PETITIONER:
PANIPAT WOOLLEN & GENERAL MILLS CO. LTD.& ANOTHER

Vs.

RESPONDENT:
UNION OF INDIA & OTHERS

DATE OF JUDGMENT26/09/1986

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
REDDY, O. CHINNAPPA (J)

CITATION:
1986 AIR 2082 1986 SCR (3) 937
1986 SCC (4) 368 JT 1986 573
1986 SCALE (2)536
CITATOR INFO :
F 1989 SC1331 (5)

ACT:
Sick Textile Undertakings (Taking over of Management) Act, 1972, ss. 2(a), 2(d) and 4(1)-Management of undertaking taken over by Central Government-Undertaking specified in First Schedule as a 'sick - textile undertaking-Whether opportunity of hearing should be given to the owner before such 'taking over'.
Sick Textile Undertakings (Nationalisation) Act, 1974 Constitutional validity of-Art. 31, 31C & 39 (b) of Constitution of India.

HEADNOTE:
A provisional liquidator was appointed in respect of two textile undertakings of the petitioner-company since they had gone into huge loss and had to be closed sometime in May 1972. As the textile undertakings of the petitioner-company were 'sick textile undertakings' within the meaning of sub-clause (i) of s. 2(d) of the Sick Textiles Undertakings (Taking-over of Management) Act 1972 (for short, Take over Act) and have also been specified in the First Schedule to the Take-over Act, they vested in the Central Government as 'sick textile undertakings' by virtue of s. 4(1) of the Take-over Act.
The petitioner-company challenged before the Supreme Court the taking over of the management of the aforesaid two textile mills under the Take-over Act and also the constitutional validity of the Take-over Act and the Sick Textile Undertakings (Nationalisation) Act 1974 on the grounds (a) that the Company should have been given an opportunity of being heard before the management of its undertakings was taken over as 'sick textiles undertakings' and if such an opportunity had been given, the company could have shown that its undertakings were not sick undertakings; (b) that the legislature, having itself decided the question whether an undertaking is sick textile undertaking or not without giving any opportunity to the owner of such undertaking to make a representation, has damaged the basic structure of the Constitution
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namely separation of power between the legislature, the executive and the judicially; and (c) that the Nationalisation Act is consititutionally invalid on the ground of inadequacy of compensation.

Dismissing the petition,

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HELD 1.1 In the First Schedule to the Take-over Act, the undertakings of the company have been specified as sick textile undertakings. In other words, the Legislature has itself decided the undertakings of the Company to be sick textile undertakings. Indeed, in the First Schedule all the sick textile undertakings have been specified. Thus, it is apparent that the Legislature has not left it to the Executive to decide whether a particular textile undertaking is a sick textile undertaking or not. If under the Take-over Act the question whether a textile undertaking is a sick textile undertaking or not had been directed to be decided by the executive authorities, the owner of such undertaking could claim an opportunity of being heard. But when an undertaking has been specified in the First Schedule to the Take-over Act as a sick textile undertaking, the question of giving an opportunity to the owner of the undertaking does not at all arise. [942C-F]

1.2 In including the sick textile undertakings in the First Schedule, the Legislature has not acted arbitrarily, for it has also laid down the criteria or tests for such inclusion. If any undertaking which has been so specified in the First Schedule does not satisfy the tests under s. 2(d) of the Take-over Act, the owner of it is entitled to challenge such inclusion or take-over in a court of law, although such challenge has to be founded on a strong ground. Thus, there is no finality or conclusiveness in the legislative determination of an undertaking as a sick textile undertaking. Such determination is neither judicial nor quasi judicial. Therefore, the question of damaging or altering the basic structure of the Constitution namely, separation of powers among the Legislature, the Executive and the Judiciary, does not at all arise. So also the question of the validity of the constitutional amendments by which the Take-over Act and the Nationalisation Act have been included in the Ninth Schedule on the ground that by such amendments the basic structure of the Constitution is damaged, as contended on behalf of the petitioners, does not arise. [943F-H; 944A-B]

2. The Nationalisation Act gives effect to the policy of the State towards securing the ownership and control of the material resources of the community which are so distributed as best to subserve the common

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good, as contained in Art. 39(b) of the Constitution. It falls within the provision of Art. 31C of the Constitution before it was amended by the Constitution (Forty-Second Amendment) Act, 1976. Even assuming that the Nationalisation Act violates the provision of Art. 31, no challenge to its validity can be made on that ground. [944E-G]

Minerva Mills Ltd. & Ors. v. Union of India & Ors., Writ Petition Nos. 356-361 of 1977, decided on September 9, 1986, relied upon.

