PETITIONER:
MAHESH KUMAR SAHARIA

Vs.

RESPONDENT:
STATE OF NAGALAND & ORS

DATE OF JUDGMENT: 14/10/1997

BENCH:
A.S. ANAND, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:
THE 14TH DAY OF OCTOBER, 1997
Present:
Hon'ble Dr. Justice A.S.Anand
Hon'ble Mr. Justice K. Venkataswami
Sunil Gupta, Mrs.Anjali Verma, Nikhil M. Sakhardande, Advs. for M/s. JB Dadachanji & Co., Advs. for the appellant
K.Parasaran, P.K.Goswami, Sr.Advs., C.K.Sasi, Kailash Vasdev, Advs. with them for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:
K. Venkataswami, J.

The appellant, formerly a shareholder and Managing Director of the Nagaland Forest Products Limited thereinafter called the "Company"), challenged the vires of Nagaland forest Products Ltd. (Acquisition of Shares) Ordinance, 1981 and nagaland Forest Products Ltd. (Acquisition of Shares) Act, 1982, which replaced the Ordinance (hereinafter called the "State Act"), contending inter alia that he said legislations were ultra vires the powers of Nagaland State Legislature in view of Selection 20 of the Industries (Development & Regulation) Act, 1951 (hereinafter called the "Central Act").

Pursuant to a contract entered into between late Shri Ram Gopal Saharia, father of the appellant and the Government of Nagaland dated 24.4.1972 to establish a plywood factory in the territory of Nagaland on the terms and conditions stipulated therein, the Company was incorporated. The authorised share capital of the Company was Rs. 50,00,000/- 'G' class equity shares of Rs. 100/- each (ii) 15,000/- 'G' class equity shares of Rs. 100/- each and (iii) 15,000/- 'S' class equity shares carried the same rights. It appears that the appellant's group, on the one hand and the government of Nagaland on the other hand, subscribed 50% each of the equity shares. The Company after obtaining necessary certificate of commencement of business on 22.7.1972, as required under the Central Act, commenced its business thereafter. The father of the appellant was the first Managing Director of the Company. After the death of his father, the appellant became the Managing Director some time in 1975. A Cabinet ranking Minister of the

Government of Nagaland was the Chairman of the Company since its inception except during Government's Rule.

While so, on December 14, 1981, the Deputy Commissioner, Mon District, directed the manager, Nagaland Forest Product Limited to close down the plywood factory on 14.12.1981 till further orders. It was followed by Ordinance 1 of 1981 which enabled the State Government to take over the assets, books of accounts, registers etc. of the Company. The Ordinance came into force on 17.12.1981. As noticed earlier, the Ordinance was replaced by the Act. The appellant challenged the Ordinance initially and subsequently by amending the petition appropriately, the Act was also challenged.

Before the High Court, the Act was challenged on various grounds but before us the learned counsel appearing for the appellant, Mr. Sunil Gupta, confined his attack to the lack of legislative competence based on Section 20 of the Central Act. In other words, the contention was that taking over of the assets (Acquisition of Shares of the Company) amounts to taking over of management/control of the Company, which field is occupied by Parliament as contemplated by Section 20 of the Central Act.

The High Court in its considered and reasoned judgment rejected all the contentions and observed thus while rejecting the contention based on lack of legislative competence, which alone was pressed before us:-

> "The Act was not enacted for taking over management or control of the company by the Nagaland State Government. In pith and substance it was enacted to acquire the S class shares of the Company. If an attempt was made to take over management or control of any industrial undertaking in a declared of the IDRA would inhibit exercise of such executive power. However, if pursuant to a valid legislation for acquisition of scheduled undertaking the management stands transferred undertaking the management stands transferred to the acquiring body it cannot be said that this would be in violation of Section 20. Section 20 does not preclude or forbid a State legislature exercising legislative power under an entry other than Entry 24 of List II, and if an exercise of that legislative powers, to wit, acquisition or shares of a company owning an industrial undertaking in a declared industry the consequential transfer of management for control over the industry or undertaking follows as an incident of acquisition, such taking over of management or control pursuant to an exercise of legislative power is not within the inhibition of Section 20."
>
> "52. From the principles of catena of decisions enunciated in the decided cases, it is found that

> merely because an industry is a declared industry under Entry 52, that by itself will not put an embargo on the State legislature to pass legislation within its competence. It has further been found in many of the cases that mere incidental trenching does not warrant the striking down of an impugned Act. As regards the contention that the Parliament having made the requisite declaration in Section 2 of Schedule 1 thereof the State Legislature was denuded of its competence to enact the impugned provisions under Entry 42 of List III cannot be accepted. On examination of the various provisions of the Act there arses no doubt that it is for acquisition of property in 'S' class shares of the company and in pith and substance it falls under Entry 42 of List III, and is not in conflict with Entries 52 or 7 List I."

