

(1989) 08 MAD CK 0015

In the Madras High Court

Case No : Writ Petition No. 11693 of 1981

Beama Manufacturers (P) Ltd.

APPELLANT

Vs

Regional Director, ESI Corporation

RESPONDENT

Date of Decision : 24-08-1989

Acts Referred:

Employees State Insurance Act, 1948 — Section 85B

Citation : (1991) 2 LLJ 29

Hon'ble Judges : S. Nainar Sundaram, J; Bellie, J

Bench : Division Bench

Judgement

Nainar Sundaram, J.—By the order of the respondent, impugned in this writ petition, there has been a levy of damages against the petitioner

u/s 85-B of the Employees State Insurance Act, 1948, hereinafter referred to as the Act. The petitioner seems to have received the show cause,

but according to the petitioner, it could not reply to the show clause on account of the fact that it came to know about it only on investigating into

the matter, after the impugned order. The respondent has made an ex parte summary imposition of the damages, as proposed in the show cause.

2. Mr. G. Narayanan, learned Counsel for the petitioner, would submit that the petitioner has valid explanation for the delay, for which alone

damages have been levied. Learned Counsel for the petition pleads that since the determination of damages u/s 85-B of the Act is a quasi-judicial

process, that has got to be done in a judicious manner, after hearing the party, who would be affected by the ultimate decision and ends of justice

require that the present matter should be re-heard by the respondent, after affording an opportunity to the petitioner to make its say in the matter

and substantiate its case. Learned Counsel also submits that the failure on the

part of the petitioner to submit its explanation to the show cause was not wilful. Learned Counsel also complains that the respondent has not at all applied his mind to the issue, namely, levy of damages, which are penal in nature, even when he proceeded to make an ex parte determination. Learned Counsel points out that in the impugned order, it is mechanically stated that the respondent has applied its mind to all the relevant fact and has gone into the reasons offered by the employer, while the actual position was that the petitioner the employer, did not advance any reasons either before or at the time when the impugned order came to be made, since admittedly, the petitioner did not reply to the show cause.

3. What the learned Counsel complains is perfectly justifiable. In spite of the fact that no explanation and no reason was offered by the petitioner to the show cause, the respondent in the impugned order, says that he had gone into the reasons stated by the employer. This exposes the lack of application of mind on the part of the respondent. In the matter of levy of damages u/s 85-B of the Act, which is penal in nature, the authority concerned is duty bound to act in a judicious manner to determine the question after assessment of all the relevant factors and not in a cursory manner. The matter should be dealt with in an objective manner and the order must disclose that there was, in fact, an application of the mind on the part of the authority to the relevant facts and circumstances of the case. The failure on the part of the employer to offer his explanation to the show cause shall not absolve the authority from this obligation. He shall do the assessment as per the materials available with him and the order must disclose that the authority, in fact, applied his mind. The above norms stand violated in the present case.

4. We are satisfied that the matter requires a de novo enquiry at the hands of respondent, after affording the petitioner adequate opportunity to make its say and substantiate its case on the question of delay. This obliges us to interfere in writ powers and accordingly this writ petition is allowed and the matter is remitted to the file of the respondent for a fresh consideration by him, as indicated above.

5. We are told that the petitioner has furnished a bank guarantee during the pendency of the writ petition for the disputed damages. The petitioner is directed to keep alive the said bank guarantee until the matter is disposed of by

the respondent, pursuant to this order of remittal. The respondent is directed to dispose of the matter within a period of three months from the date of the receipt of a copy of this order. We make no order as to costs in this writ petition.