
(2008) 02 KAR CK 0078
In the Karnataka High Court
Case No : M.F.A. No's. 5600 and 6420 of 2002

Employees' State Insurance Corporation	APPELLANT
Vs	
Loka Shikshana Trust	RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Employees State Insurance Act, 1948 — Section 82 (2), 85 B

Citation : (2008) 119 FLR 327 : (2008) 3 LLJ 945

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : Geetha Devi, for the Appellant; Chaitanya Heg, for the Respondent

Final Decision : Allowed

Judgement

K. Ramanna, J.—Both these appeals are filed u/s 82(2) of the Employees' State Insurance Act, 1948, against the judgment and order dated June 10, 2002 passed by the Employees' State Insurance Court, Hubli, in E.S.I. Application Nos. 10 and 11/1994, thereby allowing the application filed by the respondent by setting aside the order passed by the appellant u/s 85-B of the ESI Act imposing damages for delayed payment of contribution dated January 20, 1994 and January 21, 1994.

2. The brief facts leading to this appeal are that the appellant herein has passed orders u/s 85-B of the ESI Act imposing damages for delayed payment of contribution.

In M.F.A. No. 5600/2002 i.e., E.S.I. Application No. 10/1994 the appellant herein passed orders on January 20, 1994 imposing: damages of Rs. 2,278/- for delayed payment of contribution for the period from November 1980 to March 1985, and

In M.F.A. No. 6420/2002 i.e., E.S.I. Application No. 11/1994, orders passed on January 22, 1994 claiming damages of Rs. 8,553/-for the period from December 1976 to September 1980.

3. The entire contribution for the above" said period is not paid at a time but the same were paid with a delay of either few days or few months i.e., delay for the month of June 1980 is about 59 days as the due date is on July 21, 1980 but the contribution was paid on September 18, 1980. Similarly for the month of July 1980 due date is August 21, 1980 but was paid on October 17, 1980 and the delay is of 57 days similarly delay occurred in payment of contribution of different months.

4. As regards the number of delay involved in M.F.A. No. 5600/2002 is concerned from November 1980 to March 1985 the delay in 38 instances is within one month and in 6 instances the delay is of 5 days, in 3 instances the delay is of 10 days, in 10 instances the delay is more than 10 days, in 11 instances the delay is of a month and in about 31 instances the delay is between 1 and 2 months and in one instance the delay is about 100 days and in another one instance the delay is about 1000 days. The delay accessioned in each of every month.

5. As regards number of delays involved in M.F.A. No. 6420/2002 is concerned the delay for each month's payment varies from 1 day in some cases, 5 days, 9 days and 10 days in some other cases. The entire amount payable from December 1978 to July 1983 is paid before July 20, 1983 but only for the month of March 1985 to September 1986 the contribution was paid in December 1992. The delay in payment of contribution during the period from December 1978 to September 1980 in 39 instances is below one month and in 38 instances the delay is above two months and in 3 instances above 2 months and within 3 months and in another 4 instances the delay is between 140 days to 158 days.

6. Therefore the appellant herein initiated proceedings against respondent u/s 85-B of the ESI Act, and passed orders dated January 20, 1994 and January 21, 1994 levying damages of Rs. 2,278/- and Rs. 8,553/- on the respondent the delayed payment of contribution made by it. The said order of the appellant has been challenged by the respondent herein before the ESI Court in ESI Application Nos. 10 and 11/1994 respectively, the lower Court after hearing the parties had set aside the order passed by the appellant herein. Therefore, the appellant has come up with these appeals.

7. Heard the arguments of learned Counsel for both the parties.

8. It is contended by the learned Counsel for the appellant that there is no limitation prescribed to impose damages, mere delay in imposing the damages by passing the order u/s 85-B after lapse of 13 years does not disentitle the Corporation to recover the damages for the delay in payment of contribution by the respondent. It is further argued that u/s 85-B of the Act the Corporation was empowered to claim damages whenever the contribution was not paid or any delay in payment was made. Further u/s 93-A of the ESI Act, the transferor of the factory establishment shall be jointly and severally liable to pay the amount due. Hence, the order passed by the ESI Court is liable to be set aside and the appellant be permitted to recover the damages.

