(2002) 08 PAT CK 0067

In the Patna High Court

Case No : A.F.O.O. No. 167 of 1993

Bihar State Electricity Board APPELLANT

Vs

P.O., Labour Court and Others RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:
Employees State Insurance (General) Regulations, 1950 — Section 31A
Employees State Insurance Act, 1948 — Section 85B

Citation : (2002) 50 BLJR 1858 : (2002) 95 FLR 812 : (2003) 1 LLJ 349 : (2003) 3 PLJR 433

Hon'ble Judges : Ashok Kumar Verma, J

Bench : Single Bench

Advocate : V.N. Sahay, for the Appellant; Abha Kumari and Arun Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Kumar Verma, J.—This appeal has been filed against the order dated April 2, 1993 passed by the Presiding Officer, Labour Court, Patna in E.S.I. Case No. 8 of 1987, whereby the learned Presiding Officer had dismissed the application of the petitioner-appellant. According to the appellant the Court below has committed error in law.

2. A counter-affidavit has been filed on behalf of respondent No. 2, Regional Director, E.S.I. Corporation, Patna. According to the counter-affidavit, Annexure-1 is not a notice but order dated March 8, 1978 passed by the Regional Director, Employees'' State Insurance Corporation, whereby he had levied damage of Rs. 26,450/- u/s 85-B of the Act for delayed payment of contribution.

3. The petitioner Bihar State Electricity Board through its Chairman had filed the petition before the Presiding Officer, Labour Court, Patna bearing E.S.I. Case No. 8 of 1987 for recall of the notice dated March 8, 1978, which is Annexure-1 of the petition and to recall the damages claimed u/s 85-B of the Act and also to recall the certificate proceeding started against the petitioner. It is relevant to

mention here that the said Annexure-1 is not a notice but an order u/s 85-B of the E.S.I. Act, 1948 dated March 8, 1978 and according to it the Regional Director had reduced the damages of Rs. 1,85,292/- for the delayed payment of amount of contribution (both employer and employees) to Rs. 26,450/-.

4. In short the case of the petitioner-appellant is that the petitioner is a corporate Body constituted u/s 5 of the Electricity Supply Act and had acquired the assets of Patna Electrical Supply Company Ltd. in February, 1974. The petitioner deposited the money in the State Bank of India and sent the contribution cards for the periods mentioned in the petition. Regulation 31-A was amended in 1977 and proviso was added to it. The period for which damages are levied u/s 85-B of the Act is wrong. According to the petitioner even if the intimation cards were not sent in time, the Board could have been liable only for interest under Regulation 31-A of the Regulations. According to the petitioner entire proceeding is vitiated for non- observance of the procedure of law.

5. In this Misc. Appeal a counter-affidavit has been filed on behalf of the Regional Director, E.S.I., Corporation, Patna. According to the counter-affidavit, non-submission of the contribution cards under Regulation 26 would amount to failure to pay the amounts due and attract the penal provision of Section 85-B of the Act. The submission of the contribution cards with the stamps thereon duly cancelled by the appropriate office within time prescribed under Regulation 26 alone would become the essence of payment to be deemed a complete payment, Regulation 31-A was inserted in late 1977 and prior to that delay or default in making payment of contribution beyond the prescribed time would amount to failure to pay contributions. Failure to pay contribution also involves criminal liability u/s 85 of the Act. According to the counter-affidavit of Regional Director, E.S.I. Corporation, Patna, Section 85-B of the Act is applicable in this case. The appellant had replied to the show cause notice under letter No.-PAT/1519/ESI dated December 16, 1977 and stated various reasons for failure to pay the contribution and delay in payment of the contributions and so the appeal is barred by estoppel.

6. It was argued by the learned lawyer for the appellant that Section 85-B of the Act is not applicable in this case as it is a case of delayed payment of contribution. It was also submitted by him that it is a case of delayed payment and it is not a case of non-payment. The contention of the learned lawyer for the respondent was that Section 85-B of the Act also covers delayed payment. It was submitted by the learned lawyer for the respondent that Regulation 31 of the E.S.I. Regulations came in force on November 23, 1977.

7. Section 85 of the Employees'' State Insurance Act, 1948 provides for the punishment for failure to pay contributions etc. Section 85-B of the Act provides for power to recover damage, and it runs as below:

85-B. (1) Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the regulations:

Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard:

Provided further that the Corporation may reduce or waive the damages recoverable under this Section in relation to an establishment which is a sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established u/s 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in regulations.

(2) Any damages recoverable under Sub-section (1) may be recovered as an arrear of land revenue.

8. According to Section 31 of the Employees'' State Insurance (General) Regulations, an employer who is liable to pay contributions in respect of any employee, shall pay these contributions within 21 days of the last day of the calendar month in which the contributions fall due. According to Section 31-A of the said Regulations, an employer who fails to pay contributions within the periods specified in Regulation 31 shall be liable to pay interest at the rate of 6 per cent per annum in respect of each day of default or delay in payment of contribution.

9. According to the order dated March 8, 1978, passed by the Regional Director, Employees'' State insurance Corporation, Patna, Patna Electric Supply undertaking a factory/establishment is covered, under the Employees'' State Insurance Act and were required to pay the contributions in accordance, with Section 40 of the said Act read with Regulations 26, 29 and 34 of the Employees'' State Insurance (General) Regulations framed under the Act and as the employer in relation to this factory/establishment failed to pay the; contributions as required by law, a notice for Rs. 1,85,292/- was issued to the principal employer vide letter No. P/42-2067/77 dated February 18, 1977 to show cause within 15 days why damages as envisaged u/s 85-B of the said Act, be not levied and recovered from the employer. Further according to the said order the employer had replied to the notice and had appeared before him and prayed various reasons for failure to pay the contribution/delay in the payment of the contributions. The Regional Director of the Employees'' State Insurance Corporation, Patna after considering the points ordered that the damages totalling to Rs. 1,85,292/- for the delayed payment of amount of contributions (both employer and employees) are reduced to Rs. 26,450/-.

10. The learned Presiding Officer, Labour Court and Employees'' Insurance Court, Patna has mentioned in his order dated April 2, 1993 passed in E.S.I. Case No. 8 of 1987 that from the evidence of the witness of the applicant, it is admitted that there has been delay in depositing the contribution. Applicant-witness No. 1 is Ramakant Yadav, an Accounts Assistant of the Bihar State Electricity Board,

Patna. He has stated that due to acquisition of PESCO, the works were dislocated and therefore, there was delay in depositing the contribution.

11. In the facts and circumstances of the case, there does not appear any reason to interfere with the impugned order dated April 2, 1993 passed by the Presiding Officer, Labour Court and Employees'' Insurance Court, Patna.

12. There is no merit in this Misc. Appeal, it is accordingly dismissed.

