

(1980) 07 KL CK 0018

In the High Court Of Kerala

Case No : Company Petition No's. 15, 16 and 17 of 1977, Application No. 435 of 1978 and Original Petition No's. 2735 to 2737 and 3123 of 1978

Ganesh Cotton Company and Others

APPELLANT

Vs

Kottayam Textiles Ltd. and Others

RESPONDENT

Date of Decision : 23-07-1980

Acts Referred:

Companies Act, 1956 — Section 433, 434, 439

Kerala Relief Undertakings (Special Provisions) Act, 1961 — Section 3, 4

Citation : (1980) 07 KL CK 0018

Hon'ble Judges : V. Balakrishna Eradi, C.J.;K.K. Narendran, J

Bench : Division Bench

Advocate : P.K. Kurian and K.A. Nayanar, for the Appellant; T.L. Ananthasivan, P.K. Jose and Leelamma Geroje and T.C.N. Menon, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Eradi, C.J.—C.P. No. 15 of 1977 is a petition filed under Sections 433 434 and 439 of the Companies Act, 1956, praying that a company by name Kottayam Textiles Ltd. may be wound up by the court under Clause (e) of Section 433 of the aforesaid Act on the ground that the company is unable to pay its debts. The company is said to be indebted to the first petitioner in the sum of Rs. 2.25 lakhs for supplies made by the latter to the company and the 2nd petitioner is a person who has been authorised by the 1st petitioner to receive payment of the aforesaid amount from the company and to whom the company had agreed to make such payment. It is alleged that notwithstanding a demand having been made on the company by the 2nd petitioner by the letter, Ex. P-7, dated June 22, 1977, for payment of the debt the company committed default and thereupon a notice, Ex. P-8, dated 1st July, 1977, u/s 434 of the Act was issued to the company by the 2nd petitioner through counsel. Thereafter, both the petitioners jointly issued another letter to the company, Ex. P-10, calling upon the latter to discharge the debt within four weeks of the receipt thereof. Though the said

notice was acknowledged by the company on August 19, 1977, the demand was not complied with and hence the petitioners came up to this court and filed the petition for winding-up.

2. C. P. Nos. 16 to 18 of 1977 are similar petitions filed under Sections 433 434 and 439 of the Act for the winding-up of another company by name Trivandrum Spinning Mills Ltd., Balaramapuram. The petitioners therein are three different creditors of the company to whom amounts are said to be due by the company for supplies of cotton made to it by the petitioners. The debts having not been discharged by the company in spite of demands made in the manner prescribed by Section 434(1)(a), the petitioners have approached this court for the relief of winding up of the company.

3. After the filing of the company petition the Central Govt. acting in exercise of the powers conferred by Clause (b) of Sub-section (1) of Section 18AA of the Industries (Development and Regulation) Act, 1951 (Act 65 1951), issued the order, S.O. 70(E)/18AA/IDRA/78, dated 6th February, 1978, authorising the Kerala State Textile Corporation Ltd. to take over the management of the industrial undertaking known as M/s. Kottayam Textiles Ltd., Ettumanoor, subject to the conditions specified in the said order. It was stated in the order that it would have effect for a period of five years commencing from the date of its publication in the Official Gazette.

4. Shortly thereafter, the Govt. of Kerala, acting in exercise of the power conferred by Sub-section (1) of Section 3 of the Kerala Relief Undertakings (Special Provisions) Act, 1961 (Act 6 of 1962) (for short " the Kerala Act"), published a notification, No. 33200/G1/77/ID, dated 22nd April, 1978, declaring that M/s. Kottayam Textiles Ltd. shall, for a period of two years with effect from April 22, 1978, be conducted to serve as a measure of preventing unemployment and of unemployment relief and that the said undertaking shall accordingly be deemed to be a relief undertaking for the purposes of the said Act. By another notification issued on the same date in exercise of the powers conferred by Section 4 of the Kerala Act, the Govt. of Kerala directed, inter alia, that during the period M/s. Kottayam Textiles Ltd., Kottayam, continues as a relief undertaking by virtue of the notification No. 33200/G1/77/ID issued u/s 3, any liability or obligation of the said undertaking accrued or incurred before it was declared as a relief undertaking and any remedy for the enforcement thereof shall be suspended and all the proceedings relating thereto pending before any court, Tribunal, officer or authority shall be stayed.

