation Act, which reproduced the provisions of S. 8 of the Management Act in a different form the permission of the company judge given to official liquidator to sell the moveables would fall within the mischief of S. 35 of the Act. [504-G]

8. In view of the definition of the word "Appointed day" in Sections 2(1)(a) of the Nationalisation Act, it is clear that the Act, after being passed' would by virtue of its statutory fiction, take effect from the 1st day of April' 1974 and all proceedings taken after this day without the permission of the Central Government would become void ab initio. The High Court was in error in not giving effect to the statutory fiction contained in S. 2(1)(a) of the Nationalisation Act, by explaining away that as the Nationalisation Act was in fact passed after the court had

granted permission to sell, it could not affect the sale at all. Even though the Nationalisation Act may have come in force on a later date, the statutory fiction contained in the Act must be fully given effect to by the court even if the effect of the same is to nullify an order passed prior to the passing of the Act. [504G-14, 505A-B, F] East End Dwellings Co. Ltd. v. Finsbury Borough Council 1952 A.C.109' quoted with approval; Mr. Boucher Pierre Audre v. Superintendent, Central Jail Tihar, New Delhi A.I.R. 1975 S.C. 164 applied;

9.The express provision of S. 35 of the Nationalisation Act clearly voided the sale which took place under the orders of the company judge after the Act would be deemed to have come into force. The order by which the articles were sold was void in law and completely destitute of any legal effect. The Interim order passed by this Court on 28-9-1973 could not have had the effect of authorising the sale which was void under the statute. [505 F-G]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 777 of 1975. Appeal by Special Leave from the Judgment and Order dated the 27th Feb., 1975 of the Bombay High Court (Nagpur Bench) in Company Appeal No. 4 of 1974 in Company Petition No. 12 of 1965.

S.N. Kacker, Sol. General of India, T. V. S. N. Chari for the Appellant.

M.K. D. Nambodooiry, S. V. Deshpande, S. Balakrishnan for P. R. Mridul, Shiv Pujan Singh for Respondents 2 and 3 The Judgment of the Court was delivered by FAZIL ALI, J : This appeal by special leave turns upon the interpretation of an interim order passed by this Court on 28th September, 1973 in a writ petition challenging the validity of the Sick Textile undertakings (Taking over of Management) Act, 1972 as also the impact of the Sick Textile Undertakings (Nationalisation) Act, 1974 on the proceedings taken in this case both before and after, the passing of the interim order by this Court.

For short we shall refer to the appellant Maharashtra State Textile, Corporation as M.S.T.C., the Official Liquidator as O.L., the Sick Textile Undertakings (Taking Over of Management) Act of 1972 as the Management Act and in case of the Ordinance which has preceded that Act as the Management Ordinance. The Sick Textile Undertakings (Nationalisation) Act 1974 will be referred to as the Nationalisation Act. The point involved lies within a very narrow compass and the High Court appears to have travelled unnecessarily into the wealth of details regarding the history of the proceedings and has entered into meticulous detail\$ regarding the provisions of the Acts concerned although for the purposes of this case it was necessary to refer only to a few provisions of the Management Act and the Nationalisation Act.

In order to appreciate the point in controversy in the instant case it may be necessary to, give a brief survey of, the facts leading up to the impugned order. The appellant M.S.T.C. had taken a lease of the original company known as. R.B.. Bansilal Abhir Chund Spinning and Weaving Mills (P) Ltd. Hingangbat (Maharashtra). By an order dated 1.

10. 1965 the said company was ordered to be wound up and an Official Liquidator of the company was appointed. On 3rd February, 1967 a lease for the running of the mill was taken by the Government of Maharashtra which was handed over to M.S.T.C. for running the mill on behalf of the State. At the time of taking over the appellant M.S.T.C. did not take possession of all the materials which it considered unnecessary as it did not want to pay higher compensation. Consequently several items were segregated and handed over to the O.L. but the rest of the assets were taken over by the appellant M.S.T.C. Some times in 1971 the Official Liquidator sold 16 lots of store items, out of which three lots were not taken. delivery of by the purchasers M/s Akash Traders who had to pay Rs. 67,000/-. We would like to mention here that we are not concerned with this item of three lots in the instant case and the equities of the same will have to be worked out between the purchasers and the Official Liquidator. On 31.10.1972 the Management Ordinance was promulgated by the President of India which was followed by the Management Act which was passed on 31.12.1972 and was given retrospective operation with effect from 31.10.1972. In January, 1973 a writ petition was filed in this Court challenging the constitutionality of the Management Act and while, the writ petition was pending, an interim order dated 28.9.1973 was passed in the following terms "Upon hearing counsel, the Court directed that maintenance of status quo shall continue pending disposal of the Writ Petition except that the liquidation proceedings will go on, but there will be no distribution of money amongst the creditors or contributors until further orders".

