

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31.01.2012

+ **LPA 720/2010, C.M. APPL.17929/2010 & C.M. APPL. 4680/2011**

COMMISSIONER OF PAYMENTS Appellant
Through : Sh. Jaswinder Singh, Advocate.

versus

KISHNI DEVI Respondents
Through : Sh. M.K. Gautam, Advocate.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

%

1. The present appeal is against an order of the learned Single Judge dated 08.02.2010 in W.P. (C) 8337/2002, whereby the Commissioner of Payments' Writ Petition was rejected.
2. The brief facts are that the respondents (hereafter referred to as "claimants") had deposited certain sums of money, i.e. ₹ 6500/-, ₹ 3136/-, ₹ 2500/-, ₹ 6000/- & ₹ 5000/- (mentioned in the Schedule), the aggregate of

which worked out to ₹ 23136/- with the erstwhile Ajudhia Textiles Mills Ltd., a private company. These Fixed Deposits were to mature during different periods between 22.04.1970 and 01.02.1972. Finding that the affairs of the said company were not in good shape, the Central Government apparently intervened by issuing an order under Section 18A of the Industries (Development and Regulation), 1951, effective from 07.06.1971. The legal effect of this order was to suspend the management of the company; the Central Government gained intrusive powers to supervise the functioning of the company, which it did for almost three years, till the Sick Textile Undertaking (Nationalization) Act, 1974 (hereafter “the Nationalization Act”) was enacted. That enactment came into force with effect from 01.04.1974. By its provisions, the Central Government put in place a structure whereby the claims, such as those of respondent depositors, other creditors, workers etc. were to be regulated. The respondent lodged their claims for payments.

3. The Commissioner of Customs, by his order dated 04.09.1981 disallowed the claims, reasoning that they fell in Category II(b) in Second Schedule to the 1974 Act. The respondent/claimants preferred appeals, being RCA No. 116/1981 and RCA No.117/1981, challenging the orders of the Commissioner, disallowing their claims. By order dated 01.06.1983, made by the learned Addl. District Judge, the Commissioner’s orders were set-aside and the matter was remanded to reconsider the respondents’ claims. By subsequent order dated 18.03.1986, the Commissioner again disallowed the claims concerning the categorization made earlier, recording as follows:

“XXXXXX

XXXXXX

XXXXXX

After hearing the arguments and going through the records, I find that the Ld. Commissioner of Payments vide his order dated 4.9.81 has rightly categorized the claim of Shri Ganga Dutt Gupta under category of 6(b) of the Second Schedule of the Sick Textile Undertaking (Nationalization) Act, 1974. Since the compensation amount in respect of Ajudha Textile Mills has already been exhausted while meeting the liability under category 1, the Commissioner of Payments is precluded from examining the claims of lower category U/s 22(2) of the aforesaid Act.

XXXXXX

XXXXXX

XXXXXX”

4. This order was again challenged by the claimants, before the District Judge, by preferring RCA 95/1993 and RCA 96/1993. The Learned Additional District Judge, by his order of 08.09.2000 allowed the appeal. The learned Additional District Judge reasoned that the Commissioner’s order was mechanical and without any reasons. The relevant part of the said judgment is as follows:

“XXXXXX

XXXXXX

XXXXXX

Secondly, the management of the Mill was taken over by the Central Govt. U/s 18A of the Industries (Development and Regulation) Act, 1951 vide notification dt. 7.6.71 referred to above. After this taking over of the management, the owner cannot be said to have ‘incurred’ any liability after 7.6.71 to 31.3.74. After ‘appointed day’ i.e. prior to 1.4.74) under the Sick textile undertakings (Nationalisation Act), 1974; the NTC has not claimed whatsoever against the Ajudhiya Textile Mills Limited, since the amount advanced by NTC as custodian to the Mills during the post take over period for the liability of the Central Govt. and the Old liabilities relating to the pretaking over period i.e. prior to 7.6.71, were lying suspended under

Bombay Relief Undertaking Act. Thus, the liability incurred after the day 1.4.74 fell within the ambit of Section 5(2) of the Act and shall be the liability of the Central Govt. U/s 5(2) of the Act. Accordingly, the claim of the Appellant was secured under category 1 Part-A of the second Schedule of the Act. The amounts payable to the owner U/s 8 & 9 of the Act and placed at the disposal of the Commissioner U/s 18 of the Act could not be appropriated legally towards the Part A Category I of the Second Schedule liability. In other words, the post taken over management period liability could not be adjusted by the Commissioner against the compensation awarded to the owner. Ironically the Appellant were informed by the Commissioner that funds have been exhausted towards Part A Category I of the Second Schedule Liability of the undertaking which could not have been lawfully done. The omission is self-explanatory. Accordingly, this action of the Ld. Commissioner is held to be illegal and without jurisdiction.

