

M. Asghar

Vs

Union of India and Others

Transfer Petition No. 77 of 1982

(O. Chinnappa Reddy, M. M Dutt JJ)

18.09.1986

JUDGMENT

CHINNAPPA REDDY, J. -

1. Shri Raju Ramachandran appearing for an employee who claims that a sum of Rs. 5712.61 is due to him from the Lord Krishna Textile Mill, out of which a sum of Rs. 3722.20 had become due before the takeover of management of the Mill under the Sick Textile Undertakings (Taking Over of Management) Act, 1972 made a concise, but interesting submission that the low priority given to amounts due to employees relating to the pre-takeover management period in the Second Schedule to the Sick Textile Undertakings (Nationalisation) Act, was unconstitutional both because it did not subserve the object of giving effect to the policy of the State towards securing the Directive Principle specified in Article 39(b) of the Constitution and also because the classification had no nexus with the object of the statute as stated in the Preamble.

2. Section 21 of the Sick Textile Undertakings (Nationalisation) Act is as follows :

21. The claims arising out of the matters specified in the Second Schedule shall have priorities in accordance with the following principles, namely :

(a) category I will have precedence over all other categories and Category II will have precedence over Category III and so on;

(b) the claims specified in reach of the categories, except category IV, shall rank equally and be paid in full, but if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly;

(c) the liabilities specified in category IV shall be discharged, subject to the priorities specified in this section, in accordance with the terms of the secured loans and the priority, inter se, of such loans; and

(d) the question of payment of 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.

The Second Schedule to the Act is as follows :

THE SECOND SCHEDULE

(See Sections 21, 22, 23 and 27)

Order of priorities for the discharge of liabilities in respect of a sick textile undertaking.

PART A

Post-takeover management period

Category I -

- (a) Loans advanced by a bank.
- (b) Loans advanced by an institution other than a bank.
- (c) Any other loan
- (d) Any credit availed of for purpose of trade or manufacturing operations.

Category II -

- (a) Revenue, taxes, cesses, rates or any other dues to the Central Government or a State Government.
- (b) Any other dues.

PART B

Pre-takeover management period

Category III -

Arrears in relation to provident fund, salaries and wages, and other amounts, due to an employee.

Category IV -

Secured loans.

Category V -

Revenue, taxes, cesses, rates or any other dues to the Central Government, a State Government, a local authority or a State Electricity Board.

Category VI -

- (a) Any credit availed of for propose of trade or manufacturing operations.
- (b) Any other dues.

3. From Section 21 it is clear that the liabilities of the post-takeover management period are given

priority over the liabilities of the pre-takeover management period and among the liabilities of the pre-takeover management period, arrears in relation to provident fund, salaries and wages and other amounts, due to an employee given priority. Section 39 of the Act declares that Nationalisation Act is "for giving effect to the policy of the State towards securing the principles specified in clause (b) in Article 39 of the Constitution". Article 39(b) of the Constitution enjoins the State to direct its policy towards securing "that the ownership and the control of the material resources of the community are so distributed as best to subserve the common good". It is obvious that any legislation which nationalises as undertaking towards securing the Directive Principles contained in Article 39 - must ordinarily provide for the discharge of liabilities of the undertaking and if so, the legislation must also arrange the priorities for the discharge of the liabilities. The distinction made between the liabilities of the post-takeover management period and the post-takeover management period is prima facie sound as the former liabilities are those incurred pursuant to the public management of the undertaking under the statue, while the latter liabilities are those incurred in the course of the private management by the owner of the undertaking. Section 5(1) of the Nationalisation Act makes the position clear that every liability, other liabilities specified in sub-section (2) of the owner of a sick textile undertaking, in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation. Section 5(2)(c) expressly provides that any liability arising in respect of wages, salaries and other dues of employees of the sick textile undertaking, in respect of any period after the management of the undertaking had been taken over by the Central Government, shall be the liability of the Central Government and shall be discharged for and on behalf of that government by the National Textile Corporation. The classification of the liabilities made in the schedule is in tune with Section 5 of the Act, And, as stated by us, any law for the acquisition of a sick undertaking, must ordinarily provide for the discharge of the liabilities and arrange priorities among the liabilities. That is what the schedule has done. There is, therefore, no force in the submission of learned counsel and the writ petition is accordingly dismissed.

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