

(1981) 02 CAL CK 0001

Calcutta High Court

Case No: C.R. 6177 (W) of 1977

Surendra Nath Banerjee

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision:** Feb. 26, 1981**Acts Referred:**

- Constitution of India, 1950 - Article 32
- Sick Textile Undertakings (Nationalisation) Act, 1974 - Section 6

**Citation:** 85 CWN 517**Hon'ble Judges:** P.K. Banerjee, J**Bench:** Single Bench**Advocate:** A.P. Chatterjee and Dipak Banerjee, for the Appellant; Kanan Kumar Ghose, Basudev Gayen and Santanu Mukherjee, for the Respondent

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**Judgement**

P.K. Banerjee, J.

This Rule is directed against an order of dismissal of the petitioner from the service of the National Textile Corporation (A Govt. Undertaking) having its registered office at 7, Jawaharlal Nehru Road, Calcutta-13. It appears that the petitioner was appointed as Calendering-in-charge in the National Textile Corporation Ltd. on or about 20th July, 1973. The petitioner was suspended on 31st May, 1976 for acting in a manner detrimental to the organisation by purchasing materials at a higher price and also some other mal-practices. The letter dated 31st May) 1976 itself contained the charge as hereinbefore stated to which the petitioner gave explanation. It appears thereafter that an enquiry was conducted by Sri D. K. Set who was appointed as Enquiry Officer. The enquiry report is annexed to the affidavit-in-opposition filed by the Company being annexure "C". The order dated 31st May, 1976 is as follows :

Shri S. N. Banerjee, Calendering Incharge, Arati Cotton Mills is hereby directed to show cause why disciplinary action will not be taken against him for purchasing

stores materials like Saicotex etc. at a price higher than the market price and also for not stopping using such materials inspite of instruction given by the officers of the N.T.C./Purchase Division.

Explanation of Shri Banerjee should reach the undersigned within 7 days from the date of issue.

For acting in a manner detrimental to the organisation by purchasing materials at a higher price and also some other mal practices Shri S.N. Banerjee, Arati Cotton Mills is placed under suspension with immediate effect pending enquiry and disposal of findings.

He will however be entitled to the subsistence allowances as admissible during the period of suspension.

Sd/- S. N. Mukherjee

Manager (Administration)

2. On the basis of the said order the enquiry was initiated. The Enquiry Officer in his report has made three charges as :

(1) Purchased Store Materials like Saicotex etc. at a price higher than the market price.

(2) Non-stopping of use of such materials inspite of instructions given by the officers of the N. T. C./Purchase Division.

(3) Other Mal-practices.

3. Admittedly the petitioner herein has nothing to do with the purchase of Saicotex. The indent admittedly was made by the petitioner who is the member of the purchasing Committee. But he had no authority to purchase the Saicotex, It appears to me that the report of the Enquiry Officer was perverse in making a finding that the petitioner took advantage by his position and impressed upon the P. W. 1 with the pleas of urgency in purchasing Saicotex at a rate higher than the market rate from the Industrial Sales Agency, Admittedly the purchase was made by the Purchasing Officer and not by the petitioner. Therefore, in my opinion, the finding about the purchase being made by the petitioner is a perverse finding as the learned Enquiry Officer himself held that he had no power to make any purchase. The second charge is "Non-stopping of use of such materials inspite of instructions given by the officers of the N.T.C./Purchase Division". The petitioner was found guilty of the charges. The whole basis was based on perverse finding, inasmuch as, it cannot be said that the petitioner flouted the instructions of the authorities. The learned Enquiry Officer held therefore, I hold that at the time of discussion Mr. Ghose has given instructions not to use Saicotex and the said note in Ext. 7 corroborates my view". This is a conjecture and surmise and not based in so far as the charge sheet is concerned in which the learned Enquiry Officer held Mr.

Banerjee guilty of the charges and is also perverse, inasmuch as, there were no details of the charges of the mal practices perpetrated by the petitioner in derogation to the interest of the Company. On the basis thereof I have no hesitation to hold that the whole enquiry report was based on conjecture and surmise and on perverse finding and therefore any order passed on the basis thereof cannot be allowed to stand. But the question still remains which has been argued by Mr. Ghose that no Writ lies against the National Textile Corporation.

