(1986) 09 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 57 of 1979

E.S.I. Corporation — APPELLANT

Vs

Indoflex Private Limited — RESPONDENT

Date of Decision : 15-09-1986

Acts Referred:
Employees State Insurance Act, 1948 — Section 85, 85A, 85B

Citation : (1987) 2 WLN 589

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Guman Mal Lodha, J.—The Employees State Insurance Corporation has filed this Appeal No. 57/1979 against the judgment of the Employees Insurance Court, Jaipur dated 26th October, 1978 in Case No. ESI 10 of l978.

2. The sole question to be considered in this case is whether the damages charged by the Corporation against the company by its order dated 9-1-1978 is illegal. The E.S.I. Court has held that it is illegal because no damages can be charged in case of late payment and more so when interest is charged. I am inclined to accept the contention of Mr. J.P. Gupta learned Counsel for the appellant, which is substantiated by the judgment of the Andhra Pradesh High Court 1979 AP Labour Law Notes page 260 Employees State Insurance Corporation Hyderabad v. Sundaram Motors Sikandrabad. In this case it has been held by Division Bench that when the Act provides that amount should to paid within a particular period and if it is no so paid immediately there is failure to pay the amount. The word failure cannot construe as total failure only. An important question of law has been raised in respect of the ESI Act. Apart from the above decision there is yet another decision on the question of interest of the Punjab and Haryana High Court in Employees State Insurance Corporation and another v. M/s Dhanda Engineer Pvt. Faridabad 1981 Lab. I.C. 658 where in the High Court has held that payment of interest does not take away liability of civil

damages u/s 85 of the Act. Their Lordships of the Punjab and Haryana High Court have observed as under:

Mere payment of interest does not in any way condone of wash away the delay or default in the payment of contributions, which having been once made would continue to attract the penal provisions of Section 85B of the Act. Regulation 31-A, was inserted only in late 1977. Prior to that delay or default in making the payment of the contribution beyond the prescribed time would amount to a failure to pay the contributions thus attracting the liability to damages u/s 85B of the Act. Failure to pay contributions also involved criminal liability u/s 85 of the Act and enhanced punishment in certain cases after previous conviction u/s 85A thereof. It, therefore, cannot be assumed that these stringent provisions could be neutralised by merely paying interest at rate of 6 per cent for even wilful defaults in the payment of contributions. On the other hand, it would appear that Reg. 31-A was another string to the bow for preventing defaults or delays in the payment of contributions.

3. In view of the above two decisions the submission Mr. J.P. Gupta deserve to be accepted. Consequently it is held that delay in payment of contribution also makes the employer liable for damages and further charging of interest would not absolve the employer from the payment of damages. It may be mentioned that this Branch of Law is social welfare legislation meant for providing benefit to the employees at the time of illness and other such contingencies by partial deductions from their own wages by the employer according to law, and partial contribution by employer.

4. Such legislation should be interpreted in favour of beneficial to the employees as far as possible and unless it cannot be spelled out from the law.

5. Consequently the appeal is accepted. Since no one has appeared for the respondent employer, the parties would bear their own costs.