

(1999) 01 MAD CK 0071
In the Madras High Court
Case No : Writ Petition No. 793 of 1990

Swadeshi Cotton Mills Co. Ltd. and Another	APPELLANT
Vs	
Commissioner, Central Provident Fund and Others	RESPONDENT

Date of Decision : 30-01-1999

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B
Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings)
Act, 1986 — Section 5(2)

Citation : (2000) 2 LLJ 1494 : (1999) 2 MLJ 57

Hon'ble Judges : T. Meenakumari, J

Bench : Single Bench

Advocate : G. Anbumani, for the Appellant; Radha Srinivasan and G. John, for the Respondent

Final Decision : Dismissed

Judgement

T. Meenakumari, J.—The writ petition is for the issue of writ of certiorari to call for the records of the second respondent culminating in the impugned order No. SDC/PC/6/Accounts/89(i), dated January 29, 1990, and quash the same.

2. The first petitioner-company is a public limited company represented by its Director, the second petitioner herein. It was carrying on business in textiles in six units situated at Kanpur, Naini, Mannath Bhaiyan and Rae Bareli in the State of Uttar Pradesh, at Udaipur in the State of Rajasthan and in the Union Territory of Pondicherry. The case of the petitioners is that during the period 1974 to 1978, the textile industry suffered enormous losses which were due to the circumstances beyond control, as a result of which, the first petitioner-company's liquidity was adversely affected and it had to borrow large sums of money for payment of wages to the workers and even the Receiver appointed by the Collector could not pay wages of the workers at Kanpur unit, except by borrowing money from the State Government of Uttar Pradesh and there was some delay in payment of wages as well as in the payment of provident fund

dues by the company. It is further stated that the Central Government after taking note of the entire situation, in exercise of the power vested in it u/s 18-AA(i)(a) of the Industries Development and Regulation Act, 1951 (for short, the Act) took over the management of the whole of the industrial undertakings of the first petitioner-company comprising of six units stated supra. It is further stated that even before the order dated April 13, 1978, was passed by the Central Government taking over the management, the National Textile Corporation took over the possession of the abovesaid six textile units as well as all the books of accounts, records including those relating to provident fund contributions and commenced the management of the abovesaid six textile units as the authorised representative of the Central Government. By virtue of Section 18-B of the Act, the National Textile Corporation became the sole Director for all purposes of the company. It is however submitted that the said taking over of the textile units by the Central Government was challenged before the High Court and the Supreme Court and the same ended in favour of the Central Government and during the period commencing from April 13, 1978, i.e., the date of the take over to April 19, 1986, the abovesaid six textile units of the first petitioner-company were managed by the National Textile Corporation alone as the authorised representative of the Central Government. Learned counsel for the petitioners submitted that the President of India on April 19, 1986 passed an ordinance 5 of 1986 known as "Swadeshi Cotton Mills Company, Ltd. (Acquisition and Transfer of Undertakings) Ordinance, 1986", by which the said six textile units of the first petitioner were acquired retrospectively with effect from April 1, 1985. For such acquisition and/or transfer of the said six textile units of the first petitioner, a sum of Rs. 24,32,00,000/- was fixed to be the payment to be made in cash in the manner specified in Chapter VI of the Ordinance. There were certain conditions stipulated in the Ordinance for payment of the provident fund. The said Ordinance has been replaced by an Act of Parliament being Act 30 of 1986 known as "The Swadeshi Cotton Mills Company Ltd. (Acquisition and Transfer of Undertakings) Act, 1986". The case of the petitioners is that as per the provisions of the Acquisition Act, the liabilities of the first petitioner shall be discharged from the said amount of Rs. 24,32,00,000 and also from the amounts determined under Sections 9(2) and 9(3) of the Act. According to Section 15 of the said Act, for the purposes of disbursing the amount payable under Sections 8 and 9 of the said Act, the Central Government shall appoint a Commissioner of Payments with the power to investigate and determine all claims against the first petitioner in relation to any of the abovesaid six textile units. According to the petitioners, Category-I in the schedule to the Acquisition Act specifies or covers employees dues on account of unpaid salaries, wages, provident fund, Employees' State Insurance contribution or premiums relating to the Life Insurance Corporation of India and any other amounts due to the employees in respect of any period whether before or after the due date of the said take over. It is also stated by the petitioners that u/s 25 of the Act, where the liability of the first petitioner in relation to the items specified in Schedule I are not fully discharged by the Commissioner of Payments out of the amounts paid to him

under the said Act, the Commissioner shall intimate in writing to the Central Government the extent of the liability which remains undischarged and such liability shall be assumed by the Central Government. According to the Act, the Central Government issued a notification, dated January 23, 1987, inviting claims which were to be filed before the Commissioner of Payments within 30 days from the specified date February 1, 1987, which was given a wider publicity. It is also the case of the petitioners that all the dues on account of provident fund and all other amounts payable to the employees in respect of the period whether before or after taking over the units shall be paid in the first instance in priority to all other claims. While the things stood thus the second respondent issued the impugned order seeking to recover the damages amounting to Rs. 46,221.35 for the delay in payment of provident fund dues for the period September, December 1976, July 1977, November 1977 to January 1978 (levied on full dues) and for the period November 1976, April 1977 to 1978 from the first petitioner herein.

