
(1987) 10 MP CK 0030

In the Madhya Pradesh High Court

Case No : Company Petition No. 2 of 1987

Y.B. Chaturvedi

APPELLANT

Vs

Hope Textile Ltd. and Others

RESPONDENT

Date of Decision : 09-10-1987

Acts Referred:

Companies Act, 1956 — Section 633, 633(2)
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14A
Employees State Insurance Act, 1948 — Section 2(15)

Citation : (1990) 68 CompCas 713

Hon'ble Judges : P.D. Mulye, J

Bench : Single Bench

Advocate : S.C. Bagdiya, for the Appellant; A.H. Khan and N.C. Behal, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Mulye, J.—The petitioner, who is a director of Hope Textile Ltd., Indore, a public limited company, respondent No. 1, has filed this petition u/s 633(2) of the Companies Act, 1956, whereby he has prayed that he should be excused and/or relieved from any liability and/or proceedings that may be initiated against him for non-deposit of provident fund or employees' State insurance dues by respondent No. 1-company or any violation of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, or the Employees' State Insurance Act, 1948, and the rules framed thereunder.

2. Before stating the facts, it is necessary to reproduce Section 633 of the Companies Act, 1956, which is as follows :

"Power of court to grant relief in certain cases. -- (1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having

regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such terms as it may think fit:

Provided that in a criminal proceeding under this Sub-section, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

(2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceeding against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under Sub-section (1):

(3) No court shall grant any relief to any officer under Sub-section (1) or Sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted."

3. The facts giving rise to this petition may be stated in brief thus. Respondent No. 1, Hope Textile Limited, Indore, is a public limited company duly incorporated under the Companies Act, 1956, having its registered office at 1, Snehlataganj, Main Road, Indore. The petitioner, who is a chartered accountant, is a nominated director of the respondent-company. But the petitioner is neither a shareholder of the said company nor has any financial interest therein as such. Further, according to the petitioner, he is a prominent chartered accountant and also director of various other companies as mentioned in the petition. Thus, he was invited to join the board of directors in his capacity as a professional chartered accountant, he having been working as a partner of M/s. Chaturvedi and Co. and residing at Calcutta.

4. The petitioner has filed this petition under an apprehension that he being a director of the respondent company, criminal proceedings might be brought against him in respect of violation of the provisions of the Provident Funds Act and the Employees' State Insurance Act and that this petition relates to the period for the years 1982 to 1987 when this present petition was filed on February 18, 1987.

5. The petitioner in his petition has not disputed the fact that the respondent-company has violated the provisions of these two Acts. But, according to him, there were certain reasons beyond the control of the respondent-company, why the respondent-company could not comply with the provisions of these Acts by depositing the contributions deducted from the wages of the labourers and also by depositing the employer's contributions under these two Acts, as for instance, that for the loan taken by the mills, a Finance Controller was appointed by the

State Bank of Indore in whom all powers of financial matters were vested, that the financial condition of the respondent-company had deteriorated, that protection was given to the respondent-company under the Relief Undertakings Act because of the critical financial condition of the respondent-company.

6. Therefore, according to the petitioner, as he was not in direct control and management of the respondent-company but was only a nominated director who used to attend the meetings of the board of directors, he cannot be held personally liable for the violation, if any, committed by the respondent-company for its failure to comply, with the provisions of these two Acts. However, the petitioner has not, disputed that even the employees' contributions deducted from their wages by the respondent-company under these two Acts were also not deposited by the respondent-company nor had the respondent-company as an employer deposited their contributions under these two Acts.

7. It is in these circumstances that the petitioner has filed this petition as he apprehends that if any action is taken against him as a director of the respondent-company, he will be put to unnecessary harassment and expenditure as he is not at all concerned with the day-to-day management and affairs of the respondent-company.

8. Further, according to the petitioner, because of the crippled financial condition of the respondent-company, the mill is closed since June, 1987, which fact was not disputed by the respondents including respondent No. 2, Provident Fund Commissioner, and respondent No. 3, Employees' State Insurance Corporation.

9. Learned counsel for the petitioner, in support of his submission, placed a number of documents on record marked as annexures P-1 to P-8 though he laid stress upon annexures, exhibit P-1, exhibit P-2, exhibit P-3, exhibit P-4, exhibit P-6-II, exhibit P-6-III, exhibit P-6-IV and exhibit P-6-XXV.

10. Learned counsel for the petitioner thus after taking me through these annexures submitted that as the petitioner is neither a shareholder nor has any financial interest in the said company but is only a nominated director in the capacity of a chartered accountant, he is entitled to get protection from this court in respect of the alleged violations committed by the respondent-company and in support of his submission, he placed reliance on the decision in Ved Mitra Vs. Globe Motors Limited, and urged that in such a situation, considering the facts and circumstances of the case, the petitioner is entitled to the reliefs sought for by him.