Undoubtedly, Mr. Sunil Gupta, learned counsel for the appellant elaborately argued the matter and ultimately contended that the ruling of a Constitution Bench of this Court in Ishwari Khetan Sugar Mills (P) Ltd & Ors. vs. State of Uttar Pradesh & Ors (1980 (4) SCC 136) requires reconsideration as certain aspects were not brought to the notice and considered by the Constitution Bench while handing down the ruling in that judgment. He, however, fairly conceded in the face of the ruling of the Constitution Bench in Ishwari Khetan's case it is not open to him to contend that the impugned legislation lacks legislative competence, as this Court has clearly held that taking over of the assets of the company will not amount to taking over of management or control of the company. Still, as stated earlier, his attempt was to persuade us to refer the matter to a larger bench for reconsideration of the ruling of this Court in Ishwari Khetan case.

Mr. K. Parasaran, learned Senior Counsel appearing for the respondents, after referring to Judgments of this Court in Smt. Somavanti & Others vs. The State of Punjab & Others (1963 (2) SCR 774) and T. Govindaraia Mudaliar Etc. Etc. vs. The State of Tamil Nadu & Others (1973 (3) SCR 222) submitted that the reason advanced by the learned counsel for the appellant, will not be a ground for requesting the Court to refer the question to a larger Bench. He also submitted that the Constitution Bench has considered every aspect concerning the constitutionality of an identical legislation impugned therein and there is no scope for putting forward an argument that certain provisions of the Constitution were not brought to the notice of the Constitution Bench which led the Court to uphold the constitutionality of the legislation impugned therein. He also brought to our notice that the ruling of the Constitution Bench in Ishwari Khetan's case has been followed/applied consistently right from the year 1980 till date and that shows there is no deficiency in the ruling of the Constitution Bench in Ishwari Khetan's case.

Before proceeding further to consider the submissions made by the counsel on both sides, it is necessary and will

be useful to extract the relevant provisions of Central Act and the State Act.

Central Act Sections 2, Schedule 1 Item 36 (1) and Section 20 are as follows:-

Section 2

"It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule."

Sch. 1, Item 36 (1)

"Any industry engaged in the manufacture or production of any of the articles mentioned under each of the following headings or sub-headings, namely :-

36. Timber Products:

(1) Plywood."

Section 20

"20 After the commencement of this Act, it shall not be competent for any State Government or a local authority to take over the management or 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."

Section 3 of State Act :-

"3. (1) On the appointed day, all shares of the Company other than the shares already held by the Government or its nominees in the Company shall, by virtue of this Act stand transferred to, and vested in the State Government.

(2) The State Government shall be deemed on and from the appointed day, to have been registered in the Register of members of the company as the holder of each share which stands transferred to and vested in it by virtue of the provisions of sub-section (1).

(3) All the hares which have vested in the State Government under sub-section (1), shall by force of such vesting, be freed and discharged of all trusts, liabilities, obligations, mortgages, charges, liens and other encumbrances affecting them, and any attachment injunction or any decree or order of the Court, tribunal or other authority restricting the use of such shares in any manner, shall be deemed to have been withdrawn.

(4) For the removal of doubts, it is hereby declared that the provision of sub-section (1) and (2) shall not be deemed to affect-

(a) any right of the Company subsisting immediately before the appointed day, against any

> shareholder to recover from such shareholder any sum of money on the ground that the shareholder has not paid or credited to the Company the whole or any part of the value of the shares held by him, or any other ground whatsoever, or
>
> (b) any right of the shareholder subsisting, immediately before the appointed day against this Company to receive any dividend or other payment due from the Company."

