

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

FRIDAY, THE 05TH DAY OF FEBRUARY 2021/16TH MAGHA, 1942

WP(C).No.28713 OF 2010(L)

PETITIONERS:

- 1 MESSRS. UTTAM HOLDINGS LTD.,
A COMPANY INCORPORATED UNDER THE PROVISIONS
OF THE COMPANIES ACT, 1956 AND
HAVING ITS REGISTERED OFFICE AT 79,
MITTAL CHAMBERS NARIMAN POINT,
MUMBAI-400 021,
THROUGH ITS AUTHORIZED REPRESENTATIVE,
MR. MANN SINGH MEENA.
- 2 GITCO TRADERS PVT. LTD.,
A COMPANY INCORPORATED UNDER THE PROVISIONS
OF THE COMPANIES ACT, 1956 AND
HAVING ITS REGISTERED OFFICE AT 79,
MITTAL CHAMBERS NARIMAN POINT,
MUMBAI-400021,
REPRESENTED BY ITS DIRECTOR,
MR. RAM DANTAL.
- 3 NLIVE HEALTH CARE LTD.,
A COMPANY INCORPORATED UNDER THE PROVISIONS
OF THE COMPANIES ACT, 1956 AND
HAVING ITS REGISTERED OFFICE AT PLOT NO.56,
ROAD NO.17 MIDC,
ANDHERI (EAST), MUMBAI-400 093
REPRESENTED BY ITS DIRECTOR,
MS. NEETA DESAI

4 ZUBER FINVEST PVT. LTD.,
A COMPANY INCORPORATED UNDER THE PROVISIONS
OF THE COMPANIES ACT, 1956 AND
HAVING ITS REGISTERED OFFICE AT 79,
MITTAL CHAMBERS,
NARIMAN POINT, MUMBAI-400021,
REPRESENTED BY ITS DIRECTOR,
MS.NEETA DESAI.

5 DINESH AGARWAL,
PLOT NO.56, ROAD NO.17,
MIDC, ANDEHRI (EAST),
MUMBAI-400 093.

BY ADVS.
SRI.SANTHOSH MATHEW
SRI.SATHISH NINAN
SRI.ARUN THOMAS
SRI.JENNIS STEPHEN

RESPONDENTS :

1 STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2 KERALA STATE TEXTILES CORPORATION LIMITED,
THIRUVANANTHAPURAM, KERALA.

BY ADV. SRI.ASISH K.JOHN ADV.COMMISSIONER
BY ADV. ADVOCATE GENERAL SRI.C.P.SUDHAKARA
PRASAD
R2 BY SRI.P.U.SHAILAJAN, SC, KERALA STATE
TEXTILE CORPORATION LTD
GOVERNMENT PLEADER SRI. S.KANNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 05-02-2021, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

[CR]

N. NAGARESH, J.

.....
W.P.(C) No.28713 of 2010
.....

Dated this the 5th day of February, 2021

J U D G M E N T

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Petitioners 1 to 4 are incorporated Companies. Petitioners 1 to 4 along with the 5th petitioner claim to hold 70.81% of equity shares in M/s. Kerala Spinners Limited. Petitioners state that M/s. Kerala Spinners Limited (hereinafter referred to as “the Company”, for brevity) is a Private Sector Company promoted by Birlas and was engaged in the manufacture and sale of textile yarn in its factory at Komalapuram in Alappuzha District. Since the year 1998, the Company was incurring losses for various

reasons. At this stage, in the year 2001, the petitioners acquired a majority of equities of the Company, with an intention to make the Company viable and profitable.

2. Things did not go in the desired direction and the Company declared lock out on 22.03.2003. The Company applied for closure under Section 25(O) of the Industrial Disputes Act, 1947. The Company had to be referred to the Board for Industrial and Financial Reconstruction (hereinafter called "BIFR", for short). Pending consideration of rehabilitation of the Company, the BIFR appointed Indian Overseas Bank as the Operating Agency invoking Section 17 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The Company was declared sick on 07.09.2006. While the issue of revival of the Company was pending consideration before the BIFR, the 1st respondent—State of Kerala promulgated Ordinance dated 19.11.2009, subsequently replaced by the Kerala Spinners Limited, Alappuzha (Acquisition and Transfer of Undertaking) Act 4 of 2010.

3. By the impugned Act 4 of 2010, the right of the ownership of the petitioners in respect of the Company has been acquired by the Government and transferred to the Kerala State Textiles Corporation Limited. According to the petitioners, the assets of the Company were undervalued. The assets are of value of about ₹45 Crores. The Act 4 of 2010 values the assets at ₹454.67 lakhs only. Petitioners contended that the gross undervaluation is in violation of the right of the petitioners under Article 14 of the Constitution of India. The right of the petitioners to trade and business has been deprived by the Act 4 of 2010, in violation of Article 19(1)(g) of the Constitution of India.

