

UNITED MOTORS LTD.

v.

DE MEL

COURT OF APPEAL

TAMBIAH, J. AND L.H. DE ALWIS, J.

C.A. 2301/80 - C.A. 2302/80

FEBRUARY 11, MARCH 30, 31 AND JUNE 10 AND 11, 1982

Writs of Certiorari and Mandamus - Business Undertakings Acquisition Act, No. 35 of 1971, section 3,4,5 and 17 - Permissibility of deduction of liabilities to Government.

By order dated 8.3.72 of the Minister of Finance under section 2(1)(b) of the Business Undertakings Act, No. 35 of 1971 the business undertaking of the United Motors Ltd. and Automobile Assembly and Manufacture and property used for the purpose of the undertaking vested in the Government.

On 1.9.80 the Minister of Finance made an order consequent to a report made by a Committee appointed to examine the assets and liabilities of undertakings that vested. On the basis of this report order was made for payments of Rs. 596,694.26 in respect of United Motors and Rs. 262,943.15 to Automobile Assembly and Manufacture Limited after deductions of commission on debt collection, professional charges, Income and Turnover Tax.

The petitioners appealed for Writs of Certiorari and Mandamus against the deductions.

The contention of the petitioners was that section 4(1) of Act permitted only deduction of all contractual liabilities subsisting at the date of vesting from the payment of compensation and that the liabilities to government departments were not deductible.

Held -

Income Tax and Turnover Tax liabilities were deductible before any payments were made in respect of acquisition of business undertakings or their property under Act No. 35 of 1971.

APPLICATION for Writs of Certiorari and Madamus.

S.J. Kadirgamar, Q.C., with *K. Nadarajah* and *K. Thevarajah* for the petitioner in both applications.

Shibly Aziz, Deputy Solicitor-General with *K. Siripavan, State Counsel*, for the respondents.

Cur. adv. vult.

11th July 15, 1982

TAMBIAH, J.

There are two connected applications before us. In C.A. 2301/80, the petitioner is the United Motors Limited; in C.A. 2302/80, Automobile Assembly & Manufacture Limited is the petitioner.

By Order dated 8.3.72 made by the Minister of Finance under s.2 (1) (b) of the Business Undertakings (Acquisition) Act, No. 35 of 1971, and published in the Government Gazette Extraordinary, No.15,000/7, dated 8.3.72 (P1), the business undertaking carried on by the United Motors Limited and the property used for the purposes of that undertaking were vested in the Government. By a similar Order dated 8.3.72 and published in the same Gazette (P1), the business undertaking of Automobile Assembly and Manufacture Limited and the property used for the purposes of that undertaking, were also vested in the Government. The properties that were taken over were specified in the vesting orders as the lands, buildings, plant, machinery, fixtures and moveable property, used for the purposes of the undertakings. It would appear that it was on a

request made by the shareholders that the Government decided to take over the undertakings of the two Companies. The 2nd respondent is the competent authority appointed in terms of s. 3 of the Act, to manage and administer the affairs of both business undertakings.

The Minister of Finance is empowered to make Regulations under s. 12 of the Act. Two sets of regulations were made on 9.4.75 — the United Motors Limited (Assets and Liabilities) Regulations 1975, and the Automobile Assembly and Manufacture Limited (Assets and Liabilities) Regulations 1975. These were published in the Government Gazette Extraordinary, No. 158/8 of 10.4.75.

In terms of Regulation 2 the Minister appointed a Committee consisting of the 3rd, 4th and 5th respondents to examine and report to him on the assets and liabilities of both undertakings. The Committee consisting of the said 3 respondents made its report to the Minister of Finance.

By Order dated 12.3.79 (P3) made in terms of Regulation 7, the Minister of Finance and Planning, the 1st respondent, ordered that a sum of Rs. 552,741.13 be paid in respect of the business undertaking of Automobile Assembly and Manufacture Limited, and a sum of Rs. 1,000,000.00 to Messrs Chettinad Corporation Limited in respect of the land belonging to it, on which the business undertakings were sited. The said order did not specify any sum payable to United Motors Limited.

