
(1986) 09 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 152 of 1980

E.S.I. Corporation

APPELLANT

Vs

Jaipur Spinning and Weaving Mills Ltd.

RESPONDENT

Date of Decision : 15-09-1986

Acts Referred:

Employees State Insurance Act, 1948 — Section 75

Citation : (1987) RLW 247 : (1987) 2 WLN 333

Hon'ble Judges : Guman Mal Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Guman Mal Lodha, J.—The Employee's State Insurance Corporation has filed this appeal against the order of the Judge, Employee Insurance Court setting said the order for charging of damages on the petitioners Company M/s Jaipur Spinning and Weaving Mills Limited, Jaipur.

2. The petition was preferred by the Company u/s 75 of the E.S.I. Act with the contention that it was complying with the provisions of the Act and never made any default in the payment of contribution. It was pointed out that there was unprecedent circumstances beyond its control due to financial losses of Rs. 200 lacs and the textile market all crashed therefore funds were not available. The bankers stopped releasing funds.

3. The damages were proposed by the E.S.I. Corporation in 1978 in respect of contributions of January, 1976 to November 1976 and September, 1977 to March, 1978.

4. The damages which were levied were challenged in this petition. The Judge E.I. Court accepted the contention of the Company that financial losses made, it impossible to pay the amount of the contribution of the employees for Insurance and that he ordered that the order levying damages was not speaking order. The order is contained in para 12 of the judgment which reads as under:

In the present case the Corporation had passed the order of levy of damages in the following words:

"Whereas, the Employer has not replied to notice under its letter No. J/ Secy/982/78 dated 16-12-1978 and 5-2-1979, appeared before me on 5-2-1979 praying for various reasons for failure to pay the contribution/delay in the payment of the Contribution on the following amongst other grounds:

Financial Crises.

I have applied my mind to all the relevant facts. The reasons stated by you do not justify for waiver/reduction of the damages proposed to be levied. Late submission of the Contribution Cards has caused available inconvenience at all levels.

5. Mr. Gupta, learned Counsel for the Corporation argued that if the financial loss can go, the reason for depriving the employees of the contribution, then each industrial concerns would successfully manipulate for the circumvention of the contribution. It was pointed out that once from the wages of the employees deduction of contribution are made, it is not permissible for the industry to utilise that hard earned money of workmen, which has been given or taken compulsorily for providing provisions for rainy season in case of illness or otherwise. Mr. Gupta further pointed out that the alleged order was a speaking order is also not correct. In the alternative it was pointed that if the order was not a speaking order, then court have remanded the case at the most. But here since the damages have been quashed finally the relevance of order being a speaking order or not has lost its value.

6. I have considered the submission of Mr. Gupta and gone through the relevant record of the case.

7. I am of the opinion that the decision of the Apex court in *Organo Chemical Industries v. Union of India* 1979(39) Indian FLR 309 provides proper guidelines. At page 311 of the question of the defence of loss of the industry was considered and the Hon'ble Supreme Court observed as under:

The Regional Provident Fund Commissioner after giving to the petitioners the opportunity of a hearing by reasoned order dated August 16, 1977 considered in detail each of the grounds taken in litigation of the defaults and came to the conclusion that none of the grounds alleged furnished a legal justification for the delay in making contribution in time. As regards the alleged dispute among the partners leading to a loss of Rs. 1,40,165.15, he observed:

Even if it is assumed that there was a loss as claimed it does not justify the delay in deposit of Provident Fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment, over different points of time. Besides 50% of the contributions deposited late, represented the employees share which has been deducted from the employees wages and was a trust money with employer for deposit in the

statutory fund. The delay in the deposit of this part of the contribution amounted to breach of trust and does not entitle the employer to any consideration for relief."

With respect to the plea that the petitioners had been subject to a power cut of 60% w.e.f. May 6, 1974 by the Narayana Electricity Board, he negated the plea by observing that this restriction was not exclusive to them and further that no cause had been shown as to how this prevented them from depositing the provident fund dues in time. Even if the power-cut had resulted in any substantial loss, it would have reduced the liability on the amount of provident fund dues also. He went on to observe that where an employer can pay wages, it is not conceivable why it cannot pay the provident fund dues. As regards the stand taken that the establishment had borrowed huge sums from the Naryana Financial Corporation and in repayment of which it had defaulted, he held that even if it were so, the fact did not absolve the establishment of its statutory obligations for deposit of provident fund dues in time. Similarly, the other reasons furnished like the purchase of a new generating plant or internal dispute among the partners and the dissolution of the partnership firm etc. did not constitute sufficient cause beyond the control of the petitioners to justify the late deposit of provident fund dues. He, accordingly concluded that the petitioners had failed to carry out their obligation to contribute to the Employee's Provident Fund and Family Pension Schemes within the time limit provided therefore, and that no convincing case had been made out to justify the delay in making the deposits. He also observed on the material on record found as a fact, that the petitioners, having regard to their past record, were "habitual defaulters" and had therefore, to be severally dealt with, and should be visited with the maximum penalty.

8. The Atlantic Engineering Services (P) Ltd. Vs. Union of India and Another, observed that the default is sufficient to enable the Government to recover damages from the employer without proof of loss. The mere fact that the chart of damages was sent along with the show cause notice would not make the final order of the Government arbitrary.

9. In Cosmoc India Rubber Works (P) Ltd. v. RPF Commissioner Maharashtra 1986 FLR 331 the Bombay High Court considered the question whether the industrial concern's defence that they suffered loss due to less production or power cut etc. is sufficient to deprive the contribution. It was observed as under:

That the respondent had further failed to make the payment of contributions for contribution periods ending with September, 1977 November, January 1978 and March 1978, on the due dates for the legal provisions. The details of the amounts of contributions and defaults made by the respondent for the said contribution periods are as follows:

Contribution delay	Amount of Sept. 1977	Number of 33.66	Extent of 11	period ending Over 4 months	Contribution Sept. 1977	defaults 10,458.30	11	Over 4
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months Nov. 1977 86,287.10 12 Over 2 months Nov. 1977 2,366.00 12 Over 2 months Jan. 1978 78,045.40 13 Over 1 month Jan. 1978 66.00 13 Over 1 month March, 1978 88,006.45 14 Over 2 months

10. It would thus be seen that the mere fact the factory or concern has incurred loss on account of various reasons is not enough to deprive the contribution to employees State Insurance fund.

11. In the present case it has been found that deductions were made-from the wages of the workmen for the contribution to be sent to the Corporation, but it was not sent and utilised by the employer on the plea of loss in the factory but as per the law laid down in the above judgment it is not permissible.

12. I am therefore, convinced that the defence accepted by the Judge E.I. Court is not permissible in law and is untenable.

13. Consequently the appeal is accepted. The order passed levying damages by the Corporation, is confirmed and the judgment of the E I. Court is set aside. No one appeared on behalf of the Company employer, the parties would bear their own costs.