

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 138 OF 2017**

Rashtriya Mill Mazdoor Sangh	...Petitioners
<i>Versus</i>	
Union of India & Ors	...Respondents

Mr Apsi Chinoy, Senior Advocate a/w, *Mr. Ashish Kamath a/w
Pranay Dave i/by Nikhil Mengde or the Petitioners.*
Mrs Neeta Masurkar a/w *Ms. Nieyaati Masurkar for Respondent
No.1 UOI.*
Mr Shriram Redij for Respondent No. 2 NTC.
Ms Gauri Joshi i/by *Ganesh and Co for Respondent No. 3.*
Mr Nirman Sharma a/w *Ms. P. Dasgupta, Ms. Dhruti Chheda i/by
Inderslaw for Respondent No. 4*
Dr. B. Saraf, Senior Advocate i/by *Naik and Naik for Respondents
Nos. 5 and 6.*

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**
DATED: 4th January 2022

PC:-

1. Mr. Chinoy for the Petitioners points out, quite correctly in our opinion, that for the last four years, the 2nd Respondent, the National Textile Corporation has totally failed to comply with a Division Bench order of 11th October 2018.

2. In view of the directions, we propose to pass today, it is necessary to set out that order:

“The only grievance of the Petitioner in the above Petition is that the scheme of modernization /revival of the 4 mills in question i.e. (1) India United Mill No.1, Mumbai, (2) New City Manufacturing Limited, Mumbai, (3) Gold Mohur Mills Mumbai and (4) Apollo Textile Mills, Mumbai, has not taken of though a period of almost 11 years is over. The Respondent No.2 herein i.e. NTC has entered into Joint Venture Agreements with the Respondent Nos.3 to 6 for modernization / revival of the said mills. During the pendency of the above Petition show cause notices have been issued to the Respondent Nos.3 to 6 on the ground of there being serious draw backs and failure on the part of the said Respondents in the matter of implementing the revival scheme. It seems that the Respondent No.3 has already filed their response to the show cause notice issued to them on 5-9-2018.

2 The Learned Senior Counsel for the Respondent No.2 Mr. E. P. Bharucha would submit that it would be for the Board of the Respondent No.2 to take an appropriate decision on the show cause notices issued to the Respondent Nos.3 to 6 and that may take some time. Upon this the Learned Senior Counsel appearing on behalf of the Petitioner Mr. Chinoy would submit that a response from the Respondent No.2 would be required which would be de-hors the show cause notices issued to the Respondent Nos.3 to 6 as what it proposes to do in the matter of modernization / revival of the said 4 mills.

3 In our view, the said submission required to be addressed by the Respondent No.2- NTC. However, since the show cause notices have been issued to the Respondent Nos.3 to 6, we defer the hearing of the above Writ Petition No.138 of 2017, so as to enable the Respondent No.2NTC

to take a decision on the show cause notices. However, after the show cause notices are decided one way or the other we expect the Respondent No.2 to file an affidavit as regards what it proposes to do in respect of modernization/ revival of 4 mills either with or without the Respondent Nos.3 to 6. Adjourned to 13-12-2018”.

3. The matter then came up on various dates. On 26th November 2019, a full year later, an Advocate stated that he had now had instructions to appear for NTC and requested time. This was granted. There was still no compliance. On 21st January 2020, the 2nd Respondent’s Advocate sought time on health grounds. At that time, Dr. Saraf for Respondents Nos. 5 and 6 pointed out that the show cause notice issued on 8th September 2018 had even then not been decided. The order dated 21st January 2020 reads thus:

“Heard learned counsel for the parties.

2. Advocate Ms. Jain submits that advocate appearing for respondent No. 2 is not keeping well, hence she sought some time.

3. Learned counsel Dr. Saraf appearing on behalf of the respondent Nos. 5 and 6 submits that till today show cause notice dated September 5, 2018 is not decided by respondent No.2. Considering this fact, the following order is passed :

(i) Respondent No. 2 to file their additional affidavit in reply as per earlier order dated October 11, 2018 with copy to the other side.

(ii) Respondent No. 2 to make a statement before this Court within how much time it will decide the show cause notice dated September 5, 2018;

(iii) Matter to appear on board on January 27, 2020 under the caption 'for directions'.