The petitioners then wrote letters dated 17.5.79 addressed to the Secretary to the 1st respondent (P4), and letter dated 2.1.80, addressed to the 1st respondent (P5), and sought a revision of the said order in view of the reduction of Income Tax and Business Turnover Tax liabilities following the settlement of appeals against the assessments made. According to the letter (P5), in consequence of a settlement with the Commissioner of Inland Revenue, the outstanding tax liabilities were as follows:

United Motors Limited

Income Tax	Rs. 1,342,484.00	
Business Turnover Tax	Rs. 1,820,255.00	
		— 3,162,739.00

Automobile Assembly & Manufacture Limited

Income Tax	Rs. 25,200.00	
Business Turnover Tax	Rs. 2,478,829.00	
		— 2,504,029.68

The petitioners wrote a further letter dated 10.7.80 (P6) addressed to the 1st respondent, in which they stated that they accepted the valuation of assets as per report made by the Committee appointed by the Minister of Finance. They however took up the position that the liabilities relating to outstanding Income Tax, outstanding Business Turnover Tax and loans do not fall within the ambit of s.4(1) of the Act, and are not deductible in arriving at the compensation payable to them. They requested that the amount payable as compensation be first computed by taking the gross value of the assets and adding the interest that has accrued thereon, and that the 1st respondent may thereafter pay to the Commissioner-General of Inland Revenue the sums due as Income Tax and Business Turnover Tax.

The assets of United Motors Limited were valued at Rs. 5,875,861.83 and of Automobile Assembly and Manufacture Limited at Rs. 3,073,264.00.

On 1.9.80, the 1st respondent made a revised order (P7) setting out that a sum of Rs. 596,694.26 be paid to the United Motors Limited, and a sum of Rs. 262,943.45 be paid to the Automobile Assembly and Manufacture Limited.

The petitioners then appealed to the 1st respondent (P9) and stated inter alia that in determining the compensation payable, the deduction of liabilities, other than those falling under s.4(1) of the Act, is contrary to law and that there being no sum deductible under s.4(1), interest is payable on the gross value of the assets vested at the rates prescribed in terms of the Business Undertakings (Acquisition) Amendment Act No. 21 of 1980, and Regulations made thereunder. The 1st respondent, however, did not grant the petitioners the reliefs asked for.

At the hearing before us, learned Queen's Counsel for the petitioners stated that the amounts that have been deducted as liabilities from the payments due as compensation and which are in dispute are as follows:-

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- (1) 5% commission on debt collection Rs. 33,700.63
- (2) Professional charges reclaim against Walker Bros. (London) Rs. 80,511.25
- (3) Outstanding Income Tax and Business Turnover Tax and penalty thereon Rs. 3,162,739.00

Application No. C. A. 2302/80 — Automobile Assembly & Manufacture Limited

Income Tax & Business Turnover Tax Rs. 2,504,029.68.

Learned Deputy Solicitor-General agreed that the sum of Rs. 33,700.63 is not deductible. He did not make the same concession as regards the sum of Rs. 80,511.25. He however stated that for the purpose of our judgment, what is in issue is restricted to unpaid Income Tax and Business Turnover Tax.

S. 2 (1) (b) of Act No. 35 of 1971 empowers the Minister of Finance to vest in the government by a primary vesting order any business undertaking as shall be specified in such order.

S. 2 (2) reads —

“Where any business undertaking is acquired by the Government by agreement or is vested in the Government by a primary Vesting Order, the Government shall, with effect from the date of transfer or the primary vesting date, as the case may be, have absolute title to such business undertaking free from all encumbrances.”

S. 17 defines “business undertaking” as follows :-

“business undertaking” means any undertaking of a commercial, industrial, agricultural or professional nature and includes —

- (i) all property, movable or immovable, which was used for the purposes of the undertaking on the day immediately preceding the date of transfer or the primary vesting date and which may be specified by the Minister of Finance in the primary Vesting Order;
- (ii) subject to the provisions of this Act, all rights, powers, privileges and interests arising in or out of such property or business and all the liabilities of that undertaking;
- (iii) all books, accounts and documents relating or appertaining to the business undertaking or any property of that undertaking.”

