

(1991) 01 MAD CK 0045

In the Madras High Court

Case No : Cril. Miscellaneous Petitions No's. 11953, 11957, 11961, 11965, 11969, 11973, 11977, 11981, 11985, 11989, 11993, 11997, 12005, 12009, 12013, 12017, 12021, 12025, 12029, 12033 and 12037 of 1988

Hackbridge Hewitic and Easun Ltd. and others

APPELLANT

Vs

Provident Fund Inspector, Exempted-III-Divn., Madras

RESPONDENT

Date of Decision : 25-01-1991

Acts Referred:

COMPANIES ACT, 1956 — Section 25, 32

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 17, 18

Foreign Exchange Regulation Act, 1973 — Section 33

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 16, 17, 18, 22, 32

Citation : (1992) CriLJ 303

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Advocate : Mr. S. Mahimairaj for Mr. K. Jagannatha Rao, for the Appellant; Mr. V. Vibhishanan, for the Respondent

Judgement

1. The petitioners in each of these Criminal Miscellaneous Petitions are accused 1 to 6 in each of C.C. Nos. 306 to 327 of 1987 on the file of the

Sub-Divisional Judicial Magistrate, Ponneri (now stated to be pending as C.C. Nos. 757 to 778 of 1989 on the file of the Judicial Magistrate,

Thiruvotriyur).

2. M/s. Hackbridge Hewitic and Easun Limited (accused 1) is an establishment within the meaning of the Employees' Provident Funds and

Miscellaneous Provisions Act, 1952 (Act 19 of 1952 - for short "1952 Act").

Accused 2 is the Managing Director. Accused 3 is the Executive

Director. Accused 4 is the General Manager. Accused 5 is the Secretary &

Financial Controller. Accused 6 is the Managing Personnel. Accused

2 to 6 are persons in charge of the establishment and are responsible for the conduct of its business.

3. Provident Fund contributions were deducted from the wages of the employees on and from May, 1984 up to February, 1987. The

contributions so deducted with the matching contributions for the aforesaid period were not at all remitted within the 15th of the succeeding month.

Consequently, the Provident Fund Inspector, Exempted III Division, Madras-14 the respondent herein laid 22 complaints in the aforesaid

Calendar Cases on 11-6-1987, after complying with the formalities under the 1952 Act.

4. Subsequent to the launching of the prosecution, it appears that an arrangement had been entered into with the Provident Fund Commissioner,

agreeing to pay the provident fund contributions and other dues in instalments. Pursuant to the arrangement, the entire amount of the provident fund

contributions and other dues had been remitted and there is no arrears as on date.

5. Accused 1 establishment was declared as a "sick industrial establishment" on 24-5-1988 under the Sick Industrial Companies (Special

Provisions) Act, 1985 (for short "1985 Act").

6. On receipt of process, the petitioners have come forwarded with the present actions invoking the inherent jurisdiction of this court to quash the

criminal proceedings initiated against them.

7. Learned counsel appearing for the petitioners would seek to assail the prosecution so launched by urging the following points for consideration :

(1) All the Provident Fund contributions and other dues had been paid pursuant to the agreement or arrangement entered into with the Provident

Fund Commissioner;

(2) Accused 1 - establishment had been declared as a "sick industrial company" under the provisions of the 1985 Act.

8. Learned counsel appearing for the respondent would however repel those submissions.

9. There is no manner of doubt whatever that all the provident fund contributions and other dues had been remitted by the petitioners pursuant to

an arrangement or agreement stated to have been entered into with the

Provident Fund Commissioner. It is on this premises, learned counsel for the petitioners would contend that the agreement could, in the circumstances by the implication have to be construed as granting extension of time

for payment of provident fund contributions and other dues and in this view of the matter, the prosecutions as launched, are not at all maintainable.