In the instant case, the compensation that has been awarded to the Company is neither inadequate nor illusory. It is not in dispute that the paid-up share capital of the Company was Rs.60 lakhs and it paid dividend from 1965 to 1970. It will not be unreasonable to presume that in specifying the compensation, the Legislature has taken these facts into consideration. There is, therefore no substance

in the contention of the petitioners that the compensation specified in First Schedule to the Nationalisation Act in respect of the undertakings of the Company is illusory. [944G-H; 945A]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 1129 of 1977

Under Article 32 of the Constitution of India.

M . R. Sharma and Dalveer Bhandari for the Petitioner.

B.Datta Additional Solicitor General, Ms. A.Subhashini, A.K. Goel, T.V.S.N. Chari, R.K. Jain, Dr. N.M. Ghatate, D.N. Mishra and H.S. Parihar for the Respondents.

The Judgment of the Court was delivered by

DUTT, J. In this writ petition the petitioner, Panipat Woollen & General Mills Co. Ltd., hereinafter referred to as 'the Company', has challenged the taking over of the management of its two textile mills under the Sick Textile Undertakings (Taking over of Management) Act, 1972 (for short 'Take-over Act') and also the constitutional validity of the Take-over Act and the Sick Textile Undertakings (Nationalisation) Act, 1974 (for short 'the Nationalisation Act').

It appears that the Company had falled on evil days resulting in initiation of liquidation proceedings against the Company and the

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appointment of a provisional liquidator. The mills of the Company were closed sometime in May, 1972. On the application by the Industrial Finance Corporation of India, the Punjab & Haryana High Court directed the Board of Directors of the Company to hand over possession of the two mills to the Corporation to which the Company was indebted for a huge sum of money. The Corporation was also directed by the High Court to lease out the mills, and it appears that Padmashree Textile Industries Ltd. was granted the lease of the mills, that is to say, the textile undertakings of the Company.

At this stage, it may be mentioned that the lessee, the said Padmashree Textile Industries Ltd., also filed a writ petition before this Court, inter alia, challenging the Take-over Act and the Nationalisation Act. That writ petition has since been disposed of by this Court upon settlement between the parties.

Section 4(1) of the Take-over Act provides that on or before the appointed day, the management of the sick textile undertakings specified in the First Schedule shall vest in the Central Government. Under Section 2(a) "appointed day" means 31st day of October, 1972. Section 2(d) defines "sick textile undertaking" as follows:

"S. 2(d). "sick textile undertaking" means the textile undertaking which falls within one or more of the following categories, namely:-

(i) which is owned by a textile company which is being wound up, whether voluntarily or by or under the supervision of any Court, or in respect of which a provisional liquidator has been appointed by a Court,

(ii) which had remained closed for a period of not less than three months immediately before the appointed day and the closure of which is prejudicial to the textile industry, and the condition of the undertaking is such that it may,

with reasonable inputs, be re-started in the interests of the general public,

(iii) which has been leased to Government or any other person or the management of which has been taken over by Government or any other person under any leave or licence granted by any Receiver or Liquidator by or under the orders of, or with the approval of, any Court,

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(iv) the management of which was authorised by the Central Government, by a notified order made under section 18A, or in pursuance of an order made by the High Court under section 18FA, of the Industries (Development and Regulation) Act, 1951, to be taken over by a person or body of persons, but such management could not be taken over by such person or body of persons, before the appointed day,