5. Similarly, in respect of the Trivandrum Spinning Mills Ltd., Balaramapuram, which is a company that was sought to be wound up in C. P. Nos. 16 to 18 of 1977, a notification u/s 3(1) of the Kerala Act was issued by the Govt, of Kerala, on 9th November, 1977, declaring the said ndustrial undertaking as a relief undertaking und directing that it shall for a period of two years with effect on and from November 9, 1977, be conducted to serve as a measure of preventing unemployment and of unemployment relief. By another notification of the same

date issued u/s 4 of the Kerala Act the State Govt. directed, inter alia, that during the period the Trivandrum Spinning Mills Ltd. continued as a relief undertaking any liability or obligation of the said undertaking accrued or incurred before it was declared as a relief undertaking and any remedy for the enforcement thereof shall be suspended and that all proceedings relating thereto pending before any court. Tribunal, officer or authority shall be stayed.

6. In view of the aforesaid notifications declaring the two companies to be relief undertakings and the consequential suspension of the liabilities or obligations incurred by the said undertakings prior to the said declaration and all remedies for enforcement thereof it was contended before the company court by the Additional Advocate-General representing the industrial undertakings concerned that inasmuch as a liability or obligation of the industrial undertakings to discharge towards the petitioning creditors remains suspended by virtue of the aforementioned notifications the prayer for winding-up of the company on the ground of the inability of the two companies to pay the debts could not be sustained and that in any event the winding-up proceedings must be stayed. In view of the said contention the petitioners in C.P. No. 15 of 1977 filed O. P. No. 3123 of 1978 under Article 226 of the Constitution challenging the validity of the notifications dated 22nd April, 1978, issued by the Govt. of Kerala, under Sections 3(1) and 4 of the Kerala Act. O. P. Nos. 2735 to 2737 of 1978 are similar writ petitions filed by the petitioning creditors in C, P. Nos. 16 to 18 of 1977, respectively, challenging the corresponding notifications issued by the Govt. of Kerala, in respect of the Trivandrum Spinning Mills Ltd.

7. One of the prayers in all these four writ petitions is that this court should declare that the Kerala Act and the impugned notifications issued thereunder are unconstitutional, illegal and inoperative.

8. The first contention taken in the writ petitions is that since the topic of incorporation, regulation and winding-up of corporations is covered by entry No. 43 of List I of the 7th Schedule, the State Legislature has no competency to enact any provision which will interfere with the winding-up of a company under the provisions of Sections 433 and 434 of the Companies Act, 1956. Secondly, it is urged that since "textile industries" have been taken over by the Union Government under its control by virtue of a declaration made by Parliament under entry 52 of List I of the 7th Schedule as per Section 2 of the Industries (Development and Regulation) Act, 1951, read with entry 23 of the First Schedule thereto, the State Legislature has been deprived or denuded of the power to legislate on the subject of textile industries and, hence, the Kerala Act and the notifications issued thereunder can have no effect in respect of an undertaking engaged in textile industry. Yet another plea put forward on behalf of the petitioners is that inasmuch as the Kerala Act will apply only to government companies or companies to which loan or guarantee or financial assistance has been provided by the Government there is an hostile discrimination violative of Article 14 of the Constitution. A vague allegation of

mala fides has been put forward in the original petitions. Another point raised in the writ petitions is that there is a conflict between the Industries (Development and Regulation) Act, 1951, which by Section 18FB has empowered the Central Govt. to order a suspension of operation of any of the enactments specified in the 3rd Schedule therein as also of all obligations and liabilities in respect of any industrial undertaking of which the management is taken over under its provisions and the provision contained in Section 4 of the Kerala Act relating to suspension of liabilities, obligations and remedies. Lastly, it is contended that the restrictions imposed by the impugned notifications issued under the Kerala Act on the enforcement by the petitioners of the contractual obligations entered into by them with the two companies constitute unreasonable restrictions on the fundamental rights of the petitioners to carry on their trade or profession under Article 19(1)(g) of the Constitution and that they also violate Article 301 of the Constitution.

9. In view of the challenge raised by the petitioners against the constitutionality of the Kerala Act and the impugned notifications issued thereunder, the learned company judge has referred these cases for being heard by a Division Bench and that is how these matters have come up before us.

10. After having given our anxious consideration to the arguments addressed on both sides we have unhesitatingly come to the conclusion that there is no merit in any of the grounds of attack put forward by the petitioners against the constitutionality of Sections 3 and 4 of the Kerala Act and the impugned notifications issued thereunder.

11. The object and purpose of the Kerala Act have been succinctly stated in its preamble in these terms :

"Whereas it is expedient to make temporary provisions for industrial relations and other matters to enable the Government to conduct, or provide loan, guarantee or financial assistance for the conduct of, certain industrial undertakings as a measure of preventing unemployment or of unemployment relief."

