(1993) 04 AP CK 0044

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 813 of 1993

Andhra Sinters Ltd. — APPELLANT

Vs

P.F. Inspector — RESPONDENT

Date of Decision : 07-04-1993

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 6, 8
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (1994) 1 LLJ 1171

Hon'ble Judges : Jagannadha Raju, J

Bench : Single Bench

Advocate : R. Kameshwara Rao, for the Appellant; Addl. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Jagannadha Raju, J.—This batch of petitions are filed u/s 482 of the Criminal Procedure Code for quashing different prosecutions launched by the first respondent against the petitioners, viz., Andhra Sinters Limited, represented by its Managing Director, P. Bhima Raju.

2. In this batch of cases Mr. R. Kameswara Rao vehemently contended that the first petitioner-company has become a sick unit and that the matters are under consideration by SIER, hence these prosecutions launched for recovery of various amounts due under the Employees Provident Funds and Miscellaneous Provisions Act, 1952, and the Scheme thereunder should be quashed. He claims that u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, viz., Act 1 of 1986, there is suspension of legal proceedings, contracts, etc., and as the petitioners are entitled to the benefits of Section 22, these prosecutions are not maintainable. He further contends that as early as May 29, 1990, the Central Provident Fund Commissioner issued a Circular No. P.R. Cell/26(1) of 1989 under which the Provident Fund Commissioner and the Central Board of Trustees considered this matter and evolved a scheme of granting instalments for arrears

of provident fund dues. In view of that circular, the Regional Provident Fund Commissioner is not justified in launching prosecutions and he should be granted instalments in accordance with the circular. He claims that by reason of the circular also, the prosecutions now launched are not maintainable. He further contends that about 6 to 7 cases have been filed for non-deposit of administrative charges. According to him, for non-deposit of administrative charges, no prosecution can be filed. A prosecution can be launched only for non-payment of contributions. The liability to pay administrative charges arises only when the contribution is paid, as per para 38 of the Scheme of 1952. Hence, the prosecutions launched in S.T.C. No. 64, S.T.C. No. 65, S.T.C. No. 63 and S.T.C No. 58 are not maintainable. Mr. Kameswara Rao further contends that there are a few instances of two prosecutions being filed for the same arrears. Certainly, the Provident Fund Authorities are not entitled to launch two prosecutions for failure to pay the same amount.

3. Considering the importance of the questions involved in these petitions filed u/s 482, Criminal Procedure Code, very elaborate arguments were advanced at the stage of admission itself. I have given my careful consideration to the various arguments advanced in accordance with the statutory provisions both under the Employees Provident Funds and Miscellaneous Provisions Act, 1952, as well as the Sick Industrial Companies (Special Provisions) Act, 1985. I shall deal with each one of the arguments seriatim.

4. Coming to the question of protection u/s 22 of the Sick Industrial Companies (Special Provisions) Act, I find that the protection given u/s 22 is of a limited character. It does not extend to prosecutions launched. A careful reading of Section 22 clearly shows that in cases of industrial companies where an enquiry u/s 16 is pending or in any scheme referred to u/s 17, these provisions are under consideration and preparation, the companies are entitled to certain benefits. Sub-section (1) of Section 22 clearly mentions that no provision for winding up of the industrial company or for execution or distress or the like against any of the properties of the industrial company or for the appointment of a Receiver thereof shall lie or be proceeded with further except with the consent of the Board or the Appellate Authority. Sub-section (2) contemplates that where the management of the sick industrial company is taken over or changed, it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be director of the company. Sub-section (3) contemplates that during the period of consideration of any scheme u/s 18 or when any such scheme is sanctioned for due implementation of the scheme, the Board may by order declare certain specific things. It is clear from the language of this subsection that only operation of contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force shall remain suspended. All rights, privileges, obligations and liabilities accruing or arising thereunder before the said date shall remain suspended or shall be enforceable with such adaptations as specified by the Board. Sub-section (4) deals with consequences of a declaration. It is crystal clear from the language of Section 22

that only specified matters which are specifically mentioned in the different sub-sections are matters for which the protection is extended. There is no suspension of prosecutions launched against the company. Reliance upon Section 22 of the Sick Industrial Companies (Special Provisions) Act is of no avail to the petitioners.