S. 17 also defines the term “proprietor” as follows:-

“proprietor” when used in relation to a business undertaking, means the owner of that undertaking or any other person authorised by the owner to enter into contracts for the purposes of that undertaking.”

S. 4 reads —

- “(1) Subject to the provisions of sub-section (2), where any business undertaking is acquired by or vested in the Government, all the rights and liabilities under any contract or agreement which relates to the purposes of that undertaking and which subsists on the date of transfer or on the primary vesting date of that undertaking shall vest in the Government.
- (2) The Minister of Finance may at any time repudiate the liabilities under any contract or agreement referred to in sub-section (1) if he is of opinion that such liabilities were incurred mala fide, dishonestly or fraudulently. Notice of the repudiation shall be given by the competent authority to the parties to the contract or agreement.
- (3) Where the Minister of Finance under sub-section (2) repudiates the liabilities under any contract or agreement such liabilities shall be deemed never to have vested in the Government.
- (4) For the purposes of this section, “liabilities” shall not include any loan repayable to a director or any business undertaking which is acquired by or vested in the Government or to any member of the family of such director.”

The Business Undertakings (Acquisition) (Amendment) Act, No. 21 of 1980 introduced a new section 12A which reads:-

“Payments to be made in respect of:-

- (a) any business undertaking acquired by, or vested in, the Government; or
- (b) any property vested in, or requisitioned by, the Government, for the purpose of any undertaking, shall be considered as accruing due from the date on which such business undertaking or property, as the case may be, was transferred to, or vested in, or requisitioned by, the Government. Interest at the prescribed rate shall be paid on every such payment from the date on which it accrues due until the date of payment.”

S. 3 of the amending Act gave retrospective effect to the amendment.

Learned Queen's Counsel submitted that the only liabilities that become vested in the State are those envisaged in s. 4 (1) of the

Act, viz. liabilities "under any contract or agreement," that is, contractual liabilities only. Payments due as Income Tax and Business Turnover Tax are statutory levies and liabilities, i.e., imposed by Act of Parliament, and not liabilities under any contract or agreement. The Minister has therefore acted in error when he deducted Income Tax and Business Turnover Tax in making the orders for payment to the petitioner-companies. The Minister must compute the payments to the two companies by taking the gross value of assets without deduction of taxes, as these are not contractual liabilities, and add interest that has accrued thereon, from the date of vesting. The two companies do not deny that the taxes are payable, but in making the order for the payments due to the companies, the taxes are not deductible. He therefore submitted that the petitioners are entitled to have that part of the order dated 1.9.80 deducting the tax liabilities, quashed on certiorari, and also to a mandamus directing the 1st respondent to make an order for payment computed on the basis of gross value of assets, without deduction of taxes, plus interest on the gross value of the assets vested, from the date of vesting. The petitioners have no objection, he stated, once the amount is thus computed, to the 1st respondent appropriating from the said amount and paying to the Commissioner General of Inland Revenue, the sums due as Income Tax and Business Turnover Tax.

Learned Deputy Solicitor-General conceded that the amounts due as Income Tax and Business Turnover Tax are not contractual liabilities; he also conceded that if learned Queen's Counsel's contention is right that tax liabilities do not vest and are not deductible, the writs will go. His position however was that all liabilities of the undertaking become vested in the State (s. 17) and the tax liabilities are deductible in terms of Regulation 5 (3), read with Regulation 7.

Learned Queen's Counsel referred us to the words "subject to the provisions of this Act all the liabilities of that undertaking" contained in the interpretation section 17 (ii) of the Act. He stated that s. 4 (1) is the only substantive section in the Act dealing with liabilities. The expression "all the liabilities of that undertaking" must therefore be read subject to s. 4 (1) as being liabilities - (1) under any contract or agreement, (2) which contract relates to the purposes of that undertaking, and (3) which contract subsists on the date of vesting. He contended that the legislature intended to limit the vesting of liabilities to those arising under a "contract or agreement" only. If the intention was to vest "all the liabilities," it was unnecessary to enact section 4. S. 4 then is a mere repetition or tautology.