It is not in dispute that Section 20 (supra) of the Central Act provided that after the commencement of the said Act, it shall not be competent for any State to take over the management or control of any industrial undertaking under any law which authorises a State Government so to do. It is also an admitted position that inasmuch as by Section 2 (supra) read with Item 36 (i) of the First Schedule (supra) of the Central Act, it has been declared that in the public interest, the Union Government should take control of plywood industry, the State Legislature, therefore, cannot legislate with regard to the management or control of such industry.

The question is whether the impugned legislation attempts authorises mere taking over the management/control of the plywood industry or it only enables the State Government to acquire the assets (shares) of the Company. Section 3 of the State Act stated that all the shares of the Company other than those already held by the Government stood transferred to and vested in the State Government. In consequence of such vesting of the shares, the Government naturally exercises rights as shareholder and incidentally acquires the control and management of the Company. But that will not fall under the mischief of Section 20 of the Central Act because Section 20 prohibits the State Government from taking over management or control dehors ownership of the undertaking. The Central Act is concerned with the control and management of the undertaking and not with its ownership. By acquiring ownership, incidentally management and control of the Company also vests with that it will be incidental and such an exercise of legislature power is not prohibited under Section 20 of the Central Act. Notwithstanding the taking over of the Company by the State Government still if the Central Government finds scope to exercise their power under Section 20 of the Central Act, it is open to them to do so. This is exactly what has been held by the Constitution Bench of this Court in Ishwari Khetan's case:

> "25. There is thus a long line of decisions which clearly establishes the proposition that power to legislate for acquisition of property is an independent and separate power and is exercisable only under Entry 42, List III and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists. This power of the State legislature to legislate for acquisition of property remains intact and untrammeled except to the extent where on assumption of control of an industry by a

declaration as envisaged in Entry 52, List I, a further power of acquisition is taken over by a specific legislation.

26. As already pointed out, in pith and substance the impugned legislation is one for acquisition of scheduled undertakings and that field of acquisition is not occupied by the IDR Act which deals with control of management, regulation and development of a declared industry and there is no repugnancy between the impugned legislation and the IDR Act. Both can coexist because the power acquired by the Union under the IDR Act can as well effectively be exercised after the acquisition of the scheduled undertakings as it could be exercised before the acquisition. Therefore, the contention that the State legislature lacked legislative competence to enact the impugned legislation must be negatived.

30. The impugned legislation was not enacted for taking over management or control of any industrial undertaking by the State Government. In pith and substance, it was enacted to acquire the scheduled undertakings. If an attempt was made to take over management or control of any industrial undertaking in a declared industry indisputably the bar of Section 20 would inhibit exercise of such executive power. However, if pursuant to a valid legislation for acquisition of scheduled undertaking the management stands transferred to the acquiring body, it cannot be said that this would be in violation of Section 20. Section 20 forbids executive action of taking over management or control of any industrial undertaking under any law in force which authorises State Government or a local authority so to do. The inhibition of Section 20 is on exercise of executive power but if as a sequel to an acquisition of an industrial undertaking, the management or control of the industrial undertaking stands transferred to the acquiring authority, Section 20 is not attracted at all. Section 20 does not preclude or forbid a State legislature from exercising legislative power under an entry other than Entry 24 of List II, and if in exercise of that legislative

> power, to wit, acquisition of an industrial undertaking in a declared industry the consequential transfer of management or control over the industry or undertaking follows as incident of acquisition, such taking over of management or control pursuant to an exercise of legislative power is not within the inhibition of Section 20. Therefore, the contention that the impugned legislation violates Section 20 has no merit."

This judgment of the Constitution Bench has been followed and applied recently in Orissa Cement Ltd. & Ors vs. State of Orissa & Ors. (1991 Supp. (1) SCC 430); Indian Aluminium Company Limited & Another vs. Karnataka Electricity Board & Others. (1992 (3) SCC 580); Dalmia Industries Ltd & Another vs. State of U.P. & Another (1994 (2) SCC 583); Ajay Kumar Singh & Others vs. State of Bihar & Others (1994 (4) SCC 401); and Mahabir Sugar Mills Ltd. & Another vs. State of U.P. & Others (1996 (10) SCC 259).

The High Court also after elaborately discussing the matter and placing strong reliance on Ishwari Khetan's case, rejected similar contention advanced before it. In the circumstances, we do not think that there is any merit in the contention of the learned counsel for the appellant that the ruling of this Court is Ishwari Khetan's case requires re-consideration. Further, as submitted by the learned Senior Counsel, Mr. K.Parasaran that the reason given by the learned counsel for the appellant that certain aspects were not considered and those required re-consideration by a larger Constitution Bench is not a ground for referring the matter to a larger Bench.

