

PETITIONER:
INDORE TEXTILES LTD. & ANR.

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT: 02/03/1998

BENCH:
CJI, M.M. PUNCHHI, B.N. KIRPAL, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:
THE 2ND DAY OF MARCH, 1998

Present :

Hon'ble the Chief Justice
Hon'ble Mr. Justice B.N. Kirpal
Hon'ble Mr. Justice K.T. Thomas

G.L. Sanghi, V.C. Mahajan, K.N. Shukla, Sr. Advs.,
S.K. Gambhir, Vivek Gambhir, Ms. Charu Bhardwaj,
Satish K. Agnihotri, Mrs. Yogmaya, (Y.P. Mahajan) Adv.
for C.V. Subba Rao, (Sakesh Kumar) Adv. for Uma Nath Singh,
Advs. with them for the appearing parties.

J U D G M E N T

The following Judgment of the Court was delivered:

WITH

Writ Petition (Civil) No. 742 of 1986

KIRPAL, J.

The acquisition of the undertaking of the Indore Textiles Ltd. by The Indore Textiles Limited (Upkaram Ka Arjan Aur Antaran) Adhinyam, 1986, is under challenge in the writ petition and the appeal.

M/s Indore Textiles Ltd, was a public limited company whose shares were purchased by one Ajit Kumar Singh Kasliwal (Petitioner No.2 in the writ petition) on 10th February, 1977. It appears that the undertaking of the company had been closed for some time and the Central Government had appointed a committee to investigate into its affairs. After the receipt of the report the Central Government, by an order dated 12th August, 1977, took over the management of the textile mill. This order was passed by the Central Government in exercise of its powers under Section 18AA (1) (b) of the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as 'the IDR Act'). The said order was challenged with the filing of a writ petition in the Madhya Pradesh High Court and by judgment dated 8th September, 1980 that writ petition was partly allowed and the Central Government was directed to give an opportunity to the petitioners to show cause why the order of taking over of the management should not be passed and to cancel the order if the petitioners were able to show that the conditions to pass the order did not exist.

The petitioners were heard by the Joint Secretary,

Government of India on 15th November, 1980 but when no order was passed a fresh writ petition No. 825 of 1981 was filed in the Madhya Pradesh High Court. During the pendency of this petition an interim order was passed by the High Court directing the Central Government to pass an order pursuant to the hearing which and been given to the petitioner on 15th November, 1980. Thereafter the petitioners were informed that an order dated 2nd January, 1982 had been passed by the Central Government to the effect that the conditions for the taking over of the management of the mill did exist and that the take over was justified in the facts and circumstances of the case. On amendment being allowed this communication dated 2nd January, 1982 was challenged before the High Court in the writ petition which was pending. During the pendency of the writ petition an order dated 22nd May, 1982 signed by the Joint Secretary, Ministry of Commerce, Department of Textiles, stating the reasons for taking over of the mills' management was communicated to the petitioner. By an amendment in the pending writ petition this order of 22nd May, 1982 was also allowed to be challenged. Ultimately the High Court by its judgment dated 17th December, 1982 dismissed the writ petition. Civil Appeal No. 6815 of 1983, which is also being disposed of by this judgment, arises by way of special leave having been granted against the judgment dated 17th December, 1982.

The original order under Section 18AA of the IDR Act was to have effect for a period of five years from the date of its publication in the official gazette. This period was subsequently extended from time to time. In the present case the extended period of the last extension was upto the including 11th February, 1986. It may here be noticed that under Section 18A (2) proviso, the maximum period for which the extension could be granted is twelve years.

One day before the extended period was to come to an end the Governor of Madhya Pradesh promulgated an ordinance called the Indore Textiles Limited (Upkaram Ka Arjan Aur Antaran) Adhyadesh, 1986. This has subsequently been replaced by the Indore Textiles Limited (Upkaram Ka Arjan Aur Antaran) Act, 1986, which received the assent of the President on 5th April, 1986. The Act provides for acquisition and transfer of the industrial undertaking of the company and contains other incidental provisions including the management of the company vesting with the government. After the promulgation of the Act the petitioners filed the present petition under Article 32 of the Constitution challenging the validity of the said Act.

Even though in the writ petition the principal challenge to the Act was on the ground that neither the State Legislature nor the Governor of the State had legislative competence to promulgate the Act and the Ordinance inasmuch as the appropriate entry for the enactment of such an ordinance of Act was Entry 52 of List 1 of the 7th Schedule, but this contention, at the time of arguments, was not raised by Shri G.L.Singhi, learned senior counsel for the petitioners presumable because in cases of similar enactments such a contention had been rejected by this Court in the case of Ishwari Khetan Sugar Mills (P) Ltd, and Ors, Vs. State of Uttar Pradesh and Ors. [(1980) 4 SCC 136] and Mahesh Kumar Saharia Vs. State of Nagaland and Ors. [(1997) 8 SCC 176], to mention only two. It was, however, submitted by Shri Sanghi that there was no existing public purpose for which the acquisition could have been made. It was contended that the object of the Act is clearly reflected in the preamble which shows that the undertaking

was being acquired with a view to secure its proper management. Inasmuch as the management of the undertaking had already been taken over by the Central Government, under the order passed under Section 18AA of the IDR Act, Shri Sanghi submitted that the reason for securing proper management did not exist and, therefore, the Act could not have been passed.