On 16.11.1973 meetings were held before the Official Liquidator 'to consider the effect of the interim order and ultimately the Official Liquidator with the concurrence of the representatives of- the erstwhile directors of the company decided that the assets of the company may be realised by the Official Liquidator. It was further decided that the three lots of which delivery was not taken by M/s Akash Traders should be sold. In pursuance of this decision the Official Liquidator reported to the court for permission to sell the three lots and the court granted the said permission as a result of which the said three lots were sold on 14-2-1974, and were purchased by Raj Trading Company the second respondent. An appeal was filed against the order of the court dated 12.2.1974 to the Division Bench but the same was dismissed.

On 19-4-1974 another report was made by the Official Liquidator for sale of certain moveables such as furniture, duplicating machine and machinery scrap etc. The Court directed notice to the Additional Government Pleader on the aforesaid report of the Official Liquidator. On 30th April, 1974 the appellant M.S.T.C. appeared and wanted time for filing objections but no objections were filed and the Company Judge by its order dated 25th June, 1974 directed the Official Liquidator to sell the aforementioned assets and realise the price thereon. No appeal against this order was filed by the appellant M.S.T.C. On the 28th June, 1974 certain directions were sought by the Official Liquidator for approving the proposed purchasers which was granted. The items mentioned above were sold for Rs. 72,501/-. On 3-7-74 the Court accepted the offer of respondents 2 and 3 and 9 days

later on 12-7- 1974 the Court granted permission for removal of the materials by the purchasers, but unfortunately because of some labour trouble the materials could not be taken physical possession of by the purchasers. The appellant M.S.T.C. filed an appeal before the Division Bench against the order of the Court directing the sale, of the articles which was however dismissed by the Division Bench of the Bombay High Court mainly on the ground that as this Court by virtue of its interim order dated 28-9-1973 had authorised the sale of the articles the Court was fully justified in ordering the sale of those articles. It is against this order of the High Court that the appellant has come up in appeal by special leave.

This is therefore in a nutshell the sequence of events leading to the passing of the impugned order passed by the High Court dated 27-2-1975. We have heard counsel for the parties and have also perused the judgment of the High Court and we feel that the High Court has not properly construed the interim order of this Court and was under an erroneous impression of law 'that this Court by its interim order had in fact authorised the sale which in law was invalid. It is common ground that at the time when this Court passed the interim order dated 28-9-1973 the Management Act 1972 had already come into force. In the writ petition in which the interim order of this Court was passed the vires of The Management Act was challenged and it would appear from the reliefs sought in the petition that there was an express prayer for suspending the provisions of the Act. Despite this fact this Court did not at all suspend any of the provisions of the Act, but merely allowed the liquidation proceedings to go on and the only condition imposed was that there would be no, distribution of money amongst the creditors or contributors until further orders. The High Court was of the view that the order of this Court directing the maintenance of status quo impliedly amounted to suspension of the provisions of the Management Act. We are however unable to agree with the interpretation put upon the interim order by the High Court.

Section 8(1) of the Management Act runs thus "No proceeding for the winding up of a textile company, within the meaning of this Act, shall lie in any Court or be continued whether by or under the supervision of any Court or voluntarily, except with the consent of the Central Government".

Analysing this provision it is manifest that though the section does not contain an absolute embargo on the continuance of the proceedings it imposes an important condition for the continuance of the proceedings; namely, that the consent of the Central Government should be obtained. When this Court passed the interim order dated 28-9-1973 and allowed the liquidation proceeding to continue it only meant that the proceedings should continue in accordance with law and if the law enjoined any condition the same must be complied with. In view of the provisions of section 8 of the Management Act the consent of the Central Government was necessary, so the order of this Court would be interpreted as meaning that the proceedings could continue after the Official Liquidator obtained the consent of the Central Government under section 8 of the Management Act. The order passed by this Court did not give any free licence to the parties to act in disobedience of the mandatory provisions of the Act and continue the proceedings without complying with the conditions enjoined by section 8 of the Management Act. In these circumstances, therefore, the inference is irresistible that without the consent of the Central Government the liquidation proceedings could not continue and the company Judge was not legally justified in ordering the sale of the moveables without obtaining the sanction of the Central Government.

