

(1994) 12 MAD CK 0059
In the Madras High Court

Employees State Insurance Corporation	APPELLANT
Vs	
Venkatachalam Condiments represented by Partner P.V. Sivasubramanian	RESPONDENT

Date of Decision : 30-12-1994

Acts Referred:

Employees State Insurance Act, 1948 — Section 68, 75, 85A, 85B

Citation : (1995) 1 MLJ 433

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Judgement

Govardhan, J.—C.M.A. No. 881 of 1986 and C.M.A. No. 130 of 1987 arise out of the order passed by the learned E.S.I. Judge. City Civil Court, Madras dated 17.10.1984 in E.S.I. O.P. Nos. 18 of 1983 and 17 of 1983 respectively.

2. The averments in the petitions viz., E.S.I. O.P. Nos. 18 and 17 of 1983 are similar and are as follows: The petitioner is an employer within the purview of the Employees State Insurance Act. The petitioner has been remitting contributions to the respondent-Corporation in respect of their employees employed by them. In April, 1980, the respondent proposed to levy damages of Rs. 9,570 alleging that there had been delay in respect of remittance of contributions during the period from 7/1979 to 11/1979 which is the subject matter of E.S.I. O.P. No. 17 of 1983. The respondent proposed to levy damages of Rs. 34,637 alleging that there had been delay in respect of remittance of contribution during the period from 11/1976 to 5/1979 which is the subject matter of the E.S.I. O.P. No. 18 of 1983. Even though the petitioner has submitted his explanation, without any enquiry and giving an opportunity to the petitioner, the respondent passed the order on 21.6.1980 assessing the damages at Rs. 9,570 u/s 85(B) of the Employees State Insurance Act. So also the respondent without any enquiry and without giving an opportunity to the petitioner being heard in person passed an order on 2.2.1980 assessing the damages at Rs. 34,637 u/s 85(B) of the Employees' State Insurance Act. The

petitioner never failed to pay the contributions nor there was any arrears. In case of delayed payment, the Authorities could have applied the provisions of Section 68 of the abovesaid Act alone. Wages to the workers were delayed due to various reasons and they were condoned by the Inspector of Factories. The imposition of damages is arbitrary and without any basis. It is therefore invalid and unsustainable. The claim of damages is high. Hence the petitions to set aside the orders dated 21.6.1980 and 15.10.1981.

3. The respondent in their similar written statements contended as follows: There was notice before levying the damages. The petitioner had sent letters explaining the delay in general. Even though the respondent requested the petitioner to indicate whether the petitioner would require personal hearing, the petitioner did not ask for personal hearing. Therefore, there was no personal hearing. The final order levying damages was therefore passed after due and careful consideration of the replies sent by the petitioner. The respondent has got powers to levy damages u/s 75 of the Employees' State Insurance Act and the orders are lawful and legal. Section 68 of the abovesaid Act will not apply to cases of defaulted payment. The quantum of damages levied, depended not only on the extent of delay, but also on number of delays during the relevant period. The petitions are liable to be dismissed.

4. On the above pleadings, a common enquiry was held by the learned E.S.I. Judge and the impugned order has been passed by the learned Judge allowing the petitions filed by the petitioner setting aside the orders of the respondent-corporation dated 15.10.1981 and 21.6.1980 and remitting the matter to the Regional Director for fresh disposal in the list of the observations made in the impugned order.

5. Aggrieved over the said order of remand, the respondent viz., the Employees State Insurance Corporation has come forward with these two appeals.

6. The learned Counsel appearing for the appellant would argue that the learned E.S.I. Judge has passed the impugned order with an observation that the grievance of the petitioner that an opportunity was not given to him cannot be accepted, but having regard to the document, he feels that it could be stated that there had been some reasons which could be accepted as proper consideration for such delay and the reasons have not been properly placed before the Authorities and remanded the matters to the Regional Director of Employees State Insurance Corporation which is not called for since it is only the petitioner's failure to avail the opportunities given to them and it cannot be a ground to set aside the orders passed by the Corporation after considering the explanation given by the petitioner and therefore, it must be set aside. According to the learned Counsel appearing for the appellant, damages were found to be out of proportion and order of remand has been passed by the learned Judge which is not a correct approach of the matter, since the damages need not be proportionate to the defaulted contributions. According to the learned Counsel, damages were levied by the Corporation taking into consideration the number of

defaults committed by the petitioner, the period of default which has shown that the respondent in the appeals is a chronic defaulter and the orders have been passed by the Regional Director only after considering the representations made by the petitioner before the E.S.I. Judge and therefore, the impugned orders are liable to be set aside.