12. A combined reading of Sections 3 to 6 of the Kerala Act, which are really the operative provisions of the statute, also goes to show that the purpose underlying the legislation is the prevention of unemployment and the provision of unemployment relief. That is a topic squarely falling within the scope of entry 23 of List III of the 7th Schedule to the Constitution. The obvious purpose underlying the Act is to deal with the situation, where industrial undertakings are closed down or about to be closed down on account of financial difficulties necessarily resulting in unemployment to a large number of workmen, by the Government coming to their aid by either temporarily taking over the conduct of such industrial undertakings or by providing loans, guarantees or financial assistance for their conduct and giving a short breathing time to such industrial undertakings in the matter of their being proceeded against by creditors in

enforcement of pre-existing obligations and liabilities. Thus, in pith and substance, the impugned legislation relates to the subject of prevention of unemployment and unemployment relief, which is covered by entry No. 23 of List III of the 7th Schedule. We do not see any conflict between the provisions of the impugned enactment and those contained in the Industries (Development and Regulation) Act, 1951. It is also worthy of note that the Kerala Act which is much later in point of time has received the assent of the President. We do not also find any merit in the contention advanced by the petitioners that Sections 3 and 4 of the impugned Kerala Act are inconsistent with the provisions of Sections 433 434 and 439 of the Companies Act, 1956. The object and purpose of the two enactments have title in common and they operate in different fields. Even if there is an incidental encroachment by the State enactment on any matter which is dealt with in the Companies Act that would not affect the legislative competence of the State Legislature to pass the impugned legislation which in pith and substance relates to the topic covered by entry No. 23 aforementioned. Apart from the above principle, as a matter of fact, there is no conflict between the provisions of Sections 3 and 4 of the Kerala Act and those of Sections 433 434 and 439 of the Companies Act. The aforesaid provisions of the Companies Act only provide that a creditor may move the court for the winding-up of a company on the ground that it is unable to pay its debts. In order to attract the operation of the provisions there must be a subsisting or enforceable debt. The Companies Act does not deal with the topic as to under what circumstance a debt shall be treated as subsisting and enforceable. Hence, Section 4 of the State enactment in so far as it provides for the suspension and enforcement of the liabilities and obligations of industrial undertakings, which have been declared to be relief undertakings u/s 3, cannot be said to be in any way in conflict with the aforesaid provisions contained in the Companies Act.

13. In *Pushraj Puranmull and Another Vs. N. Roy and Others*, , a Full Bench of the Calcutta High Court had occasion to consider the constitutionality of substantially similar provisions contained in the West Bengal Relief Undertakings (Special Provisions) Act, 1972 (13 of 1972). The provisions of that enactment were challenged before the Calcutta High Court on substantially the same grounds as have been urged before us in these cases. But the Full Bench repelled those contentions and upheld the validity of the Act. We are in respectful agreement with the view taken in that decision.

14. Though the petitioners have put forward a plea that the provisions of the impugned Act are violative of arts. 14 and 19 of the Constitution, we see no, merit at all in the said contention and have no hesitation to reject the same.

15. The result that emerges from the foregoing discussion is that the challenge raised by the petitioners against the constitutionality of Sections 3 and 4 of the Kerala Act and the validity of the impugned notifications issued by the State Govt. fails. We declare that the aforesaid provisions of the Act as well as the impugned notifications are perfectly valid and constitutional. The original

petitions are accordingly dismissed.

16. In the light of the aforesaid conclusion arrived at by us on the question of the legality of the impugned notifications, it must follow that the proceedings in the company petitions, C.P. Nos. 15 to 18 of 1977, must stand stayed till the expiry of the period covered by the notifications issued u/s 3(2) of the Kerala Act. C.P. No. 15 of 1977 as well as Application No. 435 of 1978 filed therein and C.P. Nos. 16 to 18 of 1977 will accordingly go back to the learned company judge for being disposed of in accordance with law after the expiry of the period of stay.

17. The parties will bear their respective costs.

18. Immediately after the pronouncement of the judgment, learned advocate appearing on behalf of the writ petitioners orally prayed under Article 134A of the Constitution for the grant of certificates under Article 133(1) of the Constitution to enable the petitioners to carry the matter in appeal before the Supreme Court. We do not, however, consider these to be fit cases for the grant of such certificates, since, in our opinion, these cases do not involve any substantial question of law of general importance on which a pronouncement by the Supreme Court can be said to be necessary. The prayer is accordingly rejected.