In support of such a submission, implicit reliance is placed upon the decision in Hooghly Docking and Engineering Co. Ltd. v. Inspector,

Employees' Provident Fund, W.B. (1980) 56 Factories Journal Report page 456), wherein a learned Judge of the Calcutta High Court observed

at page 461 as follows :

It is not in dispute that in November, 1973, there was an agreement and/or accepted arrangement between the Provident Fund Authorities and

the petitioner No. 1 that the arrears of provident fund dues would be cleared on certain terms and that the petitioner No. 1 agreed to make

payment in terms thereof. It is also not in dispute that the said agreement and/or arrangement had not been terminated by the Provident Fund

Authorities or put an end to by the parties thereto. In spite of the delay in the payments of instalments made pursuant thereto, the Provident Fund

Authorities have accepted the same in satisfaction of their claims. In the circumstances, it will not be consonant to justice to permit the respondents

to continue the said criminal proceedings against the petitioners, particularly as the entire amount of arrears had been paid up and had been

accepted by the respondents. The petitioners are admittedly no longer in control of the company. It was open to the provident fund authorities to

put an end to the arrangement and/or agreement when the petitioner No. 1 failed to pay the stipulated instalment in time. This was not done.

Having accepted the instalments offered after the stipulate period the Provident Fund authorities must be held to have extended the time for

payment of such instalments by implication and by their conduct. In any event, the petitioners have acted on the basis that the time for payment of

instalments under the said scheme had been extended and by paying the said instalments they have altered their position. It is not open to the

provident fund authorities now to fall back upon the criminal prosecutions.

10. With very great respect to learned Judge, I am unable to agree with the view expressed by him on this aspect of the matter on the salutary

principle that there can be no estoppel against the law. The doctrine of estoppel cannot be invoked to render valid a transaction which the

legislature has, on grounds of general public policy, enacted is to be invalid, or to give the court a jurisdiction which is denied to it by statute, or to

oust the court's statutory jurisdiction under an enactment which precludes the parties contracting out of its provisions. In this connection, a useful

reference may be made to the observations of the apex of the judicial administration of the country in the decision in Commissioner of Income Tax

(Central) Vs. B.N. Bhattacharjee and Another, and the observations of their Lordships made at pages 431 and 432 may be penned down here (at

page (1738) of AIR :-

The soul of estoppel is equity, not facility for inequity. Nor is estoppel against statute permissible because public policy animating a statutory

provision may then become the casualty. Halsbury has noted this sensible nicety (Halsbury's Laws of England, para 1515) :

Where a statute, enacted for the benefit of a section of the public, imposes a duty of a positive kind, the person charged with the performance of

the duty cannot by estoppel be prevented from exercising his statutory powers.

(Maritime Electrical Co. Ltd. v. General Dairies Ltd.).

A petitioner in a divorce suit cannot obtain relief simply because the respondent is estopped from denying the charges, as the Court has a statutory

duty to inquire into the truth of a petition. (Hudson v. Hudson 3; Halsbury's Laws of England, para 1515).

2. (1937) AC 610; (1937) 1 All ER 748

3. P. 292 (1948) 1 All ER 773 1948 (wrongly quoted as 1978)

The luminous footnote cites rulings and states that :

This rule probably also applies where the statute bestows a discretion rather than imposing a duty."" (Halsbury's Laws of England, 4th Edn. page

1819) - (Wrongly quoted as 189)

To sum up, where public duties cast by statute are involved, private parties cannot prevent performance by invoking estoppel. We do not discuss

further since the facts here exclude estoppel.

11. In the case on hand, the petitioners are unquestionably liable to pay the provident fund contributions and other dues before the due date and

the offences become complete on the expiry of the due date. The late payment could not have absolved them of their original guilt but it would

have snapped the recurrence. As such, the first submission of learned counsel bristles next to nothing.