7. The learned Counsel appearing for the respondent would on the other hand argue that the petitioner before the E.S.I. Judge was suffering due to financial strain and it was only when the State Bank of India came to their rescue, the petitioner was able to pay even the wages to the employees and it is only on account of the above fact and on account of the non-availability of stamps, there is delay in making the contributions and mere delay in making the contributions cannot be a ground to impose damages and therefore, the order of the E.S.I. Judge is well-founded. The learned Counsel would also argue that there is no dishonesty in the conduct of the employer in making the contributions and therefore, the order passed by the E.S.I. Judge considering the reasons given by the employer for the delay in payment of the contributions is well-founded and does not call for any interference. But, he would also argue that instead of sending back the papers to the Regional Director confirming the order of the Regional Director, damages could be restricted to 10% of the amount already imposed as damages in order to save time. The last contention of the learned Counsel appearing for the respondent that instead of sending the matter to the Regional Director as per the orders of the E.S.I. Judge, 10% of the levied damages could be imposed as damages in this Court is not a tenable one, since the respondent in these two Civil Miscellaneous Appeals who stands to gain on account of the order made by the E.S.I. Judge, cannot seek an order in such a way that the damages already levied is reduced without establishing his case before the Regional Director to whom the matter has been remanded. Before proceeding further, I am of opinion that it must be borne in mind the following principles that where the discretion to apply the provisions of a particular statute, is left with the Government or one of the highest officers, it will be presumed that the discretion vested in such high authority will not be abused. The Government or such authority is in a position to have all the relevant and necessary, information in relation to each kind of establishment, the nature of defaults made by the employer, and the necessity to decide whether the damages to be imposed should be exemplary or not. The object of Sections 85-A and 85-B of the Employees' State Insurance Act is to authorise the Regional Director of the Employees' State Insurance Corporation to impose exemplary or punitive damages and thereby prevent the employers from making defaults. When we approach the case on hand in the light of the explanation offered by the petitioner applying the above principle, whether the order of remand made by the E.S.I. Judge is proper or not, is the only question before us to be considered.

8. The E.S.I. Judge has observed that under Ex.P-6 dated 26.5.1979 the petitioner had informed that the business was being carried on through the State

Bank of India's Nursing programme and under Ex.P-8 the petitioner had informed that they were not able to get stamps of the denominations of Rs. 1.50; and Re. 0.75 p. from the State Bank of India, main Branch and under Ex.P-9 they have informed the non-availability of payment forms in the local office to the respondent Corporation. In Exs. P-1 to P-14 and P-16 to P-18, the petitioner had been informing the respondent that they are suffering due to financial crisis and on occasions, they could not even get cost from the State Bank and under Ex.P-3, the petitioner had even stated that they were unable to export the product resulting in the manufacturing process being affected for nearly one year. It is thus seen that it is not as if the delayed payments were due to any conscious or intentional attitude of the petitioner in making the contributions. It is only on account of these reasons which the petitioner had brought to the notice of the Regional Director of the Employees' State Insurance Corporation, as the reason for the delayed payment, the learned E.S.I. Judge has thought it fit to remand the matter to the Regional Director for considering these reasons and dispose the applications before it afresh. I am of opinion that the maxim justice should, not only be done but seems to be done applies in all force to the case on hand and the contention of the appellant that the order of remand made by the E.S.I. Judge is not called for in the circumstances of the case, is not tenable. It is always open to the Regional Director to give a finding that the explanation for the reasons given by the petitioner for the delayed payments are not tenable and the petitioner had to pay the amount levied as damages by the E.S.I. authorities for the reasons to be recorded by the Regional Director. It is not as if the order levying damages has been set aside once for all by the learned E.S.I. Judge in his order in the two appeals to enable this Court to interfere with the said order. In that view, I am of opinion that the appeals are without merits and are liable to be dismissed.

9. In the result, both the appeals viz., C.M.A. Nos. 881 of 1986 and 130 of 1987 are dismissed. No costs.