5. Mr. Kameswara Rao relied upon a circular issued by the Central Provident Fund Commissioner on May 29, 1990. It should be remembered that under the Scheme of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, Section 20 gives power to the Central Government to give directions and whenever the Central Government gives directions to the Central Board, the Central Board is bound to comply with such directions. The circular dated May 29, 1990, is not a Government Order or direction issued under any statutory provisions. A reading of the circular clearly indicates that the question of granting of instalment facilities to the industrial companies adjudged as sick by SIER was under consideration of the Central Board of Trustees and in consultation with the Government of India, they have given certain directions. In this circular, they have provided for an elaborate system of giving instalments and recovery of arrears of employees'' provident fund. It should be remembered that the courts cannot take cognizance of this circular, as it is not a statutory circular. It is open to the Provident Fund Commissioner and the Regional Provident Fund Commissioner to implement the circular in its executive capacity to grant instalments for recovering the dues. This circular cannot be used by the petitioners as a shield in the prosecutions that have been launched against the petitioners. It should be remembered that what is granted by the circular is an executive favour which the executive authorities can only give and the courts cannot grant any relief on the basis of the circular. The reliance placed by Mr. Kameswara Rao on this circular is misconceived.

6. Mr. Kameswara Rao vehemently urged that no prosecution can be filed for non-payment of administrative charges and various prosecutions launched for non-payment of administrative charges are ab initio void and hence they should be struck down. It should be remembered that the Employees Provident Funds and Miscellaneous Provisions Act, 1952, has undergone several amendments and the original loopholes in the Act have been plugged by the various amendments. The argument advanced by Mr. Kameswara Rao overlooks the statutory provisions. It should be remembered that administrative charges are payable under paragraph 38 of the Scheme Employees Provident Funds and Miscellaneous Provisions Act, 1952. Section 6 of the Act deals with contributions and matters which may be provided for under any scheme. Section 7A deals with determination of monies due from employers. Clause (l)(b) of Section 7A clearly mentions that the authorities are entitled to determine the amount due from any employer under any provisions of this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme, as the case may be. As administrative charges are payable under para 38 of the Scheme, the authorities are entitled to deal with the question of determination of administrative charges under this Scheme. Section 8 of the Act, which deals with mode of recovery of moneys due from employers,

clearly stipulates that any amount due from the employer in relation to an establishment can be recovered by resorting to the methods provided under Sections 8B to 8-G. Section 8A clearly mentions the amount of contribution or any charges payable by him under the provisions of this Act and under the provisions of the Scheme. Thus, Section 8 covers administrative charges. Section 14, which provides for penalties, clearly lays down different types of penalties. For non-payment of contributions and certain amounts, a lesser punishment can be awarded for different types of amounts due. Sub-section (1A) of Section 14, which was introduced in 1973, clearly includes the administrative charges collectible under paragraph 38 and for non-payment, minimum punishment provided is a punishment of three years imprisonment. By a subsequent amendment in 1988, the section was tightened up very much and the earlier lesser punishment was enhanced. Thus, it is quite clear that for non-payment of administrative charges also a prosecution can be launched. Section 14 provides for punishments.

7. The argument of the learned counsel for the petitioners that no prosecution can be launched for non-payment of administrative charges and that the liability to pay administrative charges arises only when the contributions are paid is contrary to the provisions of the Act, perhaps that argument was advanced on the basis of the unamended Act It should also be remembered that by various amendments introduced in Sections, 14A to 14-C the powers of the Court and the authorities were enhanced. It is unnecessary to go into the amplitude of these powers. Suffice it to say that a prosecution is certainly maintainable for nonpayment of administrative charges.

8. The last point that is argued by Sri. R. Kameswara Rao is to the effect that there is duplication of the prosecution regarding certain amounts. As indicated for example, the S.T.C. No. 56 covers part of the prosecution in S.T.C. No. 53 especially with regard to the money due for the months of April, May and June under the family pension scheme. Similarly he contends that the prosecution in S.T.C. No. 57 covers part of the prosecution in S.T.C. No. 53 especially with regard to the family pension amounts due from January, February and March, 1990. Whenever there is double prosecution, it is open to the petitioner''s advocate to point out this fact to the trial court and get the matter duly rectified. That is no ground for this court to invoke its powers u/s 482, Criminal Procedure Code and strike down the prosecution.

9. Considering the entire material placed before the Court and considering the scheme of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, and the Scheme and the Sick Industrial Companies (Special Provisions) Act, I find that the present batch of petitions filed u/s 482, Criminal Procedure Code are not maintainable. They are accordingly dismissed as devoid of merit.

10. The Additional Judicial First Class Magistrate, Bhongir, Nalgonda District, is directed to verify in detail the various charge sheets filed and to make the necessary amendments wherever there is double prosecution for the same

amounts and for the same periods. With this observation, this batch of petitions are dismissed.

