

Supreme Court of India

Kothandran Spg. Mills Pvt. Ltd. & ... vs Union Of India & Ors on 28 March, 1989

Equivalent citations: 1989 AIR 1331, 1989 SCR (2) 127

Author: M Rangnath

Bench: Pathak, R.S. (Cj), Venkataramiah, E.S. (J), Misra Rangnath, Venkatachalliah, M.N. (J), Ojha, N.D. (J)

PETITIONER:

KOTHANDRAN SPG. MILLS PVT. LTD. & ANR.

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT 28/03/1989

BENCH:

MISRA RANGNATH

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MISRA RANGNATH

PATHAK, R.S. (CJ)

VENKATARAMIAH, E.S. (J)

VENKATACHALLIAH, M.N. (J)

OJHA, N.D. (J)

CITATION:

1989 AIR 1331                      1989 SCR (2) 127

1989 SCC (2) 481                JT 1989 (2) 19

1989 SCALE (1) 722

ACT:

Sick Textile Undertakings (Nationalisation) Act, 1974.

Sections 2(j), 3 and First Schedule--Entry 96--Applic

a-

bility of 'Sick Textile Undertaking'--Legislative determin

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tion of the petitioner Mills.

Constitution of India Art 19(1)(e) 31-B and Nin

th

Schedule-Sick Textile Undertakings (Nationalisation) Ac

t,

1974--Constitutional validity of.

HEADNOTE:

Petitioner No. 1, Kothandran Spg. Mills Pvt. Ltd., w

as

taken over under the provisions of the Sick Textile Unde

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takings (Taking Over of Management) Act, 1972 and possessi

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of the mill was taken by the National Textile Corporation,  
n, respondent No. 2. Subsequently, the Sick Textile Undertakings  
k- (Nationalisation) Act, 1974 came into force.

The petitioners filed a writ petition under

32

of the Constitution challenging the vires of the Sick Textile  
x- Undertakings (Nationalisation) Act, 1974 and that the

he mills be restored to them. It was also submitted that the  
he establishment had been closed down, and the Textile Undertakings  
r- had completely disappeared by 1969 and therefore the  
he aforesaid Act did not apply to it.

Dismissing the writ petition,

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

Minerva Mills Ltd. & Ors. v. Union of India & Ors  
, [1986] 4 S.C.C. 222; Rao v. Union of India, [1981]

[1986] 4 S.C.C. 222; Rao v. Union of India, [1981]

2 S.C.R. 1; Panipat Woollen and General Mills Company Ltd.

#### JUDGMENT:

Anr. v. Union of India & Ors., [1986] 4 S.C.C. 368, applied.

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 malafides against Parliament and rightly. [130B-C] & ORIGINAL JURISDICTION: Writ Petition No. 162 of 1977. (Under Article 32 of the Constitution of India.) Jitendra Sharma for the Petitioners. T.V.S.N. Chari for the Respondents. The Judgment of the Court was delivered by 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

tioners have challenged the vires of the Sick Textile Unde r-

takings (Nationalisation) Act, 1974 (57 of 1974) and ha ve asked for a direction to the respondents to restore t he Mills to the petitioners in the same condition as it was on 31.10.197 1 when it was initially taken over. Petitioners have alleged that the spinning mills prev i-

ously belonged to one S.R. Narasimhachari and three other s.

Mahalingam Chettiar, husband of the second petitione r, purchased the said Mills in 1965. He was not at all aquain t-

ed with the working of spinning mills and soon found th at the affairs of the Mills were far from satisfactory a nd realised that he had acquired a non-viable asset. In Dece m-

ber 1967, Mahalingam issued notice of closure to be effe c-

tive from 3.1.1968, but as a fact by a subsequent noti ce dated December 22, 1967, the Mill was closed down wi th immediate effect. According to the petitioners the Mill h ad ceased to be a "textile undertaking" by January 1968; t he workmen by numerous claim petitions in the Labour Court of Madurai pressed for their various demands, they took posse s-

sion of the Mills and even obstructed Mahalingam's ent ry into the premises. At one stage during that period Mahali n-

gam had applied for a loan of Rs. 10 lakhs from the Gover n-

ment of India with the hope of restarting the Mills aft er replacement of the machinery but that did not work out. T he establishment had thus closed down and according to the petitioners the textile undertaking had complete ly disappeared by 1969, and the Act did not apply to it. Agai n, the 1974 Act was ultra vires the Constitution. The Sick Textile Undertakings (Taking Over of Manag e-

ment) Ordinance 9 of 1972 became operative from 31.10.197

2. Item 41 of the First Schedule to the Ordinance mention ed petitioner no. 1 as one of the textile undertakings who se management was to be taken over and possession was, ther e-

fore, taken by respondent no. 2 in terms of the provisio ns of s. 4(1) thereof. The Ordinance was replaced bY Act 72 of 1972 which received Presidential assent on 23.12.1972 b ut was deemed to be in force from 31.10.1972. The petitione rs had challenged the validity of the Act by filing a wr it petition before the High Court of Madras but during t he pendency of the writ petition the Sick Textile Undertaki ng (Nationalisation) Ordinance, 12 of 1974, came into for ce from 1.4.1974, and petitioner no. 1 featured as Item 96 in the Schedule to the Ordinance. The pending writ petitio n, therefore, became infructuous and the petitioners filed a fresh writ petition challenging the validity of the Ord i-

nance of 1974. The Ordinance was duly replaced by the N a-

tionalisation Act 57 of 1974. During the pendency of t he writ petition Emergency was proclaimed and the writ petiti on was permitted to be withdrawn in December 1976, with liber ty to approach the Court again. That is how the present appl i-

cation has been filed.

Section 2(j) defines a 'sick textile undertaking'to mean: "a textile undertaking, specified in the First Schedule, t he management of which has, before the appointed day, be en taken over by the Central Government under the Industri es (Development and Regulation) Act, 195 1, or as the case m ay be, vested in the Central Government under the Sick Texti le Undertakings (Taking Over of Management) Act, 1972." It is not disputed that management of petitioner no. 1 h ad 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 undertaki ng and the right, title and interest of the owner in relati on to :every such sick textile undertaking shall stand transfer red to, and shall vest absolutely in, the Central Govern ment.

(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 transferr ed to, and vested in, the National Textile Corporation." The First Schedule to the Act against Entry 96 shows t he petitioner's Mills.; There is a legislative determinati on that petitioner no. 1 came Within the definition of 'si ck textile undertaking' as provided in s. 2(j) of the Act. T he petitioners have not alleged any mala-fides against Parli a-

ment and in our opinion rightly. It is relevant to notice at this stage that the Central Act 57 of 1974 has been put in to the 9th Schedule of the Constitution by the 39th Amendme nt and, therefore, has come under the umbrella of protecti on provided under Art. 31-B of the Constitution. In the case of Minerva Mills Ltd. & Ors. v. Union of India & Ors., [1986] SCC 222 challenge was raised against the vires of this Ac t.

The Court dealt with the effect of the inclusion of the A ct in the 9th Schedule by referring to the ratio in Waman R ao v. Union of India, [1981] 2 SCR 1 and upheld its vire s.

Similar was the view of the Court in the case of Panip at Woollen and General Mills Company Ltd. & Anr. v. Union of India & Ors., [1986] 4 SCC 368. There is no force in the two contentions raised on behalf of the petitioners and the writ petition is, ther e-

fore, dismissed. We direct the parties to bear their o wn costs of the proceedings. T.N.A. Petition dismissed.