XXXXXX

XXXXXX

XXXXXX”

5. The District Judge accordingly allowed the claims and also further directed payment of interest at 12% per annum on the amounts due, till date of realization. Apparently, the claimants preferred an Execution proceeding, being ECA No. 36-37/2002. At this stage, upon receiving notice, the Commissioner appears to have woken-up to his liabilities, and preferred a Writ Petition before the Court contending that the order of the learned Additional District Judge was unsustainable.

6. It is contended that the impugned order is serious error of law because the scheme of the Nationalization Act does not permit disbursement to claimants, whose dues fall in the Second Schedule, except those in the first category. Elaborating on this, learned counsel submitted that unlike Section 27 of the Nationalization Act, which deals with residual liability of the

Central Government or the National Textile Corporation, as the case may be, in the event assets are not sufficient to satisfy the claimants nominated under the first category, claims under the other categories do not have to be satisfied. The Commissioner, according to counsel, merely carried-out his statutory duties of categorizing what payments could be made from the funds available with him and, therefore, the Additional District Judge erred in not appreciating this vital aspect and holding that he is liable.

7. It is further contended that under the Scheme of the Act, the residual liability in the case of other categories' creditors could not be fastened on the Commissioner because of the limitation of powers as well as the assets made available which were, according to him, exhausted in making out payments for Category-I creditors in the Second Schedule to the Enactment.

8. We have carefully considered the submissions. At this stage, it would be relevant to extract the material portion of the reasoning of the learned Single Judge in the impugned judgment, which is as follows:

“XXXXXX

XXXXXX

XXXXXX

10. The Commissioner filed the present writ petition in this Court on 19th December 2002 challenging the decrees passed by the learned ADJ more than two years after they had been passed. The Commissioner contended under Section 21 STUN Act, the claims in the Second Schedule would have to abide by the principle that “a liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category.” Further under Section 22(1) the Commissioner was required to “arrange the claims in the order of priority specified in the Second Schedule and examine the same in accordance with the said order.” It was submitted that since all

the funds had been exhausted in meeting the Category I liabilities, there was no occasion to examine any other category. It was claimed that the order passed by the Commissioner was “legally unimpeachable and should not have been disturbed by the learned ADJ in appeal.” By an order dated 20th December 2002, this court stayed the decrees.

11. It must be mentioned here that the petitioner allowed this writ petition to be dismissed in default for non-prosecution on 14th September 2006. In the application for restoration of application, the petitioner did not file process fees for nearly two years. Thereafter Kishni Devi and Ganga Dutt Gupta were served and again dragged back to this Court. While restoring the writ petition by a separate order passed today, this Court has directed the petitioner to pay Kishni Devi and Ganga Dutt Gupta costs of Rs.10,000/- each within a period of four weeks.

12. Counsel for the petitioner urged that the court should go by the letter of the law, i.e. the STUN Act and hold that no liability attached to the central government once the compensation amount recoverable from the nationalization exercise was exhausted in meeting the liabilities of the “higher” categories of creditors.

13. In other words, this court is asked to uphold, as a matter of principle, the government’s perception that despite it nationalizing a company, if the funds recoverable from the sale of the assets of that company are not adequate to meet its liabilities, in the order arranged by the Commissioner, then it is just too bad for the small investors and depositors. Even if the principal amounts owing to the small investors are just a little over Rs. 23,000 and the government has lost twice in the courts in a period of three decades, the government will refuse to pay by proclaiming that the letter of the law must be upheld at all costs. The small investors like Kishni Devi and Ganga Dutt Gupta should rest content with their paper decrees which are non-encashable at the government’s door.

14. On the questions of law raised, this Court finds absolutely no error having been committed by the two learned ADJs who by their separate but concurring opinions, first in 1986 and thereafter in 2000, held that the claims of Respondents 1 and 2 were admissible and had to be honoured by the Central Government. Relying on Section 5 (2) of the STUN Act the two ADJs held that if the ATML's erstwhile owner's funds and the funds from the sale of its assets were inadequate to meet all the liabilities, then the central government stepped into the shoes of the debtor for liabilities that accrued after the „appointed day“ i.e. 7th June 1971. This court finds nothing perverse in this reasoning. After the FDs matured Kishni Devi and Ganga Dutt Gupta approached ATML for repayment only to be told that it was being run as a relief undertaking since 7th June 1971 and that by a notification dated 1st February 1973 the liabilities of ATML prior to the takeover stood frozen upto 17th February 1974. Thus neither payment nor renewals were permissible at that stage. No claim against ATML was admissible during this period. The liability therefore became operational only thereafter during the post-takeover period for which in terms of Section 5 (2) STUN Act the central government would be liable. This is a possible view to take and as explained hereinafter a plausible view in the facts and circumstances of the case.