(v) the management of which ought to be [according to the report made after investigation by any person or body of persons appointed after the 1st day of January, 1970, under section 15 or section 15A of the Industries (Development and Regulation) Act, 1951] taken over under section 18A of that Act, but in relation to which no notified order authorising any person or body of persons to take over the management of such undertaking was made before the appointed day,

(vi) in respect of which an investigation was caused to be made, before the appointed day, by the Central Government under section 15 or section 15A of the Industries (Development and Regulation) Act, 1951, and the report of such investigation was not received by the Central Government before the appointed day;

and includes any textile undertaking which is deemed, under sub-section (2) of section 4, to be a sick textile undertaking;"

In view of sub-clause (i) of section 2(d), as a provisional liquidator was appointed in respect of the textile undertakings of the Company, they were sick textile undertakings. Moreover, the sick textile undertakings of the Company have been specified in the First Schedule to the Take-over Act and by virtue of section 4(1) of the Take-over Act, the undertakings of the Company have vested in the Central Government as sick textile undertakings.

It is vehemently urged by Mr. Sharma, learned Counsel appearing on behalf of the petitioners, that before actually taking possession of the undertakings of the Company, the Company should have been given an opportunity of being heard. It is submitted that if such an

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opportunity had been given, the Company could have shown that its undertakings were not sick undertakings. Counsel submits that the intention of the Legislature to give such an opportunity of being heard is apparent from the provisions of clauses (iv), (v) and (vi) of section 2(d) of the Take-over Act which relate to the taking over of management of an undertaking under the Industries (Development and Regulation) Act, 1951. In support of this contention, the learned Counsel has placed reliance upon three decisions of this Court in A. K. Kraipak & Ors. v. Union of India & Ors., [1970] 1 SCR 457, Maneka Gandhi v. Union of India, [1978] 2 SCR 621, and Smt. Indira Nehru Gandhi v. Shri Raj Narain, [1976] 2 SCR 347.

In our opinion, none of the above decisions is applicable to the facts and circumstances of the instant case. In the First Schedule to the Take-over Act, the undertakings of the Company have been specified as sick textile undertakings. In other words, the Legislature has itself decided the undertakings of the Company to be sick textile undertakings. Indeed, in the First Schedule all the sick textile undertakings have been specified. Thus, it is apparent that the Legislature has not left it to the Executive to decide whether a particular textile undertaking is a sick textile undertaking or not. If under the Take-over Act the question whether a textile undertaking is a sick textile undertaking or not had been directed to be decided by the executive authorities, the owner of such undertaking could claim an opportunity of being heard. But when an undertaking has been specified in the First Schedule to the Take-over Act as a sick textile undertaking, the question of giving an opportunity to the owner of the undertaking does not at all arise. We are unable to accept the contention of the petitioners that sub clauses (iv), (v) and (vi) of section 2(d) indicate that principles of natural justice should be complied with. The provisions of these sub clauses are some of the categories under any one of which the undertaking may fall and, in that case, it will be a sick textile undertaking. There is, therefore, no substance in the contention made on behalf of the petitioners that the Company should have been given an opportunity of being heard before the management of its undertakings was taken over as sick textile undertakings.

It is next urged by the learned Counsel for the petitioners that the Legislature having itself decided the question whether an under taking is a sick textile undertaking or not without giving any opportunity to the owner of such undertaking to make a representation, has damaged the basic structure of the Constitution of India, namely,

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separation of power between the Legislature, the Executive and the Judiciary. Our attention has been drawn to the observations made by Sikri, CJ, in Kesavananda Bharati v. State of Kerala, [1973] 2 Supp. SCR 1, and that of Mathew, J, in Smt. lndira Nehru Gandhi v. Shri Raj Narain, [1976] 2 SCR 347 at page 503 to the effect, inter alia, that separation of powers among the Legislature, the Executive and the Judiciary, is one of the basic structures of the Constitution. It is, accordingly, submitted on behalf of the petitioners that the doctrine of separation of powers implies that the Legislature should define civil or criminal wrong or a default and create an independent machinery, judicial or quasi-judicial, to determine the liability of the status of an individual. Further, the Legislature itself cannot give a judgment and, in any case, if such a judgment is given by the Legislature, it must act in accordance with the principles of natural justice.