11. Learned counsel for respondent No. 2 submitted that prosecutions under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, for the period up to 1986 have already been launched against the petitioner also. Therefore, there is no question of granting any relief to the petitioner now though learned counsel for respondent No. 2 also submitted that as the said mills is closed from June 6, 1986, no action for the subsequent period is being taken under the provisions of these two Acts. However, learned counsel

submitted that, according to the provisions of Section 14A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the petitioner is an "occupier" as defined therein and that this fact has been admitted by the petitioner in annexure R-2 dated June 3, 1981, filed under the provisions of these Acts wherein in column 11, the name of the petitioner has been shown at S. No. 3 to point out that he is also in the day-to-day management of the respondent-company along with, four other directors whose names are also shown in that column. Learned counsel, therefore, submitted that the contention of the petitioner that he is only a nominated director whose job is just to attend the meetings of the board of directors is not correct and he cannot absolve himself from his liability as a director of the respondent-company. Learned counsel further submitted that the petitioner has failed to explain or point out as to why the contributions deducted from the wages of the employees, under the provisions of these Acts, by the respondent-company were not deposited in time under the provisions of these Acts as the respondent-company had no right or authority to withhold the employees' contributions. Learned counsel, therefore, submitted that it is apparent that there has been deliberate violation by the respondent-company of the mandatory provisions of these Acts. He, therefore, submitted that even though the mills were given protection under the Relief Undertakings Act, the directors of the company do not get any protection under the provisions of that Act for their failure to comply with the provisions of these two Acts and in support of his submission, he placed reliance on the decision in *Inderjit C. Parekh and Others Vs. Shri V.K. Bhatt and Another*, . Learned counsel further submitted that the provisions of these Acts have to be strictly complied with and if there has been any violation, a strict view should be taken including levying penalty by way of damages as has been held in *Organic Chemical Industries v. Union of India* [1979] 55 FJR 283 : AIR 1979 SC 1803.

12. Learned counsel for the said respondent also placed reliance on the decisions in *Trisure India Ltd., In Re: Tri-sure India Ltd., , Suresh Tulsidas Kailachand and Others Vs. Collector of Bombay and Others, , Suresh Tulsidas Kilachand v. Collector of Bombay* [1984] 64 FJR 399 : [1984] Lab IC 1614, *State of U.P. v. Lalaram Gupta* [1974] Lab IC 963 , *Khetramohan Nayak Vs. Sri Sidha Kamal Nayana Ramanuj Das, , B.M. Chatterjee Vs. The State of West Bengal and Another*, and *Nathulal Govardhan v. Regional Provident Fund Commissioner* [1984] MPLJ 340 : [1985] 66 FJR 66 (MP). Learned counsel, therefore, submitted that as the prosecutions have already been lodged against the petitioner also, he is not entitled to get any relief from this court and he is at liberty to raise any defence that may be available to him before the criminal court in which prosecutions have already been filed.

13. Learned counsel for respondent No. 3 submitted that a criminal case before the Employees' Insurance Court under the Employees' State Insurance Act has already been filed against the petitioner also bearing No. 15 of 1982 for the earlier period. Learned counsel further submitted that u/s 2(15), (17) of the Employees' State Insurance Act, the petitioner is an occupier as defined therein

being admittedly a director of the respondent-company. Learned counsel further submitted that the questions raised by the petitioner in this court are debatable questions of fact and whether the petitioner can be said to be the principal employer or not has to be decided by the Employees Insurance Court on the basis of the evidence adduced before it and, therefore, the petitioner is not entitled to seek any indulgence from this court at this stage. Learned counsel further submitted that like offences under the Employees' Provident Funds Act and the Employees State Insurance Act are deemed to be continuing offences and in support of this submission, learned counsel, while adopting the arguments submitted by learned counsel for respondent No. 2, placed reliance on the decisions in Bhagirath Kanoria and Others Vs. State of M. P., : [1986] 68 FJR 98, Bombay Metal Works P. Ltd. v. Regional Director, Employees' State Insurance Corporation [1985] Lab IC 1318 (P & H), B.M. Chatterjee Vs. The State of West Bengal and Another, and Nathulal Govardhan v. Regional Provident Fund Commissioner [1984] MPLJ 340 : [1985] 66 FJR 66 (MP), wherein it has been held that the director of a limited company is an owner and, therefore, the principal employer within the meaning of Section 2(17) of the Employees' State Insurance Act. He, therefore, submitted that the petitioner is not entitled to seek any relief from this court in this manner. Learned counsel also submitted that, admittedly, even the employees' contributions deducted from their wages has also admittedly not been deposited and, therefore, according to Explanations 1 and 2, added to Section 405, Indian Penal Code, the same amounts to criminal breach of trust.

14. No reply has been filed on behalf of respondent No. 1, namely, Hope Textile Ltd. nor has any one appeared on their behalf at the hearing of this petition.

15. Thus, after hearing learned counsel and after going through the record as also the case-law cited, I am of opinion that there is no merit in this petition which deserves to be dismissed as prosecutions under the Employees' Provident Funds Act have already been filed against the petitioner as also under the Employees' State Insurance Act, and as the cases are already pending, it is not necessary for me to consider the pleas as also the grounds taken by the petitioner in support of his defence as it is not for this company court but it is for the courts where the prosecutions have already been lodged, which have to consider the same. Therefore, I am not expressing any opinion regarding the merits of those cases which are yet to be decided on merits after recording evidence thereon. That apart, there appears nothing on record to indicate that prosecutions have been lodged against the petitioner also with a view to only harass him as alleged by him because it cannot be disputed that the petitioner being a director of the company is also an occupier. Therefore, he is at liberty to take whatever defences are available to him before those courts and consequently I do not find any valid ground to allow this petition, as the judgment of the Delhi High Court, on which learned counsel for the petitioner has placed reliance, has only made certain observations regarding such directors.

16. In the result, this petition fails and is dismissed with no order as to costs.