

Somasundaram Mills (Pvt.) Ltd. and Kaleeswarar Mills Ltd. Vs Union of India (UOI) and The National Textile Corporation Ltd.

Court: Madras High Court

Date of Decision: Nov. 18, 2011

Acts Referred: Constitution (Thirty-Ninth Amendment) Act, 1975 " Section 5

Constitution of India, 1950 " Article 14, 19, 21

Sick Textile Undertakings (Nationalisation) Act, 1974 " Section 18, 3, 4, 8

Hon'ble Judges: M.Y. Eqbal, C.J; T.S. Sivagnanam, J

Bench: Division Bench

Advocate: Arvind P. Datar for M/s. Sai Bharath and Ilan, for the Appellant; M. Ravindran Addl. Solicitor General of India for R 1 assisted by Mr. A.S. Vijayaragavan SCGSC Mr. T.R. Rajagopalan for Mr. C.V. Vijayakumar for RR 2-3, for the Respondent

Final Decision: Dismissed

Judgement

Hon'ble Chief Justice & T.S. Sivagnanam, J.

These appeals are directed against the common judgment and order dated 27.07.2011 in

W.P.Nos.14823 of 2005, 14824 of 2005 and 13381 of 2009, whereby, the learned Single Judge dismissed all the writ petitions.

2. The petitioner in W.P.No.14823 of 2005, 14824 of 2005 is one P.S.S. Somasundaram Chettiar, who is the Managing Director of Two

Spinning Mills, he is also the first petitioner in W.P.No.13381 of 2009. The second and third petitioners in W.P.No.13381 of 2009 are the

Spinning Mills themselves, which are companies registered under the Indian Companies Act and represented by their Managing Director Mr.

P.S.S. Somasundaram Chettiar.

3. Prayer in W.P.No.14823 of 2005, to issue a writ of declaration, declaring the Sick Textile Undertakings (Nationalization) Act, 1974 as

amended by the Sick Textile Undertakings (Nationalization) Act, 1995 as unconstitutional, ultra vires and illegal and that the nationalization and

continuance thereof and sale of assets of Kaleeswarar Mills (Pvt.) Ltd. is unconstitutional, ultra vires and illegal and consequently direct the

respondents to return the movable and immovable properties of Kaleeswarar Mills (Pvt.) Ltd. Prayer in W.P.No.14824 of 2005, is identical to

W.P.No.14823 of 2005, which has been filed by Somasundaram Mills Pvt. Ltd.

4. Prayer in W.P.No.13381 of 2009, is for a declaration, to declare Section 5 of the Constitution (39th Amendment) Act, 1975, to the extent it

inserts the Sick Textile Undertakings (Nationalization) Act, 1974, in the Ninth Schedule of the Constitution, as being violative of the basic structure

of the Constitution and hence ultra vires.

5. The case of the appellant was that during 1972, the Sick Textiles Undertakings (Taking Over of Management) Ordinance, 1972, was

promulgated and the management of the Mills in question were taken over by the first respondent and in 1974, the Ordinance was replaced by the

Sick Textile Undertakings (Nationalization) Act, 1974 (the Act). By virtue of such Act, the Mills in question were nationalized.

6. According to the appellants that though writ petitions were earlier filed by the appellants, challenging the Act which were dismissed and the writ

appeals were also dismissed, due to changed circumstances, the appellants are entitled to maintain these writ petitions and in this regard the

appellants placed reliance on the decision of the Hon"ble Supreme Court in I.R. Coelho (Dead) By LRs. Vs. State of Tamil Nadu and Others, . It

is further contended that by virtue of the amending act, it has enabled the respondents to sell the properties without even paying compensation to

the appellants. The learned Senior counsel relied on the various decisions of the Hon"ble Supreme Court, which have been noted by the learned

Single Judge.

