

Kothandran Spg. Mills Pvt. Ltd.

Vs

Union of India and Others

Writ Petition No. 162 of 1977

(CJI R. S. Pathak, N. D. Ojha, Rangath Misra, M. N. Vankatachaliah, E. S. Vankataramiah JJ)

28.03.1989

JUDGMENT

RANGANATH MISRA J. –

1. This application under article 32 of the Constitution is by two petitioners - petitioner No. 1, a private company, and the other, a director thereof. The petitioners have challenged the vires of the Sick Textile Undertakings (Nationalisation) Act, 1974 (57 of 1974), and have asked for a direction to the respondents to restore the mills to the petitioners in the same condition as it was on October 31, 1971, when it was initially taken over.
2. Petitioner have alleged that the spinning mills previously belonged to one S. R. Narasimhachari and three others. Mahalingam Chettiar, husband of the second petitioner, purchased the said mills in 1965. He was not at all acquainted with the working of the spinning mills and soon found that the affairs of the mills were far from satisfactory and realised that he had acquired a non-viable asset. In December 1967, Mahalingam issued notice of closure to be effective from January 3, 1968, but as a fact, by a subsequent notice dated December 22, 1967, the mill was closed down with immediate effect. According to the petitioners, the mill had ceased to be a "textile undertaking" by January 1968; the workmen, by numerous claim petitions in the Labour Court at Madurai pressed for their various demands; they took possession of the mills and even obstructed Mahalingam's entry into the premises. At one stage during that period Mahalingam had applied for a loan of Rs. 10 lakhs from the Government of India with the hope of restarting the mills after replacement of the machinery but that did not work. The establishment had thus closed down and according to the petitioners, the textiles undertaking had completely disappeared by 1969, and the Act did not apply to it. Again the 1974 Act was ultra vires the Constitution.
3. The Sick Textile Undertakings (Taking Over of Management) Ordinance 9 of 1972 became operative from October 31, 1972. Item 41 of the First Schedule to the Ordinance mentioned petitioner No. 1 as one of the textile undertakings whose management was to be taken over and possession was, therefore, taken by respondent No. 2 in terms of the provision of Section 4(1) thereof. The Ordinance was replaced by Act 72 of 1972 which received the Presidential assent on December 23, 1972, but was deemed to be in force from October 31, 1972. The petitioners had challenged the validity of the Act by filing a writ petition before the High Court of Madras; but during the pendency of the writ petition, the Sick Textile Undertakings (Nationalisation) Ordinance, 12 of 1974, came into force from April 1, 1974, and petitioner No. 1 featured as item 96 in the Schedule to the Ordinance. The pending writ petition therefore, became infructuous and the petitioners filed a fresh writ petition challenging the validity of the Ordinance of 1974. The Ordinance was duly replaced by the Nationalisation Act 57 of 1974. During the pendency of the

writ petition, Emergency was proclaimed and the writ petition was permitted to be withdrawn in December 1976, with liberty to approach the court again. That is how the present application has been filed.

4. Section 2(j) defines a "sick textile undertaking" to mean :

"a textile undertaking, specified in the First Schedule, the management of which has, before the appointed day, been taken over by the Central Government under the Industries (Development & Regulation) Act, 1951, or as the case may be, vested in the Central Government under the Sick Textile Undertakings (Taking Over of Management) Act, 1972."

It is not disputed that the management of petitioner No. 1 had been taken over under the 1972 Act and petitioner No. 1, therefore, came within the definition.

5. Section 3 provides :

"3. Acquisition of the rights of owners in respect of sick textile undertaking - (1) On the appointed day, every sick textile undertaking and the right, title and interest of the owner in relation to every such sick textile undertaking shall stand transferred to, and shall vest absolutely in the Central Government, absolutely in, the Central Government.

(2) Every sick textile undertaking which stands vested in the Central Government by virtue of sub-section (1) shall, immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation."

The First Schedule to the Act against entry 96 shows the petitioner's mills. There is a legislative determination that petitioner 1 came within the definition of "sick textile undertaking" as provided in section 2(j) of the Act. The petitioners have not alleged any mala fides against Parliament and, in our opinion, rightly. It is relevant to notice at this stage that the Central Act 57 of 1974 has been put into the Ninth Schedule of the Constitution by the Thirty-nine Amendment and, therefore, has come under the umbrella of protection provided under article 31B of the Constitution. In the case of *Minerva Mills Ltd. v. Union of India* ((1986) 4 SCC 222) challenge was raised against the vires of this Act. The court dealt with the effect of the inclusion of the Act in the Ninth Schedule by referring to the ratio in *Waman Rao v. Union of India* ((1981) 2 SCC 362 : (1981) 2 SCR 1) and upheld its vires. Similar was the view of the court in the case of *Panipat Woollen and General Mills Company Ltd. v. Union of India* ((1986) 4 SCC 368).

6. There is no force in the two contentions raised on behalf of the petitioners and the writ petition is, therefore, dismissed. We direct the parties to bear their own cost of the proceedings.

</html