

(1991) 08 BOM CK 0012

Bombay High Court

Case No: W. P. No. 1718 of 1984

Rasiklal Ratilal
(Partnership Firm) and
another

APPELLANT

Vs

Union of India and
others

RESPONDENT

Date of Decision: Aug. 14, 1991

Acts Referred:

- Textile Undertakings (Taking Over of Management) Act, 1983 - Section 11(1), 3, 3(1), 3(2), 3(3)

Citation: (1991) MhLj 1366

Hon'ble Judges: M. L. Pendse, J; A. V. Savant, J

Bench: Division Bench

Advocate: Virendra V. Tulzapurkar with P. D. Shah instructed by M/s Manilal Kher Ambalal and Co, for the Appellant; Janak Dwarkadas with S. J. Vajifdar instructed by M/s Bhaishankar Kanga and Girdharlal For respondent No. 2 and K.H. Afody with N. S. Fadia, for the Respondent

Final Decision: Dismissed

Judgement

A. V. Savant, J.

By this petition, the petitioners are challenging some of the provisions of the Textile Undertakings (Taking, over of Management) Act, 1983 which repealed the Textile Undertakings (Taking over of Management) Ordinance, 1983. A few facts leading to the present controversy may be stated asunder:

2. The first petitioner is a partnership firm duly registered under the provisions of the Indian Partnership Act, 1932 carrying on business as dealers and suppliers of yarn. The second petitioner is the partner of the first petitioner firm. On 7th October 1983, the first petitioner supplied a consignment comprising 497.27Kgs. of Standard Polyester Texturised Nirlon Yarn to the third respondent-company which is a textile

undertaking covered by the said 1983 Act. The said consignment was covered by the first petitioner's delivery order and invoice dated 7th October 1983 and was valued at Rs. 83,819.58/-. In respect of this consignment, the third respondent had, on 17th October 1983, issued a cheque bearing No. 038378 drawn on 5th respondent-Bank of Baroda for Rs. 83,820/-. On 12th October 1983, the petitioners supplied the second consignment comprising 493.58 Kgs. of Standard Polyester Texturised Nirlon Yarn to the third respondent. This second consignment was covered by delivery order and invoice dated 12th October, 1983 and was valued at Rs. 96,982/-. The payment in respect of this second consignment was made by the third respondent under cheque dated 18th October 1983 bearing No. 208489 for Rs. 96,982/-. On 18th October 1983, the Textile Undertakings (Taking over of Management) Ordinance, 1983 was promulgated to take effect from that date. This ordinance has subsequently been replaced by the Textile Undertakings (Taking over of Management) Act, 1983. By virtue of sub-section (1) of section 3, of the said Act, on and from the appointed day, the management of all the textile undertakings stood vested in the Central Government. Under sub-sections (1) and (3) of section 3, it has been provided as under:

Sec. 3(1) : On and from the appointed day, the management of all the textile undertakings shall vest in the Central Government;

Sec. 3(2):.....

Sec. 3(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.

Similarly sub-section (7) of section 3 of the said 1983 Act, reads as under:

Sec. 3(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.

3. It is also necessary to refer to section 6 of the said Act and in particular section 6(1)(b) appearing in Chapter HI under the heading "Power to Provide Relief to the Textile Undertakings." Section 6(1)(b) reads as under:

"Sec. 6(1): The Central Government may, if satisfied, in relation to any of the textile undertakings or any part thereof, the management of which has vested in it under this Act, that it is necessary so to do in the interests of the general public with a view to preventing any fall in the volume of production of such undertaking, by notification, declare that-

(a):.....

(b): the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force (to which such textile undertaking or the textile company owning such undertaking is a party or which may be applicable to such textile undertaking or textile company) immediately before the date of issue of the notification shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable subject to such adaptations and in such manner as may be specified in the notification."

Section 11(1) deals with the contracts etc. held to have been entered into in bad faith which may be cancelled or varied by the Central Government. Section 11(1) of the said 1983 Act reads as under:

"Sec. 11(1): If the Central Government is satisfied, after such inquiry as it may think proper, that any contract or agreement entered into at any time within three years, immediately preceding the appointed day between any of the textile companies or managing or other director of any such textile company and any other person in relation to any service, sale or supply to, or by, its textile undertaking and in force immediately before the appointed day, has been entered into in bad faith, or is detrimental to the interests of the textile undertaking of the concerned textile company, it may make, within one hundred and eighty days from the appointed day, an order cancelling or varying (either unconditionally or subject to such conditions as it may think fit to impose) such contract or agreement and thereafter the contract or agreement shall have effect accordingly."

4. In view of the above provisions, on the appointed day, namely, 18th October 1983, the contracts entered into by the petitioners with the third respondent-textile undertaking stood terminated. In view of the provisions of section 3(3) quoted above, the contract relating to the management of the business and affairs of the third respondent-undertaking stood terminated on 18th October 1983. Sub-section"(7) of section 3 quoted above further makes it clear that for removal of doubt, it was declared that any liability incurred by the textile company in relation to the textile undertaking before the appointed day would be enforceable against the concerned textile company and not against the Central Government or the Custodian. Since the cheques issued in favour of the petitioners have been dishonoured, the petitioners have filed the present petition for the reliefs inter alia for declaration that the provisions of the 1983 Ordinance and the 1983 Act referred to above are unconstitutional and for a direction to respondents Nos. 1 and 2 to desist from withholding the payment due to the petitioners and for a further direction to respondents Nos. 4 and 5-Banks to make the payment under the two cheques, one for Rs. 83,820/-and the other for Rs. 96,982/-.