I cannot agree with this submission of learned Queen's Counsel that the words "all liabilities" must be limited to contractual liabilities only. The opening words in s. 17 (ii) are "subject to the provisions of the Act" and not "subject to the provisions of s. 4." Nor does s. 4 (1) use the words "all rights and liabilities under any contract or agreement only etc. vest in the Government." Are delictual liabilities to be excluded ?

"A Court should not be prompt to ascribe, and should not without necessity or sound reason, impute to the language of a statute tautology or superfluity and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use."

(Craies on Statute Law, 7th Edn. p. 103)

S. 4 contains special provisions relating to a category of rights and liabilities, namely, contractual. It seems to me that s. 4 was enacted to quiet the fears and apprehensions of those who had honestly contracted with the business organisation before the acquisition or vesting, and to empower the Minister of Finance to select bona fide liabilities and reject those incurred mala fide, dishonestly or fraudulently. Loans repayable to a director or any member of his family were also taken out of the ambit of contractual liabilities.

S. 4 is not the only provision that the words "all the liabilities" are made subject to. For example, the said words are also subject to s. 2 (2) which states that when a business undertaking is acquired or vested, that Government has absolute title to the business undertaking free from all encumbrances. As was submitted by learned Deputy Solicitor-General, the provisions of s. 17 (ii), s. 2 (2) and s. 4 can co-exist. Read together, what is intended is that on the date of vesting, all the liabilities of that undertaking are transferred to the State (s. 17 (ii)), save and except, (1) those which the Minister of Finance can repudiate as having been incurred mala fide, dishonestly or fraudulently (s.4 (2)), (2) loans repayable to a director or any member of the family of such director (s. 4 (4)) and (3) such liabilities which do not attach to the Government under s. 2 (2) - encumbrances on title.

Learned Queen's Counsel next submitted that payments due as Income Tax and Business Turnover Tax are liabilities that cannot vest in the State. He said that only liabilities that can be vested can fall within the ambit of the expression "all the liabilities of that undertaking" in s. 17 (ii) of the Act. Income Tax and Business

Turnover Tax are debts due to the State. If these tax liabilities become vested in the State, he argued, it would lead to the absurd result of the State becoming a debtor to itself, of the State owing to itself.

Learned Deputy Solicitor-General referred us to the Statutes relating to Income Tax and Business Turnover Tax.

S. 2 (1) of the Inland Revenue Act No. 4 of 1963 states -

"Income tax shall, subject to the provisions of this Act, be charged at the appropriate rates specified in the First and Second Schedules to this Act for every year of assessment commencing on or after April 1, 1963, in respect of the profits and income of every person for the year preceding the year of assessment " etc.

"Person" is defined in s. 129 as follows :-

"Person" includes a company or body of persons.

"Body of persons" is defined as follows :-

"Body of persons" includes any local or public authority etc.

The 1st Schedule mentions Public Corporations established with capital wholly or partly provided by the Government of Ceylon and states that the rate of tax will be that chargeable in respect of the resident company.

S. 32 (1) of the Inland Revenue Act No. 28 of 1979 enacts as follows:-

"Subject as hereinafter provided, income tax shall be charged, for each year of assessment commencing on or after April 1, 1979, on the taxable income for that year of assessment of any person -

- (a) if he is an individual other than a receiver, trustee, executor or liquidator acting in such capacity, at the appropriate rates specified in the First schedule to this Act, or
- (b) if such person is a person other than a company or an individual to whom paragraph (a) applies at the appropriate rates specified in the Third Schedule to this Act."

In s. 163 the term "person" is defined as follows:-

"Person" includes a company or body of persons etc.

"Body of persons" is defined thus:-

"Body of persons" includes any local or public authority etc.

In the 3rd Schedule, item 10 states that in regard to Public Corporations, the rate of tax chargeable is 50% and in respect of Business Undertakings vested in the Government under the Business Undertakings (Acquisition) Act, No. 35 of 1971, 50% (item 11).

In the Turnover Tax Act, No. 69 of 1981, s. 2 states -

“Subject to the other provisions of this Act there shall be charged for the period November 13, 1981, to December 31, 1981 and for every quarter commencing on or after January 1, 1982 from every person who -

- (a) carries on any business in Sri Lanka; or
- (b) renders services outside Sri Lanka for which payment is made from Sri Lanka, a tax (hereinafter referred to as the “turnover tax”) in respect of the turnover made by that person from that business or from services rendered outside Sri Lanka computed at such rate as the Minister may fix by Order published in the Gazette.”