4. In the supplementary affidavit filed by Sri Sudhir Kumar Sarkar, Manager (Administration) of the Undertaking of Unit Arati Cotton Mills belonging to the National Textile Corporation Ltd. with the direction of the Court the nature and the character of the Company has been stated. It has been stated in paragraphs 3, 4, 5 and 6 as follows :--

3. In October 1974 and at the time of incorporation of the Company National Textile Corporation Ltd. subscribed and held 98 equity shares and Dr. Umakanta Bhattacharyya, Deputy Regional Controller of the said Corporation subscribed and held 1 equity share and Sri Vadakey Parayil Ramachandran, Chief Executive Officer, Bengal Laxmi Cotton Mills of the said Company subscribed and held 1 equity share, out of the authorised share capital of Rs. 15 crores divided into 3 lacks equity shares of Rs. 1000/- each. I crave reference to the Memorandum and Articles of Association of the said Company.

4. By the end of March 1978 the National Textile Corporation Ltd. subscribed and held 1, 07, 41, 781 of Rs. 1000/- each equity shares and the Governor of West Bengal subscribed and held 24, 600 equity shares of Rs. 1000/- each and the Governor of Orissa subscribed and held 800 equity shares of Rs. 1000/- each and the Governor of Bihar subscribed and held 2,668 equity shares of Rs. 1000/- each and none else. I crave reference to the Annual Report of the said Company for the year ended March 31, 1978.

5. By a resolution passed by the members of the said Company at a meeting held on 26.5.79 the authorised capital of the Company was increased to Rs. 30 crores by further creation of Rs. 1,50,000 equity shares of Rs. 1000/- each ranking pari passu with the existing shares.

6. At present no private person hold any shares of the said Company.

5. It is clear therefore that at the present moment the Company is wholly owned by the Government and the shares are held by the Governor of West Bengal, Governor of Orissa and Governor of Bihar or for practical purposes by a resolution passed by the members of the Company, the authorised capital of the Company was increased to Rs. 30 crores and no private person has any interest in the matter. It has been made clear that Arati Cotton Mills became a sick industry and under the Sick Textile Undertakings (Nationalisation) Ordinance 1974 which was repealed subsequently or substituted by the Sick Textile undertaking (Nationalisation) Act,

1974 all the rights and liabilities were vested in the National Textile Corporation Ltd. u/s 6 of the said Act the National Textile Company was empowered to form and register subsidiary companies under the Companies Act 1956 and transfer such of the nationalised undertakings or parts thereof to such subsidiary companies as were necessary. It has been also made clear that the National Textile Corporation was incorporated and registered under the Companies Act 1956 and the Undertakings of the Arati Cotton Mills Ltd. was vested in it and the employees of the said undertakings were transferred to the National Textile Corporation Ltd. On the basis of this facts Mr. Ghosh contended that no writ lies against the Company National Textile Corporation. It must be stated that initially the National Textile Corporation was not made a party to the Rule but subsequently the National Textile Corporation was made a party to the Rule. The question before me is whether the Company came into existence under the Sick Textile Undertakings (Nationalisation) Act, 1974 and shares of the said Company is being held by the Government and Government alone and no private person is interested and whether the Writ lies against those persons.

6. Mr. Chatterjee relied upon the case reported in 1981 (1) SCC 449 (Som Prakash Rekhi -v- Union of India) and contended that the Company is a State and it is a test of agency or instrumentality of the State. Therefore even a petition under Article 32 of the Constitution lies against such corporation in case of violation of Part III.

7. Mr. Ghosh on the other hand referred to the number of the Supreme Court decisions, namely, (1) [Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation](#), and (2) [Sabhajit Tewary Vs. Union of India \(UOI\) and Others](#), etc. and was placed before me in order to support the contention that the Writ does not lie against the Corporation though it is a Government Undertaking. But in my opinion, all these cases were considered by the case referred to by Mr. Chatterjee. Therefore it is not necessary for me to reiterate again. On the other hand in the present case it has been clearly stated that the Company is a State. In paragraph 28 of the judgment reported in 1981 (1) SCC 449 (Som Prakash Rekhi -vs- Union of India) it has been stated that "sometimes the test is formulated, oversimplified fashion, by asking whether the corporation is formed by a statute or under a statute. The true test is functional. Not how the legal person is born but why it is created. Nay more. Apart from discharging functions or doing business as the proxy of the State, wearing the corporate mask there must be an element of ability to affect legal relations by virtue of power vested in it by law". It has been held by the Supreme Court that the agency or instrumentality of the Government can be spelt out from the provision of the Act under which the Company came into existence. In view of the Supreme Court decision it cannot now be said that no Writ lies against such Corporation. In that view of the matter, in my opinion the Rule must be made absolute.

The will be no order as to costs.