5. We have heard the learned Counsel for the parties. Shri Tulzapurkar appearing for the petitioners has contended that in the first place the reference to the management of the business and affairs of the textile undertakings appearing in sub-section (3) of section 3 would not cover the transactions in dispute in this case. It is not possible to accept this contention for the simple reason that in the scheme of section 3, the words "textile undertaking" shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges of the textile company in relation to the said textile undertaking and all property, movable and immovable, including lands, buildings, workshops, projects, stores, spares, instruments, machinery, equipment, automobiles and other vehicles and goods etc. and all 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. Sub-section (3) makes it clear that any contract whether express or implied or other arrangement in so far as it relates to the management of the business or affairs of the textile undertaking and in force immediately before the appointed day, would be deemed to have terminated on the appointed day. The petitioners had supplied the yarn pursuant to the orders placed by third respondent-company. It is, therefore, not possible to hold that the contracts did not relate to the management of the business and affairs of the third respondent-company. There is thus no merit in the first contention raised by Shri Tulzapurkar.

6. Shri Tulzapurkar then contended that before the consequences contemplated by sub-sections (3) and (7) of section 3 of the Act ensue, it is necessary for the Central Government to make an order u/s 11(1) canceling or varying the contracts which have been found to have been entered into in bad faith or were detrimental to the interests of the textile undertaking. The learned Counsel contended that in the present case the Central Government has not made any such order. Section 11(1) contemplates the Central Government holding an inquiry and on being satisfied that some transactions have been entered into in bad faith or were detrimental to the interests of the textile undertaking making of an order as contemplated. The learned Counsel tried to contend that in the present case, the goods were ordered by the third respondent undertaking just prior to the appointed day, inasmuch as, the first consignment was ordered on 7th October, 1983 and the second consignment was ordered on 12th October 1983. According to the learned Counsel the goods were in fact delivered on 7th October and 12th October 1983 and the third respondent had even issued the cheques for the said supplies. It was, therefore, contended that unless there was an order passed u/s 11(1) of the said 1983 Act, the consequences contemplated by section 3, sub-sections (3) and (7) would not flow. In our opinion, it is not possible to accept this contention. In the first place, it must be remembered that the object of the said 1983 Act has been stated as under:

"An Act to provide for taking over in the public interest of the management of the textile undertakings of the companies specified in the First Schedule pending nationalisation of such undertakings and for matters connected therewith or incidental thereto."

Further the preamble reads as under :

"Whereas by reason of mismanagement of the affairs of the textile undertakings specified in the First Schedule, their financial condition became wholly unsatisfactory even before the commencement in January 1982 of the Textile strike in Bombay and their financial condition has thereafter further deteriorated;

And whereas certain public financial institutions have advanced large sums of money to the companies owning the said undertakings with a view to making the said undertakings viable;

And whereas further investment of very large sums of money is necessary for reorganising and rehabilitating 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;

And whereas acquisition by the Central Government of the said undertakings is necessary to enable it to invest such large sums of money;

And whereas pending the acquisition of the said undertakings, it is expedient in the public interest to take over the management of the said undertakings."

7. Secondly neither sub-section (3) of section 3 nor sub-section (7) of section 3 is subject to the provisions of section 11(1) of the Act. While it is true that section 11(1) deals with certain contracts or agreements which can be held to have been entered into in bad faith or detrimental to the interests of the textile undertakings, sub-section (3) and sub-section (7) of section 3 are in general terms. There is nothing in the scheme of section 3 to suggest that before the contract can be deemed to have been terminated on the appointed day, it is necessary in every case for the Central Government to pass an order contemplated by section 11(1) of the Act. Similarly, sub-section (7) of section 3 makes it more than clear that irrespective of the nature of the transaction entered into being in bad faith or being detrimental to the interests of the textile undertaking, any liability incurred by textile company in relation to the textile undertaking before the appointed day shall be enforceable against the concerned textile company, viz., respondent No. 3 in this case, and not against the Central Government. As stated earlier, independently of the findings recorded in an order passed by the Central Government u/s 11(1) of the Act, on a plain reading of the provisions of section 3(3) and section 3(7), we are of the opinion that the Central Government or the Custodian would not be liable in respect of the liability incurred by the third respondent company before the appointed day i.e. to

say 18th October 1983. Whereas section 11(1) is limited in its operation to such of the contracts or agreements as have been found to have been entered into in bad faith or are detrimental to the interests of the textile undertaking, there is no such qualification occurring in the provisions of section 3(3) as far as the termination of the contracts is concerned or u/s 3(7) as far as the exemption of the Central Government or Custodian from their liability is concerned. In this view of the matter, in our opinion, it is not possible to accept the contention of Shri Tulzapurkar.

8. Accordingly the petition fails. The rule is discharged with costs. Respondents Nos. 1 and 2 are free to enforce the bank guarantee furnished in pursuance of the order passed by this Court at the time of admission of the petition and recover the said amount with interest at the rate of 9% p.a. as ordered by this Court at the time of admission of the petition.