In s. 59 “person” is defined as follows :-

“Person” includes a company or body of persons.

“Body of persons” is defined thus :-

“body of persons” means any body corporate or unincorporate, local authority, any fraternity, fellowship, association or society of persons, whether corporate or unincorporate, any partnership and any Hindu undivided family and includes any Government department or any undertaking of the Government of Sri Lanka.

In terms of these tax laws, public corporations, business undertakings vested in the Government, any government department, and any undertaking of the Government can become liable to pay tax and clearly in the last two instances, it will be a case of the State owing to itself, of the State being indebted to itself. The argument of learned Queen’s Counsel that the concept of a State being both a creditor and debtor is a contradiction and results in an absurdity, seems to me to be untenable.

Learned Queen’s Counsel finally submitted that what has vested in the State is the Business Undertaking and the assets used for the purposes of the Undertaking and not the Company. The Company continues to exist with its legal status unimpaired. The tax liabilities are liabilities of the company and not of the undertaking and therefore cannot vest in the State. This submission also, in my view, cannot succeed.

The preamble to the Act states that it is an Act to provide for the acquisition for the Government of any Business Undertaking and of any property necessary for the purposes of that undertaking. The vesting orders also state that what were vested in the State are the business undertakings carried on by the petitioner-companies and the properties used for the purposes of those undertakings. S. 17 of the Act draws a distinction between "business undertaking" and "proprietor". This distinction is maintained in sections 7, 11 and 14, wherein the terms "proprietor" and "business undertaking" are juxtaposed. The regulations speak of "the specified undertaking."

The Act therefore introduced a new concept called "Business Undertaking." But it did not invest it with a legal personality capable of owning assets, enjoying rights and incurring liabilities; nor has it been contended before us, that the "Business Undertaking" is a legal person.

"The golden rule of interpretation is that we must just try to ascertain the intention of the Legislature from the words used, by attaching the ordinary meaning of the word on the grammatical construction — adding nothing and omitting nothing and to give effect to the intention thus ascertained, if the language is unambiguous, and no absurdity results..... If, even though free from ambiguity, the ordinary meaning of the words used gives rise to an absurdity, we have to endeavour to avoid the absurdity, by adding, if possible, some words and omitting some words, to ascertain the Legislature's intention."

(Bindra's Interpretation of Statutes, 6th Edn. p. 217)

"The words of a Statute must be construed so as to give a sensible meaning to them if possible."

(Maxwell on Interpretation of Statutes, 11th Edn. p. 228)

The "Undertaking" is not a legal person and cannot have rights and liabilities. So it seems to me that when the Legislature used the words "all the liabilities of that undertaking" in s. 17 (ii) of the Act, the words must be construed to mean liabilities of the undertakings owned by a natural or legal person. In fact this very idea is contained in Regulation 10 of the two sets of Regulations made by the Minister of Finance, where "specified undertaking" is defined as the undertakings which were carried on by the companies called and known as the Automobile Assembly and Manufacture Limited and the United Motors Limited.

Learned Deputy Solicitor-General submitted that the Act nowhere mentions the payment of any compensation. The Act and the Regulations only speak of "payments" to be made. The Order dated 1.9.80 made by the Minister of Finance is one which he had the power to make in terms of Regulation 5 (3), read with Regulation 7, and is a valid order. This submission appeals to me.

S. 12 (2) (c) empowered the Minister of Finance to make regulations in respect of "the *payments* to be made in respect of any business undertaking or property acquired or requisitioned by or vested in the Government and any matter regarding the assessment of the amount of the payments and mode of making such *payments*." (emphasis added)

S. 16 states, "All *payments* made in respect of any property acquired or requisitioned by or vested in the Government under this Act shall be charged on the Consolidated Fund of Ceylon." (emphasis added)

In terms of the regulation making power, the Minister has made regulations in respect of both Undertakings which were published in the Government Gazette on 10.4.75. Of relevance are the following regulations :-

Regulation 2 (1) — "The Minister of Finance may, appoint not less than three persons by name or by office to constitute a Committee to examine and report to him on the assets and liabilities of the specified undertaking."