7. The learned Additional Solicitor General appearing for the first respondent submitted that the writ petitions are not maintainable and the

appellants have no locus stand to file the writ petitions and seek the relief sought for as by virtue of the Act, the properties have vested with the

Central Government as early as 1974 and after lapse of more than 36 years, the appellants cannot maintain these writ petitions. In support of his

contention, the learned counsel also placed reliance on the decision in I.R. Coelho"s case, more particularly in paragraph 151 (v) and (vi) of the

judgment.

8. The learned Single Judge rejected the contentions raised by the appellants and held that the appellants have no locus stand to repeatedly

challenge the provisions of the Act. At this stage, we may refer to the operative portion of the findings recorded by the learned Single Judge, which

reads as follows:

16. It is admitted by both sides that raising these issues, already, a number of writ petitions have been filed and they have ended against the

petitioner. Under such circumstances, the question now to be decided is whether it is open to the petitioner to file the present writ petitions seeking

the same relief. Though the learned Senior Counsel appearing for the petitioner, relying on the judgment reported in Delhi Cloth and General Mills

Co. Ltd. and Others Vs. Union of India (UOI) and Others, which has been referred to above, has taken a stand that when there is a changed

circumstance and when the purpose of the original Act which was under challenge before the Hon"ble Supreme Court has been now given a go-

by, the petitioner has got every right to challenge the same, in view of paragraph no.68 of the judgment relied on by the learned Additional Solicitor

General reported in S. Nagaraj (dead) by LRs. and Others Vs. B.R. Vasudeva Murthy and Others etc. etc., , which reads as follows:

68. Mr. Dave, however, is right in his submission that res judicator will not operate as a bar for entertaining a fresh cause of action and in the

present case the Order dated 22-12-2003 passed by the Minister, Revenue, Government of Karnataka, gave rise to a fresh cause of action. But

even where a fresh cause of action arises, issues between the parties which have been decided cannot be reopened before the court for fresh

adjudication between the same parties.

I am of the considered opinion that as per the judgment relied on by the learned Additional Solicitor General referred to above, in view of the

changed circumstance also, the petitioner cannot have locus stand to challenge the same provisions again and again.

17. Yet another aspect to be looked into in this case is that the petitioner, as the owner of the mills, has filed the present writ petitions. It is an

admitted fact by both sides that these mills and also the other connected properties were taken over by the Central Government under the Act and

they vested with the Central Government and also National Textile Corporation as early as 1974 and based on this, this Court in W.A. No.4122

of 2003, by order dated 08.03.2005, has held as follows:

the mill in question has been nationalized as far back as in the year 1974 under Sick Textile Undertakings (Nationalization) Act, 1974 and that the

petitioner/appellant has no locus stand in the matter as he is no longer the owner.

and this finding has become final and subsequent to this, I am not able to understand as to how the petitioner can file these writ petitions on the

ground that he was the Managing Director or shareholder or owner of the mill. Apart from this, it is also not disputed by the learned Senior

Counsel that all the issues raised in these writ petitions have already been raised and the Court also has rejected the same in various writ petitions.

Under such circumstances, in respect of question as to whether repeated tests have to be done for the same issue for the same petitioner, my

answer is in negative. Since, already, in various writ petitions and writ appeals, both this Court as well as the Hon"ble Supreme Court has tested

the validity of the impugned Act and also other issues and that has also attained its finality, now, the stand taken by the petitioner that the purpose

for which mills were undertaken by the Central Government has been given a go-by, consequently, the petitioner has got a right to challenge the

Act cannot be accepted. Apart from this, the properties in question were undertaken by the Central Government as early as 1974 itself. As such,

after the lapse of nearly 36 years, now, the petitioner cannot be allowed to re-agitate the same on one pretext or the other especially when these

issues have already been decided by this Court on more than one occasion, as referred to earlier. Further, the petitioner ceased to be the owner of

the mills in question nearly before thirty six years itself. Hence, now, the petitioner cannot seek remedy on the footing that he is the Managing

Director of the mills when he had lost that capacity prior to nearly thirty six years.

