

KOTHANDRAN SPG. MILLS PVT. LTD. & ANR.

v.

UNION OF INDIA & ORS.

MARCH 28, 1989

[R.S. PATHAK, CJ, E.S. VENKATARAMIAH,
RANGANATH MISRA, M.N. VENKATACHALIAH AND
N.D. OJHA, JJ.]

Sick Textile Undertakings (Nationalisation) Act, 1974.

*Sections 2(j), 3 and First Schedule—Entry 96—Applicability of—
'Sick Textile Undertaking'—Legislative determination of the petitioner
Mills.*

*Constitution of India: 1950: Article 31-B and Ninth Schedule—
Sick Textile Undertakings (Nationalisation) Act, 1974—Constitutional
validity of.*

Petitioner No. 1, Kothandran Spg. Mills Pvt. Ltd., was taken over under the provisions of the Sick Textile Undertakings (Taking Over of Management) Act, 1972 and possession of the mill was taken by the National Textile Corporation, respondent No. 2. Subsequently, the Sick Textile Undertakings (Nationalisation) Act, 1974 came into force.

The petitioners filed a writ petition under Article 32 of the Constitution challenging the vires of the Sick Textile Undertakings (Nationalisation) Act, 1974 and that the mills be restored to them. It was also submitted that the establishment had been closed down, and the Textile Undertaking had completely disappeared by 1969 and therefore the aforesaid Act did not apply to it.

Dismissing the writ petition,

HELD: 1. The Sick Textile Undertakings (Nationalisation) Act, 1974 has been put into the 9th Schedule of the Constitution by the 39th Amendment and, therefore, has come under the umbrella of protection provided under Article 31-B of the Constitution. [130C-D]

Minerva Mills Ltd. & Ors. v. Union of India & Ors., [1986] 4 S.C.C. 222; *Waman Rao v. Union of India*, [1981] 2 S.C.R. 1; *Panipat Woollen and General Mills Company Ltd. & Anr. v. Union of India &*

A *Ors.*, [1986] 4 S.C.C. 368, applied.

B 2. The First Schedule to the Act against Entry 96 shows the Petitioner's Mills. There is a legislative determination that petitioner company came within the definition of 'sick textile undertaking' as provided in Section 2(j) of the Act. The petitioners have not alleged any *mala fides* against Parliament and rightly. [130B-C]

ORIGINAL JURISDICTION: Writ Petition No. 162 of 1977.

(Under Article 32 of the Constitution of India.)

C Jitendra Sharma for the Petitioners.

T.V.S.N. Chari for the Respondents.

The Judgment of the Court was delivered by

D RANGANATH MISRA, J. This application under Art. 32 of the Constitution is by two petitioners—petitioner no. 1, a private company and the other a Director thereof. The petitioners have challenged the vires of the Sick Textile Undertakings (Nationalisation) Act, 1974 (57 of 1974) and have asked for a direction to the respondents to restore the Mills to the petitioners in the same condition as it was on 31.10.1971 when it was initially taken over.

F Petitioners have alleged that the spinning mills previously belonged to one S.R. Narasimhachari and three others. Mahalingam Chettiar, husband of the second petitioner, purchased the said Mills in 1965. He was not at all acquainted with the working of spinning mills and soon found that the affairs of the Mills were far from satisfactory and realised that he had acquired a non-viable asset. In December 1967, Mahalingam issued notice of closure to be effective from 3.1.1968, but as a fact by a subsequent notice dated December 22, 1967, the Mill was closed down with immediate effect. According to the petitioners the Mill had ceased to be a "textile undertaking" by January 1968; the workmen by numerous claim petitions in the Labour Court of Madurai pressed for their various demands, they took possession of the Mills and even obstructed Mahalingam's entry into the premises. At one stage during that period Mahalingam had applied for a loan of Rs. 10 lakhs from the Government of India with the hope of restarting the Mills after replacement of the machinery but that did not work out. The establishment had thus closed down and according to

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the petitioners the textile undertaking had completely disappeared by 1969, and the Act did not apply to it. Again, the 1974 Act was *ultra vires* the Constitution.

The Sick Textile Undertakings (Taking Over of Management) Ordinance 9 of 1972 became operative from 31.10.1972. Item 41 of the First Schedule to the Ordinance mentioned petitioner no. 1 as one of the textile undertakings whose management was to be taken over and possession was, therefore, taken by respondent no. 2 in terms of the provisions of s. 4(1) thereof. The Ordinance was replaced by Act 72 of 1972 which received Presidential assent on 23.12.1972 but was deemed to be in force from 31.10.1972. The petitioners had challenged the validity of the Act by filing a writ petition before the High Court of Madras but during the pendency of the writ petition the Sick Textile Undertaking (Nationalisation) Ordinance, 12 of 1974, came into force from 1.4.1974, and petitioner no. 1 featured as Item 96 in the Schedule to the Ordinance. The pending writ petition, therefore, became infructuous and the petitioners filed a fresh writ petition challenging the validity of the Ordinance of 1974. The Ordinance was duly replaced by the Nationalisation Act 57 of 1974. During the pendency of the writ petition Emergency was proclaimed and the writ petition was permitted to be withdrawn in December 1976, with liberty to approach the Court again. That is how the present application has been filed.

Section 2(j) defines a 'sick textile undertaking' to mean:

"a textile undertaking, specified in the First Schedule, the management of which has, before the appointed day, been taken over by the Central Government under the Industries (Development and Regulation) Act, 1951, or as the case may be, vested in the Central Government under the Sick Textile Undertakings (Taking Over of Management) Act, 1972."

It is not disputed that management of petitioner no. 1 had been taken over under the 1972 Act and petitioner no. 1, therefore, came within the definition.

Section 3 provides:

"3(1) On the appointed day, every sick textile undertaking and the right, title and interest of the owner in relation to

A every such sick textile undertaking shall stand transferred to, and shall vest absolutely in, the Central Government.

B (2) Every sick textile undertaking which stands vested in the Central Government by virtue of sub-section (1) shall, immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation."

C The First Schedule to the Act against Entry 96 shows the petitioner's Mills. There is a legislative determination that petitioner no. 1 came within the definition of 'sick textile undertaking' as provided in s. 2(j) of the Act. The petitioners have not alleged any *mala-fides* against Parliament and in our opinion rightly. It is relevant to notice at this stage that the Central Act 57 of 1974 has been put into the 9th Schedule of the Constitution by the 39th Amendment and, therefore, has come under the umbrella of protection provided under Art. 31-B of the Constitution. In the case of *Minerva Mills Ltd. & Ors. v. Union of India & Ors.*, [1986] 4 SCC 222 challenge was raised against the vires of this Act. The Court dealt with the effect of the inclusion of the Act in the 9th Schedule by referring to the ratio in *Waman Rao v. Union of India*, [1981] 2 SCR 1 and upheld its vires. Similar was the view of the Court in the case of *Panipat Woollen and General Mills Company Ltd. & Anr. v. Union of India & Ors.*, [1986] 4 SCC 368.

E There is no force in the two contentions raised on behalf of the petitioners and the writ petition is, therefore, dismissed. We direct the parties to bear their own costs of the proceedings.

T.N.A.

Petition dismissed.