3. It is contended by the learned counsel for the petitioners that the damages leviable u/s 14-B of the Provident Funds Act form part of "employees dues on account of provident fund" within the meaning of the said expression in Category I of the Schedule to the Acquisition Act and therefore the petitioners are not liable to pay the said amount to the second respondent and the Central Government alone is responsible for the said payment, since the damages are the result of the delay in payment of the provident fund by the Central Government.

4. The second respondent has filed a counter stating that the first petitioner-company was holding the ultimate control over the affairs of the company during the period in question for which the damages were levied and therefore the shifting of burden over the National Textile Corporation Mills cannot be sustainable.

5. Learned counsel for the petitioners submitted that the National Textile Corporation has taken over the management of the said six textile units on April 14, 1978 itself and therefore the N. T. C alone is responsible for payment of the damages to the second respondent. Learned counsel for the petitioners has brought to the notice of the Court Category I of the Schedule to Act 30 of 1986 which reads as under:

"Category I. Employees" dues on account of unpaid salaries, wages, provident fund, Employees" State Insurance contribution or premium relating to the Life Insurance Corporation of India and any other amounts due to employees in respect of any period whether before or after the date of taking over of the textile undertaking."

In the schedule, Category I was given priority for the discharge of liabilities. According to Clause 3(1) of Chapter II of the Act, on the appointed day, every textile undertaking and the right, title and interest of the company in relation to every such textile undertaking shall, by virtue of the Act stand transferred to and

shall vest in the Central Government. As per Clause 4(1), the textile undertakings referred in Section 3 shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges and all property movable and immovable including lands, buildings, workshops, stores, instruments, machinery and equipments, cash balances, cash in hand, reserve funds, investments and book debts pertaining to the textile undertaking and all other right and interests in or arising out of such property as were immediately before the appointed day in the ownership, possession power or control of the company in relation to the said undertakings, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto. The Central Government gave Rs. 24,32,00,000 for taking over the abovesaid six textile units of the first petitioner company. According to Section 16(1) of the Act, the Central Government shall, within 30 days from the specified date pay in cash to the Commissioner for Payment to the company an amount equal to the amount specified in Section 8 and the amounts payable to the company u/s 9. In the Act, it has been made clear that Category I shall have precedence over all other categories and in Category I provident fund of the employees includes.

6. In the counter it is stated that as the establishment failed to remit the provident fund dues within the time limit, a show cause notice was issued and also an opportunity of personal hearing was given and after carefully considering the entire material and after strictly observing the guidelines given by the High Court, the matter was considered and accordingly the impugned order was issued.

7. The impugned order is very clear and elaborate. It is stated that the first petitioner-company is liable to pay the provident fund contributions u/s 6 of the Act; the Family Pension Fund contributions u/s 6 of the Act read with Para. 9(1) of the Family Pension Fund Scheme, 1971; Administrative charges under Para. 38 of the Employees Provident Fund Scheme, 1952, the Employees Deposit Linked Insurance Contributions. Every contention raised by the first petitioner-company was dealt with according to law by the respondent with reference to the evidence available. Further Section 5(1) of the Act makes it very clear that every liability of the company in relation to the Textile undertakings in respect of any period prior to the appointed day shall be the liability of the company and shall be enforceable against it and not against the Central Government or the N.T.C.

8. From the above it is clear that the first petitioner-company alone is responsible to pay the damages to the second respondent since the said amounts were due prior to the appointed date and as per Section 5(2)(b) also no award, decree or order of any Court/Tribunal or other authority in relation to any textile undertaking passed after the appointed day in respect of any matter, claim or dispute which arose before that day shall be enforceable against the Central Government or National Textile Corporation. In this case, it is not in dispute that the claim arose before the appointed day even though the order was passed by the Regional Provident Fund Commissioner on January 29, 1990. In such

circumstances, even as per Section 5(2)(b) also the order of the above authority is not enforceable against either the Central Government or the National Textile Corporation. Even as per Section 5(2)(c) no liability incurred by the company in relation to any textile undertaking before the appointed day for the contravention of any provisions of law for the time being in force, shall be enforceable against the Central Government or the National Textile Corporation. The damages were incurred by the company for the contravention of the provisions of the Provident Funds Act. The liability was incurred by the company and as such as per Sub-clause (c), it shall not be enforceable against the Central Government or the National Textile Corporation. Further, u/s 9(1) of the Act, the Central Government has paid the amounts to the company for the deprivation of the management of the company by the first petitioner at the rate of Rs. 10,000 per annum for the period commencing on the date on which the management of the textile undertaking of the company was taken over in pursuance of the order made by the Central Government u/s 10-AA of the Act. In the circumstances, it has to be held that the company alone is liable u/s 5 of the Act to pay the damages as the liability was prior to the appointed day and the damages have been levied for the contravention of the provisions of the Provident Funds Act. In this case, there is no dispute mat the liability was incurred prior to the appointed day. Under such circumstances, I reject the contentions of the learned counsel for the petitioners and uphold the order passed by the second respondent. The writ petition shall accordingly stand dismissed. No costs.

9. Consequently, W.M.P No. 1202 of 1991 is dismissed.