18. With regard to the residential bungalows of the petitioner also, as per the order dated 21.08.1986 passed by the Hon"ble Apex Court in W.P.

No. 1274 of 1979 which was filed by the petitioner, the title of the residential bungalows has to be decided only based on the decision in the civil

suits. Besides, it is to be noted that though the learned Single Judge of this Court has held in favour of the petitioner, the judgment of the learned

Single Judge has been reversed by a Division Bench of this Court and the Division Bench also has held that that they are the properties of the

company and based on this, the bungalows vest with the National Textiles Corporation. It is also informed to this Court that the Division Bench

judgment has also been confirmed by the Hon"ble Apex Court.

Under such circumstances, for the reasons stated above and also in view of the earlier judgments which have been cited supra, without going into

the merits of the issue raised by the learned Senior Counsel appearing for the petitioners, I am of the considered opinion that no relief can be

granted to the petitioners. Hence, these writ petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

9. We have heard the learned Senior counsel appearing for the appellants and the learned Additional Solicitor General appearing for the first

respondent and the learned Senior counsel appearing for the second and third respondents.

10. The learned Senior counsel appearing for the appellants would vehemently contend that by virtue of the decision of the Hon"ble Supreme

Court in I.R. Coelho's case, all amendments to the Constitution on or after 24.04.1973, by which, the Ninth schedule is amended by inclusion of

various laws can be tested on the touchstone of Article 21 read with Articles 14 & 19 of the Constitution. Though at the first instance, the

submission made by the learned Senior counsel appears to be attractive on a closure scrutiny, we find no merit in the said submission as in the

instant case, the appellants are attempting to reopen a settled matter, after nearly a period of 36 years. The Nationalization Act (Act 57 of 1974)

came into effect on 21.12.1974, and by virtue of Section 3 of the Act on the appointed date, the right, title and interest of the owner in relation to

the appellant's Textile undertaking stood transferred to and vested absolutely in the Central Government. By virtue of Section 4, the Sick Textile

undertaking referred to in Section 3 shall be deemed to include all assets, rights, leaseholds, powers and all property movable and immovable

including lands, buildings etc. It is not in dispute that the appellants were granted payment in terms of Section 8, read with Section 18 of the Act

and the names of the appellants Mill find place in the first schedule to the Act, which gives the name of undertaking, name of the owner and the

amount paid and the appellant mills are found in Serial No.48, 49 & 93. Further, it is seen that a Division Bench of this Court in W.A. No. 4122 of

2003 which was filed by Somasundaram Mills (Pvt.) Ltd, dismissed the writ appeal by observing as follows:

This writ appeal is filed against the impugned order dated 19.09.2003, passed by the learned Single Judge.

2. Heard the learned counsel for the parties. Admittedly, the Mill in question has been nationalized as far as back in the year 1974, under the Sick

Textile Undertaking (Nationalization) Act, 1974. Hence, the petitioner/appellant has no locus stand in the matter as he is no longer the owner.

Hence, nothing survives in the writ appeal. The writ appeal is, therefore, dismissed. Connected WAMP.No.3530 of 2004 is closed.

11. Therefore, we are at loss to understand as to how the appellants could maintain the writ petitions against which these appeals have been

preferred. Further, the Hon'ble Supreme Court in I.R. Coelho's case in paragraph 151 (vi) of the judgment held as follows:

(vi) Action taken and transactions finalized as a result of the impugned Acts shall not be open to challenge.

12. From the above decision, it is manifestly clear that action taken and transactions which have been finalized as the result of the impugned

enactments shall not be open to challenge.

13. Therefore, we are fully in agreement with the view expressed by the learned Single Judge in dismissing the writ petitions and for the reasons

noted above, we find no grounds to entertain the appeals and the same are dismissed. No costs. Consequently, connected miscellaneous petitions

are closed.