9. During the course of the arguments learned Counsel for the appellant relied on a decision rendered by the Apex Court in the case of M/s. Hindustan Times Limited Vs. Union of India and Others, , wherein the Court has held:

Head Note (D) Employees' Provident Funds and Miscellaneous Provisions Act (19 of 1952), Section 14-B - Recovery of damages from defaulter - Defence of; power-cut, financial problems relating to other indebtedness or the delay in realisation of amounts paid by cheques or drafts - Are not justifiable grounds for the employer to escape liability - Delay in initiating; recovery - Cannot itself be a ground for drawing an inference of waiver.

He has also relied on another decision of the Apex Court in the case of Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others, , wherein the Court has held that the authority cannot waive the penalty on the ground that there is delay in initiating the proceedings against the-respondent.

10. On the other hand, learned Counsel for the respondent submitted that the Loka Shikshana Trust has taken the moveable and immovable properties of Samyuktha Karnataka with effect from March 10, 1986. Earlier to that date the Loka Shikshana Trust had alienated the properties of Samyuktha Karnataka to a private company by name K.P.P. Limited, vide an, agreement which was running the management from November 21, 1974 to December 12, 1977. Later the Jaya Karnataka News Printers have taken over the property from K.P.P. with effect from December 12, 1977 and running till September 17, 1979. Subsequently till 30-30-1986 (sic) the Samyukta Karnataka was managed by the Court receiver appointed by District Court, accordingly the Charity Commissioner and the Administrator of Government of Karnataka and again the Court receiver till March 9, 1986. It is argued that thereafter, as per the order of the High Court of Karnataka, the Loka Shikshana Trust has assumed the charge under the scheme formulated therein by appointment of new trustees.

11. Therefore, the Loka Shikshana Trust cannot be construed as a successor-in-interest of earlier management to make it liable to pay damages for the delayed contributed by the earlier trustees. It is further contended that the delay in paying the contribution is caused by the earlier management which was not within the knowledge of the present management and the present management is not liable to pay as they are not successor-in-interest.

12. It is further argued that though there is no limitation prescribed under the Act to impose damages u/s 85-B of the ESI Act, but the appellants should have demanded the damages within a reasonable period. But in the instant case there is a delay of 13 years in claiming the damages after the payment of contribution and there is delay and laches on the part of the appellant. Therefore, the Court below is right in setting aside the order of damages claimed by the appellant. The appellant is not entitled to recover damages from the respondent. Hence, prays for dismissal of the appeal.

13. During the course of arguments learned Counsel for the respondent relied on

a decision in the case of *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, and another decision in the case of *Mansaram Vs. S.P. Pathak and Others*, wherein the Court has held that:

Head Note (C): C.P. and Berar Letting of Houses and Rent Control Order, 1949, Clauses 22(2) and 28 - Initial unauthorised entry - Eviction cannot be ordered after 22 years - Power under Clause 28 must be exercised within reasonable time.

When the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner. Exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time. Undoubtedly, no limitation is prescribed in this behalf but one would stand against that a landlord to some extent in *pari delicto* could turn the tables against the person who was in possession for 22 years as a tenant. In such a situation, even though the House Allotment Officer was to reach an affirmative conclusion that the initial entry 22 years back was an unauthorised entry and that failure to vacate premises till 9 years after retirement was not proper, yet it was not obligatory upon him to pass a peremptory order of eviction. In such a situation, it would be open to him not to evict the tenant.

He also relied on another decision in the case of *C.S. Narayana Rao v. City Improvement Trust Board, Bangalore* AIR 1969 Mys. 310 : 1969(1) Mys.LJ 237, wherein it has, been held that:

Held, that the order of resumption could not be sustained. The power of resumption had to be exercised within a reasonable time after the occasion for the exercise of that power arose, and if the Trust Board did not exercise any such power for a period of nearly twelve years after that occasion arose, it was reasonable to presume the abandonment of the power.

