(2002) 01 AP CK 0037

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 141 of 1998

Alluminium Industries Limited and Another — APPELLANT

Vs

Provident Fund Inspector and Others — RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Constitution of India, 1950 — Article 142, 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2002) 3 LLJ 422

Hon'ble Judges : S.R.K. Prasad, J;S.R. Nayak, J

Bench : Division Bench

Advocate : Vedula Srinivas, for the Appellant; R.N. Reddy and Government Pleader for Revenue, for the Respondent

Judgement

S.R. Nayak, J.—The appellant management was sought to be prosecuted for its failure to contribute its contribution towards Employees Provident Fund during the years 1987 to 1989 u/s 14 of the Employees Provident Fund Act, 1952 (for short ''the Act'').

2. The appellant Management filed Writ Petition No.5906/1990 before this Court praying for a Writ of Mandamus declaring that the launching of prosecution against it by the authorities of the Provident Fund in S.T.C. Nos. 512 to 519 of 1990 on the file of the 3rd respondent as illegal, unsustainable and contrary to the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 and to consequently forbear the 3rd respondent from proceeding with S.T.C. Nos. 512 to 519 of 1990.

3. Before the learned single judge, it was contended on behalf of the appellant Management that the launching of the prosecution is contrary to Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short ''the Act) and therefore it is liable to be quashed. The learned judge opining that criminal prosecution do not fall within the ambit of protection envisaged u/s 22 of the Act,

dismissed the writ petition. Hence, this writ appeal.

4. Sri. V. Srinivas, learned counsel for the appellant with his usual fairness did not seriously contest the correctness of the view taken by the learned single judge. However, the learned counsel placing reliance on the judgment of the Supreme Court in ADONI COTTON MILLS LTD., vs. REGIONAL PROVIDENT FUND COMMISSIONER & OTHERS (1), would request the Court to close the prosecution launched against the appellant petitioner by maintaining that in similar facts situation the Apex Court thought it appropriate to direct the closure of the proceedings.

5. We do not think that this Court under Article 226 of the Constitution could assume such a power which is available to the Apex Court under Article 142 of the Constitution of India and direct the closure of the prosecution as suggested by the learned counsel for the appellant. It cannot be gainsaid that undoubtedly the appellant management had committed breach of the duty statutorily imposed on it under the Act by not remitting its contribution to the Employees Provident Fund in terms of the prescriptions made in the Act and the scheme framed thereunder. Therefore, it cannot be said that initiation of the prosecution against the appellant-petitioner is one without authority of law nor can it be said that the necessary conditions precedent to launch the prosecution did not exist when the prosecution was launched. In that view of the matter, quashing the impugned prosecution or forbearing the 3rd respondent Court from entertaining the petitions would not arise. No Mandamus would lie to an authority or the Court preventing such authority or the Court from exercising the power or performing the obligation cast on such a Court or authority by the law.

6. In that view of the matter, no exception can be taken to the order of the learned single judge impugned in this writ appeal. The writ appeal fails and it is accordingly dismissed.

7. However, it is trusted that when the learned Munsif Magistrate, the 3rd respondent herein proceeds to dispose of the proceedings pending before him, he would take into consideration the peculiar fact situation of the case and also the judgment of the Apex Court cited supra-1. No costs.