4. On 27th January 2020, there were some typographical corrections effected to the previous order. On 27th January 2020, there came to be made what we believe is the most astonishing submission on behalf of NTC. It was being said for the first time one and half years after the order of 11th October 2018 by NTC's lawyer that time was required to find the name of an officer who could make a statement to the Court as to within what time the show cause notice would be decided. The order of 27th January 2020 reads thus:

"1. Heard. The learned counsel for Respondent No. 2 seeks some time to find out the name of officer who can make a statement before this court, within how much time, they will decide the show cause notice dated 26.07.2018 issued by them to the Petitioner. Earlier also this Court had passed orders dated 11.10.2018 and 21.01.2020 in this behalf.

2. Considering these facts, at the request of learned counsel for Respondent No.2, S.O. to 31.01.2020."

5. On 31st January 2020, the learned ASG appeared for NTC. This was the order that was passed:

"Heard the learned counsel for the parties.

2. Learned ASG Mr. Anil Singh appearing on behalf of the Union of India submits that they will file an additional affidavit, explaining the present names and addresses of the Board of Directors and what steps they are taking to appoint Additional Directors, with copy to other side.

3. Time is granted till 14/02/2020 to file an additional affidavit.

4. Matter to appear on board on 17/02/2020.

6. On 20th February 2020, the Petitioners pointed out that there was still non-compliance. The following order was passed on that day:

1. “Today the matter is shown on production board pursuant to the praecipe dated 18/02/2020 filed by the learned Advocate for the Petitioner.

2. Heard the learned counsel for the parties.

3. Learned Advocate Mr Ashish Kamat appearing on behalf of the Petitioner submits that, the Respondent No. 2 failed to comply the order dated 11/10/2018. He submits that, as per earlier order dated 31/01/2020 the matter was due on 17/02/2020. On that date, the court was not available. The office has not assigned any CMIS date.

4. Considering this fact, the Registry is directed to place this matter on board on 16/03/2020.”

7. As everybody knows, there then followed the global pandemic and lockdown. A full two years have gone past. We are in January 2022 and we are yet without compliance with the order dated 11th October 2018.

8. Today we have told by Mr. Redij that the NTC does not have a full time board. It has a Chairman and Managing Director. Beyond this, he has no instructions to make any statement or offer any information.

9. He states that the learned ASG will be appearing for the NTC. We see no reason why a law officers of the Union should have his position embarrassed or compromised by non-compliance on the part of a Government Undertaking. The fact that the learned ASG has been requested to appear does not give the NTC a licence to disobey the orders of this Court nor to compromise or embarrass the position of the learned ASG.

10. Mr. Redij seeks further time to file the affidavit required by the orders of 11th October 2018 and 31st January 2020.

11. As a last indulgence and subject to certain conditions, we will grant time until 25th January 2022. The affidavit in compliance with the 11th October 2018 order will have to be filed by 5.00 pm that day and served in both hard and soft copy on the Advocates for the Petitioners, Respondents Nos. 5 and 6 and the MCGM.

12. Four years is unconscionable by any standard. We are making it abundantly clear to NTC that continued disobedience and non-compliance with orders of this Court will invite action against the NTC and its principal officers, if necessary suo motu. Apart from any proceedings in contempt, we will consider imposing costs for this delay. We may also be compelled to discharge or dismiss the show cause notices or to quash them if this disobedience continues. We trust our meaning is plain and requires no further clarification.

13. We make this order because of what is set out at the forefront of the 11th October 2018 order. This is not a question of some

private enterprise seeking to make monetary benefit. This is the question of livelihoods of erstwhile workmen of Cotton Textile Mills taken over by NTC. The proposal sought to be enforced is for the revival of these mills, which will ensure employment to thousands. Those lives and livelihoods cannot be jeopardised, nor can a consideration of those concerns be indefinitely delayed like this simply because NTC does not know whether it has an officer to file an affidavit or to decide the show cause notice. It is the interests of the workmen that will receive prior consideration over any convenience of NTC or its officers.

14. Under no circumstances, we will extend the time to NTC to file its affidavit even by a day.

15. We allow Respondent No. 4, which has recently emerged from CRP proceedings to file a further affidavit by 25th January 2022.

16. List the matter high on board on 27th January 2022.

17. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)