

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.18079 OF 2005

ORDER:

This writ petition is filed challenging the proceedings of the first respondent in No.AP343/AC/Recy/CTR/2005/316, dated 12.08.2005.

2. It is the case of the petitioners that the first petitioner is a cotton mill and it is a unit of National Textile Corporation and petitioner No.2 is National Textile Corporation Limited, Bangalore, which is a Government undertaking governed by the Ministry of Textiles, New Delhi. The first petitioner Mill was found viable out of the few mills and ordered for revival under the scheme of Rehabilitation as per the orders of Board for Industrial and Financial Reconstruction (BIFR). While the matter stood thus, the respondents ordered attachment of the petitioners Mill under Section 8F of the EPF & MP Act, 1952, claiming that there are arrears of Rs.4,46,858/- to be paid by the erstwhile management during the period 1966 to 1975. The second petitioner filed the reference under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1983, and after going through the said reference, the petitioners were directed to submit a revival proposal based on the reports made by the petitioners. During the pendency of the matter before BIFR, all the concerned departments were given notice and the respective departments also have made their appearance. The first respondent also appeared before BIFR, but it had not raised any claim regarding the dues of PF for the pre-takeover period. BIFR also made it clear that any claim would be

clarified under this package and a provision would have been made in the BIFR scheme, but the first respondent has not put forth any claim and without issuing any notice, ordered attachment of the bank account of the petitioner.

3. It is further stated that the first respondent had earlier issued the order of attachment dated 7.8.2001, for which the petitioners have filed a reply stating that as per Section 5 of the Sick Textile Undertakings Nationalisation Act, 1974, the liability arising in respect of the pre-take over period for the employee dues shall be enforceable against the order of such "Sick Textile Undertaking" so nationalized i.e., Tirupati Cotton Mills Limited, Madras, only and not against the Central Government/National Textile Corporation. Thereafter, the first respondent withdrew the order of attachment and intimated the petitioners vide letter dated 19.02.2002. The respondents remain silent for the period of 3 years and now, without informing the status of the matter and issuing any notice prior to the order of attachment, highhandedly issued the impugned proceedings, which is causing much inconvenience to the business activities of the petitioners. Meanwhile, the first petitioner addressed a letter dated 9-8-2005, requesting the first respondent to withdraw the order of attachment, giving reference of their earlier letter of withdrawal dated 19.02.2002, but the first respondent issued the attachment order and also directed the third respondent to arrange for a demand draft in the name of the first respondent.

4. It is further stated that in view of reference made by the petitioners to BIFR under Section 22 of SICA, no coercive action can be taken against the sick mills. The proviso clearly states that any legal proceedings while the 'Sanctioned Scheme' under implementation shall lie and be proceeded with further, except with the consent of the Board.

5. Heard.

6. It is clear from the records that the first respondent, after lapse of several years, has issued the impugned notice without affording opportunity to the petitioner, which is in violation of doctrine of *audi alteram partem*. On this short ground alone, the writ petition is liable to be allowed.

7. The writ petition is accordingly allowed, setting aside proceedings of the first respondent in No.AP343/AC/Recy/CTR/2005/316, dated 12.08.2005. As a sequel, the miscellaneous petitions pending if any shall stand closed. No order as to costs.

T.AMARNATH GOUD, J

Date: 24-08-2018
TJMR