4. The meagre amount of compensation of ₹1,000/- per annum given for the deprivation of Management is illusory and violates Article 300-A of the Constitution of India. Arbitrariness is writ large in the State action, since from among a number of companies from Kerala pending reference before the BIFR, only the petitioner's Company has been chosen for acquisition. Enacting Act 4 of 2010

during the pendency of reference proceedings before the BIFR would make the Act 4 of 2010 illegal and unconstitutional, contended the petitioners.

5. The 1st respondent filed a counter affidavit in the writ petition. The 1st respondent pointed out that the Company was lying closed with effect from 23.03.2003. Livelihood of 500 workers and their families were adversely affected. They were put to penurious conditions. The Company was declared sick by the BIFR on 07.09.2006 and the BIFR appointed M/s. Indian Overseas Bank as Operating Agency. Due to non-cooperation of the management, revival programs could not be materialised in the BIFR proceedings.

6. In such circumstances, the Government convened several meetings with the management of the Company and representatives of trade unions for a viable solution. In view of the recalcitrant attitude of the management of the Company, the Government felt it absolutely necessary and expedient to take over the

Company by Government itself. Accordingly, Ordinance No.24/2009 was promulgated on 17.11.2009. The Ordinance was replaced by a Bill and the Bill was passed by the Legislative Assembly on 29.12.2009. The valuation of assets as projected by the petitioners is exorbitant, contended the 1st respondent. The 1st respondent stated that, the liability of the company towards workmen alone was about ₹5.18 Crores, which was settled after the takeover. Act 4 of 2010 overrides all proceedings before the BIFR. In fact, the BIFR was informed of the proposal of takeover by the State.

7. The BIFR in its hearing held on 16.09.2009 consented to takeover of the Company and opined that if the Government intends to takeover the Company, it has to file appropriate proposal with the Operating Agency. The Government of Kerala accordingly informed the Operating Agency its intention to takeover the Company. Requisite application was submitted on 12.10.2009. The legislative power exercised by the State is not in violation of or in

derogation of any of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985.

8. The 2nd respondent-Kerala State Textiles Corporation Limited filed counter affidavit and defended the writ petition. The 2nd respondent pointed out that the Act 4 of 2010 was preceded by Ordinance No.24/2009 dated 17.11.2009. The modalities for transfer of the Company to the 2nd respondent were initiated following the Ordinance. The 1st respondent took over possession of the assets and transferred the same to the 2nd respondent for revival of the Mill. Now, the 2nd respondent holds possession of all the assets and has made substantial investments for revival of the Mill. The petitioners cannot challenge the Act 4 of 2010 without challenging the Ordinance also. The Ordinance is not under challenge.

9. The 2nd respondent further stated that as per Section 16 of the Act 4 of 2010, the Government has appointed the Commissioner of Payments for the purpose of disbursing the amounts payable to the owner of the

Company. If the petitioners have any grievance regarding compensation, they have to approach the Commissioner. The Act 4 of 2010 overrides all proceedings before the BIFR. The Government took the initiative of taking over, with the knowledge of the BIFR. The writ petition is therefore without any merit.

10. I have heard the learned counsel for the petitioners, learned Government pleader appearing for the 1st respondent and the learned Standing Counsel appearing for the 2nd respondent.

11. The questions arising for consideration in this writ petition are:-

1) Whether the State of Kerala lacks legislative power to enact Act 4 of 2010?

2) Whether in view of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, the consent of the BIFR is necessary for takeover of a Company which is under reference to the BIFR?

3) Whether the Act 4 of 2010 offends the right of the petitioners under Articles 14 or 19(1)(g) or 300-A of the Constitution of India?

4) Whether the compensation offered to the owners of the Company is adequate?

5) Whether the State of Kerala has followed due process of law, while enacting the Act 4 of 2010?

12. Section 3 of Ext.P5 Act, 2010 reads as follows:-

“3. Acquisition of rights of owners in respect of sick textile undertaking –

(1) On the appointed day, the sick textile undertaking and the right, title and interest of the owner in relation to such sick textile undertaking shall, by virtue of this Act, stand transferred to, and shall vest absolutely in the State Government.

(2) The sick textile undertaking which stands vested in the State Government under sub-section (1) shall, immediately after it has so vested, stand transferred to, and vest in the State Textile Corporation.”

So, the Company as well as the right, title and interest of the owner in relation to the Company stands acquired by and stood vested in the State Government, in view of Section 3.

