

(2009) 03 P&H CK 0101
In the Punjab And Haryana At Chandigarh

Employees State Insurance Corporation	APPELLANT
Vs	
D.C.M. Engineering Products	RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Employees State Insurance Act, 1948 — Section 75, 85, 85B

Citation : (2010) 124 FLR 736 : (2010) 2 LLJ 540 : (2009) 156 PLR 265

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This appeal is directed against the order of Employees Insurance Court, Chandigarh, (for short, "the Court") dated 1.12.1988 whereby an application filed u/s 75 of the Employees State Insurance Act, 1948 (for short, "the Act") challenging the demand of damages amounting to Rs. 34,451/- imposed by the Regional Director, has been allowed.

2. Brief facts of the case are that the respondent is a factory/establishment situated at Asron having Code No.PB.12/8I848, covered under the Act and is required to pay the contribution in accordance with the provisions of the Action 30.1.1984, the Regional Director of the Corporation passed an order u/s 75-A of the Act, directing the respondent to pay contribution for the period from 1/81 to 11/82 amounting to Rs. 2,34,768.10 paise plus interest amounting to Rs. 27,999.75 paise. The said order dated 30.1.1984 was challenged by the respondent before the Court by way of a petition u/s 75 of the Act on 15.2.1984 on the ground that the amount of contribution assessed is patently illegal.

3. During the course of hearing, while no witness was examined, the respondents counsel filed an application that the record of the respondent be respected and they would be prepared to pay whatever amount is found due on the basis re-inspection of the record.

4. In view of the prayer made, the Court vide its order dated 29.11.1984 ordered

that the record of the respondent be got re-inspected and the report be submitted.

5. Pursuant to the order passed by the Court on 29.11.1984, Hardial Singh, Insurance Inspector of the Employees State Insurance Corporation inspected the record of the respondent and submitted his report Ex.R-1. His statement was also recorded. He stated that as per his report Ex.R-1, only Rs. 85,840/- is due from the respondent instead of the amount which has been assessed by the Regional Director vide his order dated 30.1.1984 to the tune of Rs. 2,34,768.10. At that stage, learned Counsel for the respondent made a statement that they are ready and prepared to pay this amount within a period of 45 days and stated that the petition be decided in accordance with the report and statement of Hardial Singh. Thus, vide order dated 6.2.1985, the Court partly allowed the petition and modified the order dated 30.1.1984 to the extent that the respondent shall be liable to pay only Rs. 85,840/- which shall be paid within 45 days from the date of the order.

6. It is pertinent to mention here that at that stage, no question was raised by the appellant about the damages or with regard to the late payment of that amount which was found to be actually due.

7. Pursuant to the order of the Court dated 6.2.1985, the amount of Rs. 85,840/- was deposited by the respondent on 11.3.1985 within a period of 45 days as stipulated in the order. However, the appellant served a show cause notice to the respondent u/s 85-B of the Act as to why damages be not imposed for depositing the amount of contribution late on 11.3.1985 for the period of 1981/82. Ultimately, on 26.6.1985, Regional Director of the Corporation imposed damages of Rs. 34,451/- on the premise that the contribution has been deposited late by the respondent. The learned Court below vide its above order dated 1.12.1988 found that there was no delay in making the payment of contribution actually determined by the Court.

8. Mr. A.P. Singh learned Counsel for the Corporation has vehemently argued that although the amount has been assessed in the Court on the statement made by Hardial Singh and decision rendered by the Court on 6.2.1985, yet it relates to the year 1981-82. Therefore, it would come within the definition of delay.

9. As against this, Mr. Anil Kaushik, representative of the respondent-Company has contended that there is hardly any delay on the part of the respondent because as soon as the order dated 30.1.1984 was passed u/s 85 of the Act, a petition u/s 75-A of the Act was immediately filed and a statement was made before the Court that the respondent is ready to pay the amount whatever is due. On the very fair stand taken by the respondent in the Court, the Court directed the Corporation to submit its report. Pursuant to that, report (Ex.R-1) was submitted by Hardial Singh, who also stated that records were inspected as per direction of the Court and some discrepancies were noted in the amount which is shown as Rs. 84,840/- instead of Rs. 85,710/- in the said record. The

statement was suffered by Hardiai Singh on 6.2.1985 and on the same day, the Court passed the order holding that actual contribution which is to be made by the respondent for the year 1981-82 is Rs. 84,840/- and a period of 45 days" time was granted to deposit the same.

10. It is pertinent to mention here that at the time when this order was passed, no question was raised by the appellant with regard to the late payment or for any amount of late damages. The respondent thereafter within 33 days of the order dated 6.2.1985 deposited Rs. 85,840/- on 11.3.1985. Thus, in view of the above, as soon as the appellant brought to the notice of the respondent the actual amount of contribution to be deposited by them, the same was deposited within the period prescribed by the Court. Therefore, there was hardly any delay on the part of the respondent to make the payment. If there is any delay then it is solely attributed to the appellant Corporation for illegally and erroneously determining the contribution of Rs. 2,34,768/- which was reduced to Rs. 85,840/- by them. Therefore, it does not lie in the mouth of the appellant to say that delay has been caused on the part of the respondent in making the contribution.

11. In view of the above, I do not find any merit in the appeal and the same is hereby dismissed without any order as to costs.