The above submissions of the petitioners, in our opinion, are misconceived. There can be no doubt that in respect of each sick textile undertaking, a Take-over Act and a Nationalisation Act could be passed and, in that case, a large number of enactments would come into existence to the inconvenience of all concerned. In order to avoid such cumbersome course and for the sake of convenience, the Legislature has mentioned in the First Schedule in both the Take-over Act and the Nationalisation Act the names of all sick textile undertakings in the country. By including certain textile undertakings as sick textile E undertakings

in the First Schedule to the Take-over Act, the Legislature has not made any judicial or quasi-judicial determination, nor has the Legislature given any judgment, as contended on behalf of the petitioners, although such inclusion is sometimes loosely expressed as 'legislative judgment'. In section 2(d), the Legislature has laid down the criteria for a sick undertaking. The sick textile undertakings have been specified in the First Schedule on the basis of the tests laid down in section 2(d). In including the sick textile undertakings in the First Schedule, the Legislature has not acted arbitrarily, for, it has also laid down the criteria or tests for such inclusion. If any undertaking which has been so specified in the First Schedule does not satisfy the tests under section 2(d) of the Take-over Act, the owner of it is entitled to t challenge such inclusion or take-over in a court of law, although such challenge has to be founded-on a strong ground. Thus, there is no finality or conclusiveness in the legislative determination of an under taking as a sick textile undertaking. Such determination is neither judicial nor quasi-judicial. Therefore, the question of damaging or altering the basic structure of the Constitution, namely, separation of
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powers among the Legislature, the Executive and the Judiciary, does not at all arise. So also the question of the validity of the constitutional amendments by which the Take-over Act and the Nationalisation Act have been included in the Ninth Schedule on the ground that by such amendments the basic structure of the Constitution is damaged, as contended on behalf of the petitioners, does not arise. The contentions are misconceived and are rejected.

As a last resort, the petitioners have challenged the validity of the Nationalisation Act on the ground of inadequacy of compensation. The Company had two undertakings, namely, Panipat Woollen Mills and Kharar Textile Mills. In the third column of the First Schedule to the Nationalisation Act, a sum of Rs. 6,40,000 has been specified for the Panipat Woollen Mills and a sum of Rs. 12,89,000 has been specified for the Kharar Textile Mills by way of compensation for the acquisition of these two undertakings. It is the contention of the petitioners that the amounts of compensation, which have been specified for the acquisition of these two undertakings, are inadequate. We are afraid, as on the date the Nationalisation Act had come into force, Article 31 of the Constitution was not repealed, the validity of the Nationalisation Act cannot be challenged on the ground of inadequacy of compensation. In Minerva Mills Ltd. & Ors. v. Union of India & Ors., Writ Petition Nos. 356-361 of 1977, decided on September 9, 1986, it has been already held by us that the Nationalisation Act gives effect to the policy of the State towards securing the ownership and control of the material resources of the community which are so distributed as best to subserve the common good, as contained in Article 39(b) of the Constitution. In the circumstances, the Nationalisation Act falls within the provision of Article 31C of the Constitution before it was amended by the Constitution (Forty-Second Amendment) Act, 1976. Even assuming that the Nationalisation Act violates the provision of Article 31, no challenge to its validity can be made on that ground. Apart from that, we are of the view that the compensation that has been awarded to the Company is neither inadequate nor illusory as contended on behalf of the petitioners. It is not in dispute that the paid-up share capital of the Company was Rs.60 lakhs and it paid dividend up to 1965. Thereafter,

the Company did not pay any dividend from 1965 to 1970. It will not be unreasonable to presume that in specifying the compensation, the Legislature has taken these facts into consideration. There is, therefore, no substance in the contention of the petitioners that the compensation specified in First Schedule to the Nationalisation Act in respect of the undertakings of
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the Company is illusory. The contention is rejected. No other point has been urged on behalf of the petitioners.

For the reasons aforesaid, the writ petition is dismissed and the rule nisi is discharged. There will, however, be no order as to costs.

M.L.A. Petition dismissed.
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