13. The effect of such vesting is laid down in Section 4 of the Act, 2010 which is as follows:-

“4. General effect of Vesting –

(1) The sick textile undertaking referred to in section 3 shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges and all property, movable and immovable including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the possession, power or control of the authorised person and all books of account, registers and all other documents of whatever nature relating thereto and shall also be deemed to include the liabilities and obligations specified in sub-section (2) of section 5.

(2) All property as aforesaid which have vested in the State Government under sub-section(1) of section 3 shall, by reason of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting it, and any attachment, injunction or decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn.

(3) Where any licence or other instrument in relation to the sick textile undertaking had been granted at any time before the appointed day to an owner by the Central Government or a State Government or any other authority, the State Textile Corporation shall, on and from the appointed day, be deemed to be substituted in such licence or other instrument in place of the owner referred to therein as if such licence or other instrument had been granted

to the State Textile Corporation and it shall hold such licence or the sick textile undertaking specified in such other instrument for the remainder of the period for which the owner would have held such licence or the sick textile undertaking under such other instrument.

(4) Every mortgagee of any property which has vested under this Act in the State Government and every person holding any charge, lien or other interest in or in relation to any such property shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner, of such mortgage, charge, lien or other interest.

(5) For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section(2) or any other person holding any charge, lien or other interest in, or in relation to, any such property shall be entitled to claim, in accordance with his rights and interest, payment of the mortgage money or other dues, in whole or in part, out of the amount specified in relation to such property, in the First Schedule, but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the State Government.

(6) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any matter specified in sub-section (2) of section 5 in respect of the sick textile undertaking, instituted or preferred by or against the textile company or the authorised person, is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the sick textile undertaking or of anything contained in this Act but the suit, appeal or other proceedings may be continued, prosecuted and enforced by the State Textile Corporation.”

Therefore, all properties of the Company including the rights of the Company over landed assets, are deemed vested with

the State Government.

14. As far as legislative competence of the State to enact the law, the source of power can be traced to Entry 42 (Acquisition and requisitioning of property) in List III and as far as landed assets are considered, the power can be traced to Entry 18 (Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement; and agricultural loans; colonization) in List II also. Therefore, legislative competence of the State is beyond doubt.

15. The further contention of the petitioners is that when the Company was under reference pending with the BIFR, the state legislature has no power to acquire or takeover the Company, without the leave of the Board constituted under Sick Industrial Companies (Special Provisions) Act, 1985. The Sick Industrial Companies (Special Provisions) Act has been enacted by the Union Parliament with a view to securing the timely detection of

sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters incidental thereto.

16. The Sick Industrial Companies (Special Provisions) Act contemplates reference of Sick Industrial Companies to the BIFR. The BIFR would make such enquiry as required to determine whether the Company has become Sick Industrial Company. On the basis of such enquiry, the BIFR is empowered to appoint an Operating Agency for the sick company. The Operating Agency is expected to frame a scheme for financial reconstruction of the Sick Industrial Company. If the BIFR is of the opinion that the Sick Industrial Company is not likely to make its net worth exceeds the accumulated losses within a reasonable time while meeting all its financial obligations and that the Company as a result is not likely to become viable in future

and that it is just and equitable that the company should be wound up, in that case the BIFR can order winding up of the Company.

17. The Kerala Spinners Limited was referred to the BIFR and the BIFR appointed Indian Overseas Bank as Operating Agency. It is an admitted case that no revival programme could be materialised by the Operating Agency. Ext.P4 summary record of the proceedings of the hearing held before the BIFR would show that the Government of Kerala submitted before the BIFR that the Government intends to takeover the unit in the interest of all concerned. Based on the submission, the BIFR directed that Government of Kerala/KSIDC may consider to file an appropriate proposal with the Operating Agency for Change of Management.

18. The counter affidavit filed by the 1st respondent would show that the Government of Kerala accordingly expressed its intention to takeover the Company to the BIFR through the Operating Agency and filed the required

application as directed by the BIFR. It was thereafter that the Ordinance No.24/2009 was promulgated and later the Act 4 of 2010 was enacted. Therefore, it has to be assumed that the acquisition of the Company by the State of Kerala was known to the BIFR.

19. Furthermore, when a Company is referred to the BIFR, the Board is only discharging a statutory function. Takeover of the Company has been effected by a State legislation. Pendency of the statutory proceedings before a statutory authority cannot ordinarily be a bar for any legislature to exercise its legislative functions. This Court finds no illegality in enacting the Act 4 of 2010 during the pendency of proceedings before BIFR.