Regulation 3 — "The Committee may publish or cause to be published a notice in one or more newspapers requiring any person owing any moneys to or having any claims against the specified undertaking to communicate such debt or claim to the Committee on or before a date to be specified in the notice."

Regulation 5 (3) — "For the purposes of arriving at the valuation of the liabilities of the specified undertaking, the Committee may take into consideration inter alia, any outstanding contractual or other lawful obligations, bona fide transactions with any recognised financial or commercial institutions or other persons excluding any member of the Board of Directors of the specified undertaking, *payments* due to any Government Department or other State institution and any loss sustained by any statutory board or corporation due to the activities of the specified undertaking."

Regulation 7 — “The Committee shall report to the Minister of Finance on the assets and liabilities of the specified undertaking together with their recommendations thereon as regards any *payments* that may be due in respect of the specified undertaking and the party or parties to whom such *payment*, if any, may be made. On receipt of such report the Minister of Finance may make such order as he may deem fit in respect of any such *payment*.” (emphasis added)

The Business Undertakings (Acquisition) (Amendment) Act No. 21 of 1980 introduced a new section 12A which also uses the words “*payments* to be made.” (emphasis added)

Nowhere in the Act is there any mention of compensation payable in respect of the business undertaking taken over by the State. S. 12 (1) (c) talks of “payments” to be made in respect of the business undertaking taken over by the State. This notion of “payments” is carried on, in the regulations made, and is continued in the amending act. In this respect, the Statute differs from other Statutes where specific provisions are made in the Statutes themselves for the payment of compensation in respect of the property vested, the manner of computation and the mode of payment. (See, for example, the Land Reform Law No. 1 of 1972, Part III; Mines and Minerals Law No. 4 of 1973, s. 58; Sri Lanka State Trading Corporation Act No. 33 of 1970, Part IV). The whole scheme of payments is set out in the Regulations only.

Under Regulation 2 (1), the Minister of Finance appoints a Committee to examine and report to him on the assets and liabilities of the Undertaking. The Minister, in Regulation 5 (3), has set out the matters to be taken into consideration by the Committee in arriving at other valuation of the liabilities of the Undertaking, inter alia, outstanding contractual or other lawful obligations, payment due to any Government Department or other State institution. These serve as guidelines. The Committee is then required to report to the Minister on the assets and liabilities of the undertaking together with its recommendations thereon and the party or parties to whom such payments be made. On receipt of the report, the Minister is empowered to make such order as he may deem fit in respect of any such payments (Regulation 7). The words “in respect of any such payment” refer to “any payments that may be due in respect of the undertaking and the party or parties to whom such payments may be made.” The Committee advises but it is the Minister who makes the orders for payments.

The petitioner-companies do not challenge the validity of any of these regulations. Among the matters that the Committee can take into consideration in order to arrive at the liabilities are, "any outstanding contractual or other lawful obligations..... payments due to any Government Department or other State Institution." The matters specified take the nature and scope of liabilities beyond what is contended for by learned Queen's Counsel — that only contractual liabilities vest in the State.

The Committee is authorised to take into account, inter alia, payments due to any Government Department. Income Tax and Business Turnover Tax are payments due to the Inland Revenue Department, which is a Government Department. Regulation 7 gives the Minister of Finance the power to order that monies due as tax liabilities be paid to the Commissioner-General of Inland Revenue. This very same regulation also gives the Minister the power to order that payments be made to the two petitioner-companies, in respect of the undertakings that have been taken over. The revised Order of the Minister dated 1.9.80 is challenged by the petitioner-companies, only on the ground that the Minister had wrongly deducted the tax liabilities in making the order for payments due to them. This submission, I have already rejected. The petitioner-companies have not pointed out to any other infirmities in the Order made by the 1st respondent which would attract the Writ of Certiorari.

Both applications, C.A. 2301/80 and 2302/80, are refused, but taking into account all the circumstances, there will be no order for costs.

L.H. DE ALWIS, J. – I agree.

Application refused.