

Inderjit C. Parekh and Others

Vs

Shri V. K. Bhatt and Another

Criminal Appeal No. 57 Of 1973

(M. H. Beg, Y. V. Chandrachud JJ)

08.01.1974

JUDGMENT

CHANDRACHUD, J. -

1. Appellants 1, 2, 4, 5 and 6 are the directors of Rajnagar Spinning and Weaving Manufacturing Co. Ltd., Ahmedabad, and appellant No. 3 is an officer of the said company. On March 19, 1969 complaint was lodge against them by respondent No. 1, an Inspector appointed under the Employees' Provident Funds Act, 1952 that they had failed to pay a sum of Rs. 1,39,419.50 being the contribution to the] provident fund for the months of June, July and August, 1968 and that thereby they had contravened the provisions of Paragraph 38(1) of the Employees' Provident Funds Scheme, 1952, an act punishable under Paragraph 76(a) of the Scheme.

2. An investigation was made into the affairs of the company under Section. 15 of the Industries (Development and Regulation) Act, 1951 and on being satisfied that the company was managed in a manner highly detrimental to public interest the Government of India issued an order dated January 7, 1972 authorising the Gujarat State Textile Corporation to take over the management of the company. On May 6, 1972 the Gujarat Government issued a notification declaring the company to be a "relief undertaking" under Section 4(1)(a)(iv) of the Bombay Relief Undertakings (Special Provisions) Act, 1958 ('the Act') and directing that :

"all rights, privileges, obligations and liabilities accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all the proceedings relative thereto pending before any Court, tribunal, officer or authority shall be stayed with effect from 6th May, 1972" .....

3. The appellants filed one application after another asking the Court which was seized of the matter to stay the prosecution in view of the notification issued by the Government of Gujarat. Two so such application were rejected by the learned City Magistrate, III Court, Ahmedabad. Appellant acquiesced in one of the orders, carried the other in revision to the High Court but withdrew that proceeding. On October 27, 1972 they made yet another application for the same relief which also was rejected by the learned Magistrate. He took the view, as in the two earlier applications, that the operation of Section 4 of the Act is restricted to the statutes mentioned in the Schedule to that Act and that sub-clause (iv) of Section 4(1) did not contemplate stay of criminal proceedings. The High Court of Gujarat rejected summarily the revision application filed by the appellants against the judgment of the learned Magistrate. This appeal by special leave is directed against the judgment of the High Court.

4. We are concerned in this appeal with the narrow question whether the prosecution pending against the appellants under Paragraph 76(a) of the Employee's Provident Funds Scheme, 1952 is liable to be stayed by virtue of the notification issued by the Government of Gujarat on May 6, 1972. That notification was issued in exercise of the power conferred by S. 4(1)(a)(iv) of the Act, which reads thus :

"4. (1) Notwithstanding any law, usages, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever, the State Government may, by notification in the Official Gazette, direct that -

(a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under sub-section (2) of Section 3 -

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(iv) any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for enforcement thereof shall be suspended and all proceedings relative thereto pending before any Court, tribunal, officer or authority shall be stayed".

"all proceedings relatives thereto patently means all proceedings relating to "any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking". The obligation or liability which sub-clause (iv) speaks of is an obligation or liability incurred by the undertaking before it was declared a relief undertaking. In other words sub-clause (iv) concerns itself with the pre-existing obligation and liabilities of the undertaking and not of its directors, managers or other officers.

5. The obligations or liability of these persons is not comprehended within the words of sub-clause. (iv). Clause (a) of Section 4(1) shows that the power of the State Government is itself restricted to giving directions referred to in sub-clause(iv) "in relation to any relief undertaking". Obligations and liabilities of the directors or other officers of the undertaking are not in a true sense obligations and liabilities in relation to the relief undertaking. In plain and simple language they are the obligations and liabilities of such persons themselves. Their obligations and liabilities have to be viewed from a different angle than the obligations and liabilities of the company itself which only acts impersonally.

6. The object of Section 4 (1)(a)(iv) is to declare, so to say, a moratorium on actions against the undertaking during the currency of the notification declaring it to be a relief undertaking. By sub-clause(iv), any remedy for the enforcement of an obligation or liability against the relief undertaking is suspended and proceedings which are already commenced are to be stayed during the operation of the notification. Under Section. 4(b), on the notification ceasing to have force, such obligations and liabilities revive and become enforceable and the proceedings which are stayed can be continued. These provisions are aimed at resurrecting and rehabilitating industrial undertakings brought by inefficiency or mis-management to the brink of dissolution, posing thereby the grave threat of unemployment of industrial workers. "Relief undertaking" means under Section 2(2) an industrial undertaking in respect of which a declaration under Section 3 is in force. By Section 3, power is conferred on the State Government to declare an industrial undertaking as a relief undertaking, "as a measure of preventing unemployment or of unemployment relief". Relief

undertakings, so long as they continue as such, are given immunity from legal actions so as to render their working smooth and effective. Such undertakings can be run more effectively as a measure of unemployment relief, if the conduct of their affairs is unhampered by legal proceedings or the threat of such proceedings. That is the genesis and justification of Section 4(1)(a)(iv) of the Act.

7. Thus neither the language of the statute nor its object would justify the extension of the immunity so as to cover the individual obligations and liabilities of the directors and other officers of the undertaking. If they have incurred such obligations or liabilities, as distinct from the obligations or liabilities of the undertaking, they are liable to be proceeded against for their personal acts of commission and omission. The remedy in that behalf cannot be suspended nor can a proceeding already commenced against them in their individual capacity be stayed. Indeed, it would be strange if any such thing was within the contemplation of law. Normally, the occasion for declaring an industry as a relief undertaking would arise out of causes connected with defaults on the part of its directors and other officers. To declare a moratorium on legal actions against persons whose activities have necessitated the issuance of a notification in the interest of unemployment relief is to give to such persons the benefit of their own wrong. Section 4(1)(a)(iv) therefore advisedly limits the power of the State Government to direct suspension of remedies and stay of proceedings involving the obligations and liabilities in relation to a relief undertaking and which were incurred before the undertaking was declared a relief undertaking.

8. Paragraph 38(1) of the Employees' Provident Funds Scheme, 1952 imposes an obligation on 'The employer' to pay the provident fund contribution to the Fund within 15 days of the close of every month. The Scheme does not define 'Employee' but Paragraph 2(m) says that words and expressions which are not defined by the Scheme shall have the meaning assigned to them in the Employees' Provident Funds Act. Section 2(e)(ii) of that Act defines an 'Employer', to the extent material, as the person who, or the authority which, has the ultimate control over the affairs of an establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent. Thus the responsibility to pay the contributions to the Fund was of the appellants and if they have defaulted in paying the amount, they are liable to be prosecuted under Paragraph 76(a) of the Scheme which says that if any person fails to pay any contribution which he is liable to pay under the Scheme, he shall be punishable with six months' imprisonment or with fine which may extend to one thousand rupees or with both. Such a personal liability does not fall within the scope of Section 4(1)(a)(iv) of the Act.

9. We therefore dismiss the appeal and direct that the prosecution shall proceed expeditiously.

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