12. For consideration of the second submission, it is but necessary to refer to various provisions of the 1985 Act. Section 16 contemplates as

inquiry into working of sick industrial companies. Section 17 deals with the powers of the Board to make suitable order on the completion of the

inquiry. Section 18 contains provisions regarding preparation and sanction of schemes. Section 22 deals with suspension of legal proceedings,

contracts etc. under certain circumstances. The circumstances are indicated in sub-clause (1). The circumstances are :-

(1) An inquiry u/s 16 is pending;

(2) Any scheme referred to u/s 17 is under preparation or consideration;

(3) A sanctioned scheme is under implementation; and

(4) Where an appeal u/s 25 relating to an industrial company is pending. In such an eventuality, the sub-section further provides that

notwithstanding anything contained in the Companies Act, 1956 or any other law or the memorandum and articles of association of the industrial

company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for

execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie

or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

13. Sub-Section (3) is also relevant for our purpose. It prescribes that during the period of consideration of any scheme under Sec. 18 or where

any such scheme is sanctioned hereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial

company concerned that the operation of all or any of the contracts, assurance of property, agreements, settlements, awards, standing orders or

other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately

before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising

thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board.

14. Sub-section (4) further provides that any declaration made under sub-section (3) with respect to a sick industrial company shall have effect

notwithstanding anything contained in the Companies Act, 1956 or any other law, the memorandum and articles of association of the company, any

remedy for the enforcement of any right, privilege etc., shall remain stayed and the right or privilege so stayed shall become revived and

enforceable on the declaration ceasing to have effect.

15. Section 32 deals with the effect of the Act on other laws. Sub-section (1) which is relevant for our purpose states that the provisions of this

Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law

except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of

1976) for the time being in force or in the Memorandum of Articles of Association of an industrial company or in any other instrument having effect

by virtue of any law other than this Act.

16. Section 33 makes provision for penalty for certain offences committed under this Act. It states that whoever violates the provisions of this Act,

or any scheme, or any order of the Board, or the Appellate Authority and whoever makes a false statement or gives false evidence to the Board or

the Appellate Authority, shall be punishable with simple imprisonment for a term which may extend to three years and shall also be liable to fine.

17. On the face of these provisions, learned counsel for the petitioners would submit that the prosecutions, as launched, are incompetent and if at

all any prosecution is capable of being launched, that can be done only u/s 33 of the Act. In amplification of this argument what learned counsel

would submit is that under the scheme framed under this Act, the State Government had agreed for the payment of the provident fund contributions

and other dues in instalments and accordingly, the scheme had been scrupulously adhered to by the petitioners in remitting all the instalments and

other dues and in such a contingency, the prosecutions even for an offence u/s 33 of the 1985 Act is not at all permissible. With regard to the

prosecutions under the 1982 Act, learned counsel for the petitioners would contend that the provisions of the said Act must be construed to be

inconsistent with the provision of the 1985 Act and therefore it is, on the face of Section 32 of the 1985 Act, criminal proceedings initiated against

the petitioners are liable to be quashed. To this submission of learned counsel. I am unable to affix my seal of approval.

18. There is absolutely no inconsistency between the provisions of those two enactments. This aspect of the matter can very well be appreciated if

a distinction between the obligations and liabilities of the directors and other officers of the sick industrial company and the obligations and liabilities

in relation to such company is understood in the proper perspective. Their obligations and liabilities have to be viewed from a different angle than

the obligations and liabilities of the company itself which only acts impersonally. The object of a notification u/s 17 of the 1952 Act is to declare a

moratorium on actions against the undertaking during the currency of the notification declaring it to be a sick industrial company. Any remedy for

the enforcement of an obligation or liability against the sick industrial company is suspended and proceedings, which are already commenced are to

be stayed during the operation of the notification. On the notification ceasing to have force as already stated, such obligations and liabilities revive

and become enforceable and the proceedings which are stayed can be continued. These provisions are aimed at resurrecting and rehabilitating

industrial undertakings brought by inefficiency or mismanagement to the brink of dissolution, posing thereby the grave threat of unemployment of

industrial workers. The sick industrial companies, so long as they continue as such are given immunity from legal actions so as to render their

working smooth and effective. Such companies can be run more effectively as a measure of unemployment relief, if the conduct of their affairs is

unhampered by legal proceedings or the threat of such proceedings. That perhaps is the genesis and justification of the notification u/s 17 of the

