(2008) 12 MAD CK 0262

In the Madras High Court

Case No : Writ Petition No. 38192 of 2003

Sree Sabari Mills, Unit of the Amalgamated Cold Fields Ltd., K. Sathanur	APPELLANT
Vs	
The Revenue Divisional Officer, Sri Rangam Division, The Assistant Commissioner of Labour, (Controlling Authority under the Payment of Gratuity Act), C.T. Solai and R. Raju	RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22, 22(1)

Citation : (2009) 148 CompCas 475

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : Vijay Narayan for R. Parthiban, for the Appellant; P. Muthukumar, Government Advocate for R1 and R2 and S. Muthukrishnan, for R3 and R4, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned Counsels appearing for the parties concerned.

2. The petitioner has filed the present writ petition praying for a writ of Mandamus to forbear the first respondent from taking further steps against the petitioner, pursuant to the Distraint order issued in proceedings No. Na.Ka.A2/4150/03, dated 10.12.2003.

3. It is stated that the petitioner is a Company, registered under the Companies'' Act. It owns Textile Mills at Trichy, which had an installed capacity of 22092 spindles. Due to various reasons, the said Mills was running at a heavy loss and it had stopped functioning in the year, 1995.

4. It has been further stated that due to the fact that the net worth of the petitioner Mills had been completely eroded, it was referred to the Board for

Industrial and Financial Reconstruction, under the provisions of the Sick Industrial Companies Act. The reference was taken as Case No. 158/99, on 19.6.1999, and hearings have been going on, from time to time. While so, the respondents 3 and 4 had filed applications, under the Payment of Gratuity Act and the second respondent, after computing the gratuity payable to them, had passed an order, on 12.5.2003, in the case of the third respondent and on 25.11.2002, in the case of the fourth respondent, computing an amount of Rs. 59,951, in favour of the third respondent, a sum of Rs. 47,214/- in favour of the fourth respondent, together with interest at the rate of 10%, after thirty days from the date of the respective orders.

5. It has been further stated that it is only when the first respondent had issued a Distraint notice, on 10.12.2003, which had been stuck on the premises of the petitioner Mills, on 11.12.2003, the petitioner had come to know about the said orders. In the said notice, it had been stated that the petitioner Mills had 15 days time to make the payment, as ordered by the second respondent, failing which the property of the petitioner would be brought for sale.

6. It has been further stated that by virtue of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, no proceedings could be taken against the petitioner Mills to enforce the recovery of any amount, without the consent of the Board for Industrial and Financial Reconstruction. Even though it is open to the Controlling Authority, under the payment of gratuity Act, to compute the amount, it is not open to any authority to take steps to recover the same, without the consent of the Board for Industrial and Financial Reconstruction.

7. At the stage of the hearing of the writ petition, the learned Counsels appearing on behalf of the third and the fourth respondents had relied on a decision of a Full Bench of this Court in Gowri Spinning Mills (P) Ltd. v. Assistant Provident Fund Commissioner 2006 (5) CTC 1, wherein, it has been held that the provident fund dues, under the Employees Provident Fund and Miscellaneous provisions Act, 1952, are not covered by Section 22(1) of the Sick Industrial Companies (Special Provisions) Act 1985, and the provident fund benefits which the employees are entitled to cannot be placed on the same footing as taxes of the Government or dues of other Commercial Ventures or dues to Corporation or like others.

8. The learned Counsel appearing on behalf of the third and fourth respondents had submitted that the payment of the gratuity amounts due to the third and fourth respondents, being statutory dues recoverable from the petitioner Mills, they would not be protected by Section 22 of the Sick Industrial Companies (Special Provisions) Act 1985.

9. In view of the submissions made on behalf of the petitioner, as well as the respondents and in view of the decision cited supra, it is clear that the petitioner has not shown sufficient cause or reason for this Court to grant the prayer, as prayed for by the writ petitioner in the present writ petition. Hence, the writ

petition stands dismissed. No costs.