15. Howsoever neat and important the questions of law might be in a case like this, the harsh reality is that two small investors have not been able to recover from the central government their hard-earned life savings for nearly four decades. And for absolutely no fault of theirs. And that too after successfully fighting the government in court battles twice over for three decades. The Central Government cannot hide behind a statute that permitted it to take over the company in question and wash its hands off stating that in its ordering the priorities of claims, once the funds recovered from the owner of ATML and from the sale of ATML's assets stood exhausted in settling the “higher” claims, the claims of „lower” categories like Kishni Devi and Ganga Dutt Gupta get wiped out by law. As a

principle of law, as an instrument of social and economic justice ordained by the Constitution, this is simply unacceptable.

16. It is unfortunate that instead of repaying their principal sums of Rs. 12,136 and Rs. 11,000/- together with interest owing to them for over four decades, the Central Government dragged Respondents 1 and 2 into further litigation. Compared to what the central government has spent so far on this litigation, the money owed by it to Kishni Devi and Ganga Dutt Gupta does not justify its engaging them in vexatious litigation for over three decades.

17. Today when Respondent No.2 Ganga Dutt Gupta appeared in this Court, he appeared shrivelled by the long years of waiting for justice, worn out by litigation fatigue, and weighed down by the unbearable burden of a vexatious case so mercilessly imposed on him by the mighty Central Government. It was a pathetic sight to behold and signified the failure of the legal system to render timely justice to the weakest among our citizenry. It is the duty of a Constitutional court in a situation like this to ensure that the law is not operated to mete out injustice to a citizen.

18. This petition is accordingly dismissed with costs of Rs.15,000/- each to be paid to Respondents 1 and 2 by the Central Government within a period of four weeks from today. Failure to pay costs within the time granted will attract penal costs of Rs. 20,000 each. The applications are disposed of.

19. Certified copies of this order, and the order passed to day in CM Nos.16395 and 16396 of 2007, be sent for compliance to the Commissioner of Payments and the Secretary of the concerned Ministry under which the Commissioner functions within seven days.

20. Certified copies of the two orders be also sent forthwith to the Secretary, Delhi Legal Services Authority (DLSA) with a

direction that the Secretary will contact Kishni Devi and Ganga Dutt Gupta and give them all possible assistance to pursue the matter further with the Central Government and recover the amounts due to them under the decrees of the ADJs and the costs awarded to them by this Court both in this petition and in the application for restoration of the writ petition. A complete set of the papers in the case be also delivered to the Secretary DLSA to enable the follow-up. If the Central Government defaults in complying with any of the directions, the DLSA will assist Kishni Devi and Ganga Dutt Gupta in filing appropriate proceedings for further directions.

XXXXXX

XXXXXX

XXXXXX”

9. We are not unmindful of the fact that the object behind the Nationalization Act was to take charge of the affairs of the erstwhile Textile Mills, which were sick and to ensure that those which were about to become sick were brought to order, and its creditors, contributories and workers were given their dues. The sequence of events recorded by us would show that the first order of the Commissioner was made in 1981 – three decades ago when the NTC was created, and was a young Corporation. The order of the Addl. District Judge was made in 1983. Almost 3 years later, in 1986, the Commissioner made his second order, reiterating his previous reasoning *vis-à-vis* categorization of the claims. The Learned Additional District Judge, rendered judgment in 2000. Apparently, the present appellant did not appear before the District Judge despite notices. Therefore, the order admitting the respondents’ claims, was made on 08.09.2000. It was only in the year 2002, after receiving notices in execution, that the Commissioner preferred a Writ Petition. This too was decided eight years later. All these events, though noticed by the learned Single Judge, have also been noted by us, to reiterate

the plight of small depositors whose cases unwittingly become victims to bureaucratic delay and litigation.

10. So far as the submission with regard to the Commissioner's liability is concerned, even though Section 27 specifically provides for residual liability in the case of Category-1, Second Schedule creditors, that in our opinion, does not end the matter. In this case, the deposits concededly matured when the Central Government had assumed full responsibility of the management of the Ajudhia Textile Mills Ltd. between 07.06.1971 and 01.04.1971. Such being the position, mere omission to provide for this category would not absolve the Central Government or the NTC of the liability.

11. We notice that the enactment does not contain any provision completely exonerating such liability. It is one thing to contend that the express provision for one kind of liability, such as Category-1 would mean that other categories' residual liability is excluded. However, having regard to the object of the enactment, which was beneficial and meant to provide relief to small depositors falling in such class of persons as the respondents, for which purpose, the Central Government had taken-over management of the company in 1971 itself, the arguments contended by the counsel are unfeasible.

12. In view of the above reasoning, we are of the opinion that the impugned judgment does not disclose any infirmity so as to call for interference. Further, since the respondents have been unnecessarily dragged to the Court, we are of the opinion that further costs over and above the costs directed by the Single Judge are warranted. The appellants are directed to pay further costs quantified at ₹ 40,000/-, to the respondents within three weeks from today. The appellants shall file an affidavit within the said

period, indicating that these directions as well as the directions of the Single Judge have been duly complied with, during that period. The appeal is disposed of in the above terms.

13. List before the Court on 23.02.2012, to oversee compliance with the Court's directions, issued in the Court today.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

JANUARY 31, 2012
'ajk'