1952 Act. Thus neither the language of the statute; nor its object would justify the extension of the immunity so as to cover the individual

obligations and liabilities of the managing director, executive director and other officers of the company. If they have incurred such obligations or

liabilities, as distinct from the obligations or liabilities of the sick industrial company, they are liable to be proceeded against for their personal acts

of commission and omission. The remedy in that behalf cannot at all be suspended; nor can a proceeding already commenced against them in their individual capacity be stayed. Indeed, it would be strange if any such thing was within the contemplation of law. Normally, the occasion for

declaring a company as a sick industrial company would arise out of causes connected with defaults on the part of its directors and other officers.

To declare a moratorium on legal actions against persons whose activities have necessitated the issuance of a notification in the interest of

unemployment relief is nothing but to give such persons the benefit of their own wrong. Unflinching support to this view is traceable to the decision

of the Supreme Court in *Inderjit C. Parekh and Others Vs. Shri V.K. Bhatt and Another*, , while considering analogous provisions under the

Bombay Relief Undertakings (Special Provisions) Act, 1958.

19. In the case on hand, the liability to pay provident fund contributions and other dues are the personal obligations of the petitioners to see that

such contributions and other dues are paid within the 15th of the next succeeding month. Admittedly, the defaults in payment of such dues had

been committed by the petitioners on and from May, 1984 to February, 1987, and only in respect of personal obligations of the petitioners, the

prosecutions had been launched in the various Calendar Cases.

20. One more factor of paramount importance has to be referred in this context. Criminal Prosecutions had been launched not to enforce any

financial liability; but to punish the petitioner-offenders for a crime, already committed by them, in the sense of refracting or violating paragraph 38

of the Employees' Provident Funds Scheme, 1952, punishable u/s 14(1) of the 1952 Act. The moment the provident fund contributions and other

dues are not paid within the time limited, then the offences become complete, as already indicated and the notification issued u/s 17 of the 1952

Act cannot be construed as declaring a moratorium to crimes committed by the petitioners. If at all any moratorium is granted u/S. 17 thereof, it is

relatable to such other civil liabilities and other enforceable privileges against the sick industrial company during the currency of the notification. As

such, there is no substance in the second submission and consequently the same is also rejected.

21. Though the fact, that the obligations and liabilities for payment of the

employees" provident fund contributions and other dues had been entirely discharged by the petitioners pursuant to the agreement or arrangement entered into by them with the Provident Fund Commissioner, may not by itself exonerate them from the penal consequences flowing from the tentacles of S. 14 of the 1952 Act, yet it cannot be stated that such a circumstance cannot at all be construed as a mitigating or ameliorating circumstance to be taken into consideration by the court below, in case it comes to the conclusion that the petitioners are guilty on the evidence adduced, in the matter of award of sentence. No doubt true it is that the minimum punishment provided u/S. 14 of the 1952 Act in case of default in payment of employees' contribution is three months. There is also a proviso appended thereunder, giving the power to the court for special reasons to be recorded in the judgment, for imposition of sentence of imprisonment for a lesser term or of fine only in lieu of imprisonment. There cannot be a better case than the one on hand providing for plethora of special reasons to be considered as mitigating circumstances to consider the case of the petitioners very leniently in the matter of award of punishment, in the sense of imposition of a nominal fine only in case they are found guilty. While stating so, I should not be mistaken that I am interfering with the discretion vested in the trial Court in the matter of imposition of punishment. If learned Magistrate feels impelled to consider that the circumstances, as indicated above, will serve as special and adequate reasons for imposition of a nominal fine, it is perfectly open to him to do so. 22. As such, all these petitions deserve to be dismissed and are accordingly dismissed.

22. Petitions dismissed.