20. It is an admitted fact that even after purchase of majority stake in the Company by the petitioners, the Company could not perform and lockout was declared. An application for closure of the establishment was made by the petitioners invoking Section 25(O) of the Industrial Disputes Act. Therefore, it is clear that the Company was not

managed well prior to the acquisition of majority stake by the petitioners and even thereafter. There were about 500 employees working in the Company who were denied wages for a long period. Taking into account the entire facts, the State Government decided to acquire the Company in order to revive the same and also to give relief to the workmen. The action of the state Government is not arbitrary and therefore the petitioners cannot be heard to contend that their right under Article 14 is violated.

21. As regards violation of the rights conferred on the petitioners under Article 19(1)(g) of the Constitution of India is concerned, petitioners 1 to 4 being incorporated Companies, they are not citizens capable of exercising the fundamental rights guaranteed under Article 19(1)(g). The 5th petitioner alone is a citizen who can contend that his right to engage in trade and business is affected. By the Act 4 of 2010, the 1st respondent has taken over the Company in which the 5th petitioner has only 0.20% of equity. The right of the 5th petitioner to engage in any business or trade is not

prohibited or curtailed by the Act 4 of 2010. Merely for the reason that the Government has taken over a Company in which the 5th petitioner holds only 0.20% equity, it cannot be said that fundamental right guaranteed to the 5th petitioner under Article 19(1)(g) is violated. The argument in that regard is therefore liable to be rejected.

22. The Act 4 of 2010 has been enacted by the State legislature following due process and the Act has received the assent of the Governor. Since the Act 4 of 2010 has been brought into force following due process of law and by the authority of law, the petitioners cannot be heard to contend that the right guaranteed to them under Article 300-A of the Constitution of India is violated. The right to hold property given under Article 300-A is not absolute and the State is competent to take away the said rights with the authority of law.

23. The only remaining argument of the petitioners is that the compensation granted by Ext.P5 Act 2010 is too negligible and therefore illusory. According to the

petitioners, the assets of the Company is worth about ₹45 Crores whereas the valuation under the Act is only ₹454.67 lakhs. As the compensation provided under the Act, 2010 is illusory, the Act is liable to be set aside as unconstitutional. Scanning the provisions of the Act, it is seen that the Act 4 of 2010 has made a specific provision relating to payments that may become due under the Act.

24. Under Section 16 of the Act 4 of 2010, the State Government has to appoint a Commissioner for the purpose of disbursing amounts payable to the owner of the sick textile undertaking. Section 18 of the Act contemplates claims to be made to the Commissioner appointed under Section 16. There are provisions for examination, admission or rejection of the claims. The Act 4 of 2010 also provides that a claimant who is dissatisfied with the decision of the Commissioner may prefer an appeal against the decision to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the sick textile undertaking is situated. As the Act 4 of 2010 has provided a separate

machinery for payment of claims and also has provided for Appellate Forum, this Court finds that any issue relating to compensation will have to be taken up in accordance with the provisions of the Act 4 of 2010.

In view of the findings made hereinabove, this Court finds no merit in the writ petition. The writ petition is accordingly dismissed.

aks/02.02.2021

Sd/-
N. NAGARESH, JUDGE

APPENDIX

PETITIONERS' EXHIBITS:

- EXHIBIT P1 PHOTOCOPY OF THE ORDER OF BIFR DATED
07/09/2006.
- EXHIBIT P2 PHOTOCOPY OF THE ORDER OF BIFR DATED
16/04/2009.
- EXHIBIT P3 PHOTOCOPY OF THE ORDER DATED
28/02/2008 IN WPC NO. 6873/2008 OF
THIS HON'BLE COURT.
- EXHIBIT P4 PHOTOCOPY OF THE ORDER OF BIFR DATED
16/09/2009.
- EXHIBIT P5 PHOTOCOPY OF ACT 4 OF 2010.
- EXHIBIT P6 AFFIDAVIT OF MR. D.K.SINGH, I.A.S.
ADDITIONAL RESIDENT COMMISSIONER
GOVERNMENT OF KERALA IN APPEAL
NO.149/2007 BEFORE THE APPELLATE
AUTHORITY FOR INDUSTRIAL AND
FINANCIAL RECONSTRUCTION.
- EXHIBIT P7 PHOTOCOPY OF THE MEMORANDUM AND
ARTICLES OF ASSOCIATION OF KERALA
SPINNERS LIMITED, ALAPPUZHA.

RESPONDENTS' EXHIBITS:

- EXHIBIT R2 (A) TRUE COPY OF THE GOVERNMENT ORDER
G.O. (MS) NO.107/2009/ID DATED
27/08/2009.

EXHIBITS OF ADVOCATE COMMISSIONER:

- ANNEXURE C-1 NOTICE DATED 13/10/2010 ISSUED TO THE
COUNSELS ON EITHER SIDE.
- ANNEXURE C-2 REPORT OF THE ENGINEER.

