

Adoni Cotton Mills Ltd. And Ors. vs Regional Provident Fund Commissioner ... on 6 May, 1992

Equivalent citations: (1996)IILLJ739SC, 1995SUPP(4)SCC580, AIRONLINE 1992 SC 209

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Bench: S. Ranganathan, V. Ramaswami

ORDER

S. Ranganathan, J.

1. The first appellant is a company. Appellants 2 to 7 are the Directors of the company and the eighth appellant was the Administrative officer-cum-Factory Manager of the company. The company was taken over by the Government under the Textile Undertaking Nationalisation Ordinance which was replaced by the Sick Textile Undertaking Nationalisation Act, 1974. The nationalisation took effect from April 1, 1974. The company challenged the proceedings for nationalisation by a writ petition filed in the High Court. Pending disposal of the writ petition, the first appellant was appointed as a Receiver to manage the affairs of the mills. The writ petition itself came to be dismissed on July 27, 1976 and a further special leave petition to this Court was dismissed on August 17, 1976. The company also ceased to be the Receiver about that time.

2. The establishment of the company attracted the provisions of the Employees Provident Funds Act, 1952 and the Additional Emoluments (Compulsory Deposit) Act, 1974. However, there appears to have been a default on the part of the Company to make deposits relevant for the months of April to July 1976, a period of four months. In view of the above default the company as well as other appellants were given notices as to why they should not be prosecuted for the default under the provisions of Sections 14 and 14-A of the Employees' Provident Funds Act, 1952, and Section 15 of the Additional Emoluments (Compulsory Deposit) Act, 1974 read with Sections 406 and 409 of the Indian Penal Code. On receipt of these notices the appellants filed two writ petitions (one in respect of the notice under each of the two enactments), taking several objections to the proposed prosecution. These petitions were eventually dismissed by the High Court by its judgment and order of March 6, 1979. The present appeals have been preferred under a certificate of fitness granted by the High Court.

3. We do not think it is necessary for us to go into the details of the High Court's judgment or the contentions raised on behalf of the appellants. The prosecution was initiated in respect of certain

offences alleged to have been committed in 1976, about 15 years back. We are informed that two of the appellants have subsequently died. The offence alleged is the failure to deposit the amounts under the enactments for a short period of four months immediately following the discharge of the appellant-company from the receivership. During the pendency of these appeals, this Court granted stay of further proceedings by way of prosecution on condition that the appellants deposited an amount of Rs. 40,000 and furnished a bank guarantee for a sum of Rs. 60,000 to the satisfaction of the Registrar of the High Court within a period of six weeks. We are informed that the sum of Rs. 40,000 has been deposited and that the bank guarantee for Rs. 60,000 has also been furnished. We are also informed that the amount in respect of which there was default would also be in the region of about Rs. 90,000. Taking into account all these circumstances, we are of the opinion that this is a case in which the proceedings by way of prosecution need not be pursued provided the amounts deposited in Court and secured by the bank guarantee are paid over to the Regional Provident Fund Commissioner for credit to the appropriate Accounts. Learned Counsel appearing for the appellants stated before us that they have no objection to the first respondent withdrawing the amount of Rs. 40,000 deposited in the court and are also willing to have the first respondent encash the bank guarantee of Rs. 60,000 already furnished.

4. In the above circumstances, we are of the opinion that this is an appropriate case in which the proceedings for prosecution initiated by the impugned notices should be quashed subject to the above condition that the amount of Rs. 1,00,000 be paid to the first respondent who will be at liberty to withdraw the sum of Rs. 40,000 and encash the bank guarantee of Rs. 60,000. We direct accordingly.

5. We dispose of the appeals accordingly. There will be no order regarding costs.