The preamble of the Act reads as follows :

"An Act to provide in public interest for the acquisition and transfer of the industrial undertaking known as the Indore Textiles Limited Ujjain, with a view to securing the proper management of such industrial undertaking so as to subserve the interest of the general public by ensuring the continuity of production of cloth which is vital to the needs of the country and for matters connected therewith or incidental thereof"

It is true that on the date when the ordinance was issued i.e., 10th February, 1986, the management of the undertaking was still with the Central Government. The preamble of the Act does not show that the same was passed with a view only to secure the proper management of the industrial undertaking. The reading of the preamble and of the Act as a whole makes it clear that the said legislation was undertaken with a view to secure the proper management of the same "so as to subserve the interest of the general public by ensuring the continuity of producing of cloth which is vital to the needs of the country and for matter connected therewith or incidental thereto" (Emphasis added) The anxiety in promulgating the ordinance and replacing it with the act clearly was to see that the mill, which had been closed for more then three months at the time when the notification under Section 18AA of the IDR Act had been issued, should continue its activity of production of cloth which was in the interest of the country. As a result of the acquisition of the undertaking it is but obvious that its management would henceforth vest with the State Government and it is for this reason that provisions with regard thereto are contained in Chapter IV of the said Adhiniyan.

It was faintly suggested that when the IDR Act contains the e power to take over the management of an undertaking there can be no acquisition by the said Act which would have the same effect, i.e., taking over of the management of the undertaking. This questions no longer res integra. There was a similar provision the one contained in Chapter IV of the Adhiniyam which existed in the U.P. Sugar Undertaking Acquisition Act, 1971, which enabled the management of the acquired undertakings being taken over by the State Government. A contention was raised in Ishwari Khetan's case (supra) that the UP Act was violative of Section 20 of the IDR Act which provided that after the commencement of the IDR Act it was not competent for any State Government or a local authority to take over the management for control of any industrial undertaking under any law for the time being in force which authorises any such Government or local authority so to do. It was observed that the said Section 20 of the IDR Act does not preclude or forbid a State Legislature from exercising legislative powers under an Entry other than Entry 24 of List II and if in exercise of that legislative power the consequential transfer of

management or control over the industry or under taking as an incident of acquisition then such taking over of the management or control pursuant to an exercise of legislative power is not within the inhibition of Section 20 of the IDR Act. To the same effect is a recent judgment of this Court in Mahesh Kumar Saharia's case (supra) where a similar challenge to the Nagaland Forest Products Limited (Acquisition of Shares) Act, 1982, was repelled.

Shri Sanghi, however, vehemently contended that neither in Ishwari Khetan's nor in Mahesh Kumar Saharia's cases had the management been taken over by the Central Government under the IRD Act before the respective acquisition acts had been passed. He submitted that present case is clearly distinguishable because as on the date of the issuance of the ordinance the management was with the Central Government.

In our opinion this distinction, if at all, makes no difference to the merits of the case because as held in Ishwari Khetan's and Mahesh Kumar Saharia's cases the provision for taking over of the undertaking is merely incidental to the acquisition of the undertaking and is not in conflict with Section 20 of the IDR Act. Furthermore the extended period of management with the Central Government was coming to end on 11th February, 1986 and the impugned ordinance was issued one day before that, i.e., on 10th February, 1986. This was obviously done with a view that there should be no break and the management of the undertaking should continue with the Government even after 11th February, 1986. The so called overiapping of the management for one or two days, i.e. 10/11th February, 1986, would not and cannot affect the validity of the Adhiniyam.

It was lastly submitted by Shri Sanghi that the undertaking was under the control and management of the Government from 12th August, 1977 till its acquisition. According to Section 5 of the Adhiniyam every liability in respect of the period prior tot he appointed date shall be the liability of the company and shall be enforceable against the owners and not against the State Government. It was contended that during this period of management after 12th August, 1977, the liabilities had been incurred by the Government when it was managing the undertaking and it will be unfair and unfair and arbitrary if the liability incurred during this period, when the management of the undertaking was not with the petitioner, should be fastened upon the petitioners and they be asked to discharge the same. We do not find in the writ petition any challenge to the Act or Section 5 in particular on the ground that the liability for the period after 12th August, 1977 is sought to be fastened on the petitioners. It is admitted that so far no demand under Section 5 has been raised. Even though Shri K.N. Shukla, learned senior counsel appearing for the State, stated that the liabilities between 12th August, 1977 and 10th February, 1986 will be borne by the State, we do not think it is necessary or appropriate, in the absence of necessary pleadings, to adjudicate on this aspect. We, however, do hope and expect that the Government will not act unfairly and whenever necessary it will pass appropriate orders, which power it has under Section 32 of the Act, to remove any difficulty in this regard.

Inasmuch as the validity of the Adhiniyam is being upheld, the civil appeal No. 6815 of 1983 in which the challenge was to the taking over of the management under the IRD Act had become infructuous. We, therefore, dismiss both the writ petition as well as the civil appeal but leave the parties to bear their own costs.

JUDIS