It was however suggested on behalf of the respondents that section 8 would have no application to the facts of the present case inasmuch as that section applied merely to proceedings for the winding up of a textile company. In the instant case, the company had already been wound up and the proceedings had however passed beyond the scope contemplated by section 8 of the Management Act. A delicate and ingenious distinction was sought to be drawn by counsel for the respondents between "the winding up" proceedings and the proceedings which started after a company had been wound up. In our opinion, it is not possible to construe, the words "winding up" in such a narrow sense as to defeat the very object of the Management Act. In our opinion, the words "winding up" must be given the widest possible amplitude in order to serve the purpose of the Act namely, to control the proceedings of a textile company which is in liquidation, by the Central Government. Whether the company had been wound up or whether the proceedings for the winding up of the company had been continuing would make no difference so far as the, application of section 8 of the Management Act is concerned. In these circumstances, we are unable to accede to the argument put forward by the counsel for the respondents.

It was rightly submitted by counsel for the appellant that the High Court appears to have completely lost sight of the effect of the Nationalisation Act which had been given retrospective effect. In this connection, our attention was drawn to section 35 of the Nationalisation Act which runs thus :-

"No proceeding for the, winding up of a textile the right, title, and interest in relation to the sick textile undertaking owned by which have vested in the National Textile Corporation under this, Act or for the appointment of a receiver in respect of the business of the sick textile undertaking shall lie or be proceeded with in any court except with the consent of the Central Government".

This section reproduced the provisions of section 8 of the Management Act in a different form. The, Nationalisation Act was passed on 21-12-1974 and was, given retrospective effect from 1-4-1974. Thus, if the Act was to be properly construed the permission of the Company Judge given to the Official Liquidator to sell the moveables would fall within the mischief of section 35 of the Act.

Section 2 (1) (a) of the Nationalisation Act runs thus " "Appointed day" means the 1st day of April, 1974". It is, therefore, clear that the Act after being passed would, by virtue, of its statutory fiction, take effect from the 1st day of April, 1974 and all proceedings taken after this day without the permission of the Central Government would become void ab-initio. The High Court seems to have explained away this aspect of the matter on the ground that as the Nationalisation Act was in fact passed after the Court had granted permission to sell, it could not affect the sale at all. We are of the opinion that the High Court was in error in not giving effect to the statutory fiction contained in section 2(1) (a) of the Nationalisation Act.

In the case of East End Dwellings Co. Ltd. v. Finsbury Borough Council<sup>(1)</sup> Lord Asquith observed as follows :-

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents

which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it..... Tile Statute says that you must imagine a; certain state of affairs it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".

These observations were quoted with approval by this Court in the case ,of Mr. Boucher Pierre Audre v. Superintendent,- Central Jail, Tihar, New Delhi(2) where Bhagwati, J. speaking for the Court observed as "It is now well settled law that where a legal fiction is created, full effect must be given to it and it should be carried to its logical conclusion".

In view of the decision of this Court it is manifest that even though the Nationalisation Act may have come, into force oil a later date the statutory fiction contained in the Act must be fully given effect to by the Court even if the effect of the same is to nullify an order passed prior to: the passing of the Act. For these reasons, therefore, we are clearly of the opinion that the express provisions of section 35 clearly voided the sale which took place under orders of the Company Judge after the Act would be deemed to, have, come into force.

Thus whichever way we look at this case; the position is clear that the, order by which the articles were sold was void in law and completely ,destitute of any legal effect. The interim order passed by this Court on 28-9-1973 could not have had the effect of authorising the sale which was void under the statute,. For these reasons, therefore, the observations of the High Court while interpreting the interim order of this Court which may be extracted thus "In other words, the Supreme Court by its interim order has suspended the operation of section 8 of the Management (1) [1952] A.C. 109.

(2) A.. 'R. 1975 S.C. 164.

Act, but subject to the provisions that the vesting in management and the possession of the respective parties will be preserved undisturbed".

are uncalled for as they are, based on a misconstruction of the interim order passed by this Court.

For the reasons given above the appeal is allowed, the order of the, High Court is set aside and the sale held by the Official Liquidator in pursuance of the order of the Company Judge is annulled. In case, the concerned respondents have deposited the purchase money in Court they would be entitled to refund of the same according to law as the sale made under the orders of the Company Judge has been held by us to be invalid and void. The decision of this appeal would not govern the order of three lots of items of movable property which had been sold earlier and which do not form the subject matter of the, present appeal. In the peculiar facts and circumstances of the case there will be no order as to costs, S. R.

Appeal allowed..