In Smt. Somavanti's case (supra), a Constitution Bench of this Court observed as follows:-

> "A binding effect of a decision does not depend upon whether a particular argument was considered therein or not provided that the point with reference to which an argument was subsequently advanced was actually decided."

Again another Constitution Bench in Mohd. Avub Khan vs. Commissioner of Police, Madras and Another (1965 (2) SOR 884) held thus :

> "This Court has pronounced upon the legislative competence of the Parliament to enact Section 9 of the Citizenship Act, 1995 in Izhar Ahmad Khan vs. Union of India. In the same case challenge to he validity of Rule 3 of Sch. III to the Rules framed under the Citizenship Act, 1955 was also negatived. Mr. Ram Reddy for the appellant contended that as certain important aspects of the plea of invalidity were not presented before the Court at the hearing of Izhar Ahmad Khan's case, we should again proceed to consider the challenge to the validity of Rule 3 of Sch. III and Section 9 of the Citizenship Act limited to those

arguments. We are unable, however, to countenance the submission. This Court has held on the arguments presented before the Court in Izhar Ahmad Khan's case that Section 9 of the Act was validly enacted by the Parliament, and that Rule 3 of Sch. II was competently made by the Central Government in exercise the powers conferred by Section 18 of the Citizenship Act. Assuming that certain aspects of the question were not brought to the notice of the Court, we see no grounds for entering upon re-examination of the question. It may be pointed out that the judgment of the Court in Izhar Ahmad Khan's case was followed by this Court in the Government of Andhra Pradesh vs. Syed Mohd. Khan."

In T. Govindaraia Mudaliar Etc. Etc. vs. The State of Tamil Nadu & Ors (1973 (3) SCR 222) it was held as follows:-

"The argument of the appellants is that prior to the decision in Rustom Cavasjee Cooper's case it was not possible to challenge Chapter IV-A of the Act owing to the decision of this Court that Art. 19(1)(f) could not be invoked when a case fell within Art. 31 and that was the reason why this Court in all the previous decisions relating to the validity of Chapter IV-A proceeded on an examination of the argument whether there was infringement of Article 19(1) (g), and clause (f) of that Article could not possibly be invoked. We are unable to hold that there is much substance in this argument. Bani Munji and other decisions which followed it were based mainly on an examination of the inter-relationship between Article 19(1) (f) and Art. 31(2). There is no question of any acquisition or requisition in Chapter IV-A of the Act. The relevant decision for the purpose of these cases was only the one given left that the authority of law seeking to deprive a person of his property otherwise than by way of acquisition or requisition was open to challenge on the ground that it constituted infringement of the fundamental rights guaranteed by Article 19(1) (f). It was, therefore, open to those affected by the provisions of Chapter IV-A to have agitated before this Court the question which is being raised now based on the guarantee embodied in Art. 19(1) (f) which was never

done. It is apparently too late in the day now to pursue this line of argument. In this connection we may refer to the observations of this Court in Mohd. Ayub Khan vs. Commissioner of Police, Madras & Another, according to which even if certain aspects of a question were not brought to the notice of the court it would decline to enter upon re-examination of the question since the decision had been followed in other cases. In Smt. Somavanti & Others vs. The State of Punjab & Others a contention was raised that in none of the decisions the argument advanced in that case that a law may be protected from an attack under Art. 31(@) but it would be still open to challenge under Art. 19(1) (f), had been examined or considered. Therefore, the decision of the Court was invited in the light of that argument. This contention, however, was repelled by the following observations at page 794:-

"The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided."

It is common ground in the present cases that the validity of Chapter IV-A of the Act has been upheld on all previous occasions. Merely because the aspect now presented based on the guarantee contained in Art. 19(1)(f) was not expressly considered for a decision given thereon will not take away the binding effect of those decisions on us."

We have already noticed that decision of the Constitution Bench in Ishwari Khetan's has been consistently followed/applied right upto this date. There is, therefore, no merit in the argument that Ishwari Khetan's case requires reconsideration. No other point was urged. Accordingly the appeal is dismissed. However, there will be no order as to costs.