

D. Ravikumar and Others Vs. Union of India and Others

D. Ravikumar and Others Vs. Union of India and Others

SooperKanoon Citation : sooperkanoon.com/774614

Court : Chennai

Decided On : Jul-25-1994

Reported in : AIR1995Mad58

Judge : Abdul Hadi, J.

Acts : Sick Industrial Companies (Special Provisions) Act, 1985 - Sections 3, 4, 16 and 20; [Companies Act, 1956](#); [Constitution of India](#) - Article 14

Appeal No. : W.P.Nos. 21507 of 1993 and 2456, 4427 of 1994

Appellant : D. Ravikumar and Others

Respondent : Union of India and Others

Advocate for Def. : T.R. Sethuraman and ;Sairam, Advs.

Advocate for Pet/Ap. : R. Subramanian, Adv.

Judgement :

ORDER

1. These three writ petitions challenge the validity of Section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'the Act'). The relevant portions of the said section run as follows:--

'(1) Where the Board, after making inquiry under Section 16 and after consideration of all the relevant facts and circumstances and after giving an

opportunity of being heard to all concerned parties, is of opinion that it is just and equitable that the sick industrial company should be wound up, it may record and forward its opinion to the concerned High Court.

(2) The High Court shall, on the basis of the Board, order winding up of the sick industrial company and may proceed and cause to proceed with the winding up of the sick industrial company in accordance with the provisions of the [Companies Act, 1956](#) (1 of 1956).

2. The 1st respondent in all the writ petitions is the Union of India, represented by Counsel. Respondents 2 and 4 in all the three writ petitions are respectively the abovesaid 'Board', namely the Board for Industrial and Financial Reconstruction (Bench II) constituted under the Act and the Registrar of the High Court at Bombay respectively. Though respondent 2 and 4 were served they remain unrepresented. Respondents 2 and 4 have been impleaded in these writ petitions since in respect of 3rd respondent-Company in each of these writ petitions, the 2nd respondent has, after making enquiry under Section 16 of the Act, formed opinion that it is just and equitable that the above referred to 3rd respondent-Company should be wound up and has forwarded the said opinion to the 4th respondent-High Court at Bombay. The petitioner in W.P. No. 21507 of 1993 and the petitioner in W.P. No. 2456 of 1994 are the employees of 3rd respondent-Company in both the writ petitions, viz., Basant Alloy Steel Limited, which is a 'sick industrial company' as defined under the Act. The petitioner in W.P. No. 4427 of 1994 is an employee of the 3rd respondent in the said writ petition, viz., Basant Tubes Limited, which is also a 'sick industrial company' as defined under the Act.

3. There is no necessity to traverse the averments in the respective writ petitions in the light of the submissions made before me.

4. The gravamen of the attack by learned Counsel for the petitioner can be gathered from the following grounds mentioned in the affidavit in support of these writ petitions:--

'1. Section 20 of the Sick Industrial Companies Act 1985 is bad in law in as much as it deprives the exercise of Judicial Discretion by the High Court.

2. Section 20 provides for an opinion forwarded to the High Court which has to necessarily order winding up without any application of Judicial mind, while the provisions of the Indian [Companies Act, 1956](#) expressly provides for the High Court to order winding up of companies only after applying judicial mind whether it is just and equitable.

3. Section 20 which takes away the judicial discretion or Judicial Review is against the principles enunciated by well settled pronouncements of the Supreme Court of India as enunciated and reported in : 1983 CriLJ811 .'

This argument is made solely on the basis that in Section 20(2) the word 'shall' is used. So, according to the petitioners, the said clause is a mandatory provision and the High Court has no other alternative except to accept the Board's opinion forwarded to it for winding up of the sick industrial company concerned. Learned Counsel also lays emphasis on the words 'on the basis of the opinion of the Board'. In this connection, learned Counsel also drew my attention to certain decisions, where the relevant provision is taken as mandatory in view of the use of the word 'shall' therein. So according to him, when the abovesaid opinion is forwarded to High Court, it has necessarily to wind up the company in question, though in other cases, where the High Court itself under the different provisions of the Companies Act, passes an order of winding up of a company it has to take into consideration several relevant facts. So, according to learned Counsel the companies, with reference to which the Board has given the above referred to opinion under Section 20(1) of the Act, the High Court should not apply its mind independently or take into consideration any other relevant facts as it would do in the cases of other companies, whose winding up question is brought up before it for consideration. Thus, according to learned Counsel, the 3rd respondent-company is treated differently from such other companies and thereby Art. 14 of the [Constitution of India](#) is violated.

5. On the other hand, learned Counsel for the 1st respondent argues that despite the use of the words 'shall' or 'on the basis' in Section 20(2), the provision is not mandatory and the High Court can independently assess the correctness of the opinion of the Board forwarded to it and come to an independent conclusion as to

whether the company concerned should be wound up. In this connection, he drew my attention to certain decisions, wherein the term 'shall' is construed as 'may' only. According to the said learned Counsel, if so construed, there is no violation of Art. 14. Alternatively he also argues that even if the abovesaid Section 20(2) is a mandatory provision, it would not lead to any violation of Art. 14 since there is a reasonable classification between the 'sick industrial companies' under the Act on the one hand and the other companies on the other hand.

6. I have considered the rival submissions. In these writ petitions, I am only concerned whether Section 20 would be hit by Art. 14 of the [Constitution of India](#). In my view for coming to the conclusion on this point, there is no necessity to come to a definite conclusion as to whether sub-section (2) of Section 20 should be taken as a mandatory provision in view of the use of the word 'shall' or the words 'on the basis of'. My view is whether the said sub-section is mandatory or directory, or in other words, whether the High Court, under Section 20(2), has to necessarily approve the opinion of the Board, or it could exercise its independent discretion in that regard, the said provision will not be hit by Article 14 of the [Constitution of India](#). If the conclusion therein is that the said provision is not mandatory and the High Court can exercise its independent discretion and could wind up the company only after taking into consideration all the relevant facts, the said provision, even according to the learned Counsel for the petitioner, would be constitutional and would not be hit by Article 14.

7. Then, if the said provision is mandatory one and the High Court must necessarily approve the opinion of the Board and wind up the company in question, the said provision even, then would not be hit by Article 14. This is so because 'sick industrial company' is defined under Section 3(o) of the Act and consequently the abovesaid Board established under Section 4 of the Act would come under a separate class by itself as compared with other companies. In this connection, I may also point out that what Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation and that Article 14 does not insist that legislative classification should be scientifically perfect or logically complete.

8. Viewed in that line, I do not see any unconstitutionality under Article 14 with reference to the abovesaid Section 20 of the Act. I, therefore see no merit in these writ petition and hence they are dismissed. No costs.

9. Petitions dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com