He has also relied on other decision in the case of *Venkatagiriappa Vs. The State of Karnataka Revenue Development*, wherein this Court has held that:

Held: Proceeding quashed since the Revenue Authorities have failed to initiate action within a reasonable time.

He has relied on other decision in the case, of *Sarat Textiles Limited v. Joint Regional Director and Ors.* 100 FLR 150 and finally he relied on other decision in the case of *Regional Director, Employees" State Insurance Corporation v. N. Dasrathy and Sons* 2002 (93) FLR 795.

14. I have carefully examined the materials placed on record. Admittedly, there is delay in payment of contributions by the respondent. u/s 85-B of the ESI Act, the ESI Authorities are entitled to levy penalty by way of damages for the delayed payment of contributions by the respondent. There is no limitation prescribed under the ESI Act to initiate proceedings against the employer to levy damages for the delayed payment of contribution. Of course the respondent herein has deposited the contribution without any demand by the appellants", according to respondents the delay is on account of change of management and

etc. Under the ESI Act, if there is any delay in payment of contribution the appellant is entitled under the Act to impose damages on the employer, by initiating proceedings u/s 85-B of the Act. The intention behind insertion of the said provision is to deter the employer who make default or delay in depositing the contribution amount. Therefore, when there is a default or delay in making the said contribution the Corporation may recover damages from the employer by way of penalty after giving an opportunity to the employer of being heard. The Corporation may even reduce or waive the damages in relation to an establishment which is a sick industry etc. In the instant case the appellant after issuing notice to the respondent and giving him an opportunity of hearing has rightly passed orders levying damages on the respondent who is a chronic defaulter and was always paying the contributions beyond the due date, there were very rare occasions or there were no such occasion wherein he has paid/deposited the contribution within due date.

16. The Act itself makes it very clear that the Contribution should be paid within due date and in default or delaying the same the employer is liable to pay the penalty by way of damages, thus when there is a duty cast on the employer/respondent to make the deposit of contribution within due date, if he violates or makes default in respect of the same, then the respondent should be made liable to pay damages by way of penalty on an order passed by the appellant-corporation in a proceedings initiated u/s 85-B of the Act. Therefore, mere delay in demanding damages cannot be ground to straightaway reject the demand of the appellant as outside the scope of jurisdiction of the Corporation.

17. Further Section 93-A of the ESI Act makes it very clear that the employer and the person to whom the factory establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contribution or any other amount payable under the Act in respect of the period upto the date of such transfer. Therefore, the respondent is liable to pay the damages and he cannot contend before this Court that being a transferee he is not liable for the dues of his transferor. As such the contention of the respondent that he is not a successor-in-interest and that he is not liable to pay compensation, cannot be accepted and the same is liable to be rejected.

18. In the instant case though there was a long delay of about 13 years, considering the facts and circumstances of the case that the respondent made delay in payment of contribution on each and every occasion when it fell due and there was no bona fide and genuine reasons given by the respondent to explain the delay caused in payment of contribution, the respondents cannot be allowed to take benefit of delay caused in levying the penalty by way of damage by the appellant.

19. The contention of the respondent is that there is abnormal delay in initiating proceedings to levy damages. But there is no time limit prescribed under the Limitation Act or under ESI Act to initiate proceedings to levy penalty by way of damages, it is also not prescribed under the Act that the proceedings should be

initiated within reasonable time. Where the respondent has committed default in depositing the contributions in time then the authority has a right to levy damages. Therefore, the delay if any, in initiating the proceedings for recovery of damages will not come in the way of levying damages.

20. Therefore, the order under challenge passed by the Workmen Compensation Commissioner is incorrect and illegal and is liable to be set aside and the appellant be permitted to recover the damages from the respondent.

21. For the foregoing reasons, these appeals are allowed. The order under challenge passed by the ESI Court dated June 10, 2002 in ESI Application Nos. 10 and 11/1994 are hereby set aside. The appellant is permitted to recover the damages from the respondent. The respondent is directed to deposit the damages within 60 days from the date of this order.