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**(1999) 11 AP CK 0049**  
**In the Andhra Pradesh High Court**  
**Case No : AAAO No. 683 of 1994**

ESI Corporation, Hyderabad

APPELLANT

Vs

J.D. Electronics, Abids, Hyderabad

RESPONDENT

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**Date of Decision :** 01-11-1999

**Acts Referred:**

Employees State Insurance Act, 1948 — Section 85

**Citation :** (2000) 1 ALD 582 : (2000) 2 ALT 119 : (2000) 1 LLJ 1484

**Hon'ble Judges :** Elipe Dharma Rao, J

**Bench :** Single Bench

**Advocate :** Mr. B.G. Ravinder Reddy, for the Appellant; Mr. Amancharla Krishna Murthy, for the Respondent

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## Judgement

1. This appeal was filed by the Employees State Insurance Corporation against the order dated 30-1-1994 in EI Case No.10 of 1992 by which the order of the Corporation, demanding an amount of Rs.7,716/- u/s 85-B of the Act by way of damages for the delayed payment of contributions for the period from April, 1983 to June, 1986, was set aside by the Employees State Insurance Court, holding that the respondent No.1 herein is not liable to pay the damages as claimed by the appellant herein, on the ground that when the respondent No.1 herein filed EI Case No.42 of 1986 against the order of the appellant herein demanding contribution for Rs.35,502,80 Ps. by way of ad hoc, assessment for the period from 1-6-1983 to 30-8-1986, as the respondent firm is covered by the ESI Act with effect from 1-4-1983, which was intimated by the Corporation on 10-12-1986. While disposing of the above said EI Case No.42 of 1986 on 19-2-1987, the ESI Court has not empowered the Corporation to impose penalty by way of damages for the delayed payments on the other hand, the Court has directed the Corporation to re-assess the contributions as the respondent was not given opportunity at the time of ad hoc assessment. Further the respondent herein has given undertaking to produce the records for proper assessment of the contributions, which are liable to be contributed by the respondent herein.

2. The learned Counsel for the appellant has submitted that the respondent herein has employed more than twenty persons for wages with effect from 1-4-1983 and the business of the respondent was sale of electronic goods, when the respondent was intimated through its letter dated 10-12-1986 that the establishment is covered under the provisions of ESI Act, with effect from 1-4-1983, he filed EI Case No.42 of 1986 disputing the coverage of his establishment and disputing the ad hoc assessment arrived at by the appellant herein. As per the directions of the ESI Court, the Corporation has re-assessed the contributions and the respondent has paid an amount of Rs.35,502.80 ps., on various dates i.e., 18-4-1987, 28-4-1987, 9-5-1987, 16-5-1987, 25-5-1987, 8-9-1986, 23-9-1986 and 27-9-1986. Thus there is a delay of more than one year in payment of contributions from the date of communication of coverage on 10-12-1985. Further the respondents have disputed through their letter dated 27-6-1989 levying of damages and the same was considered and accordingly u/s 85-B of the Act, the impugned order dated 3-1-1992 was communicated demanding an amount of Rs.7,716/- for the period from April, 1983 to June, 1986. He further submitted that though the Court has not granted any direction, yet the Corporation is entitled to impose interest and damages u/s 85-B of the Act and for implementation of the provisions of the Act, no direction is required from the Court. Therefore, the said demand made by the Corporation imposing damages for delayed payment of the contribution, u/s 85-B of the Act is legal and valid and consequently the order of the ESI Court setting aside the order dated 3-1-1992 imposing the damages u/s 85-B of the Act is liable to be set aside and sought for interference of this Court.

3. The only contention raised by the learned Counsel for the respondent is that the ESI Court has not given any direction in EI Case No.42 of 1986 dated 19-2-1987 empowering the Corporation to levy damages for the delayed payment. After going through the entire material and the judgment of the ESI Court, I am of the considered view that though there is no direction from the ESI Court in EI Case No.42 of 1986 dated 19-2-1987 for collecting damages, but Section 85-B of the Act empowers the Corporation to impose penalty for delayed contributions. Further after producing the records by the respondents, as directed by the ESI Court, in the above said case, the assessment was made for an amount of Rs.35,502-80 ps., i.e., after giving opportunity to the respondent herein, but the respondent has failed to pay the said amount in lumpsum but the same was paid in several instalments. To appreciate the contentions raised by both the parties, it is better to have a glance of Section 85-B of the Act, which reads as follows:-

"... Power to recover damages :--

(1) Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the regulations:

Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard;

Provided further that.....

(2) Any damages recoverable under sub-section (1) may be recovered as an arrears of land revenue or u/s 45C of Section 45A..."

4. A reading of the above said section makes it clear that when the employer fails to pay the amount in respect of any contribution or any other amount payable under the Act, the Corporation is empowered to impose penalty such damages not exceeding the amount of arrears as may be specified in the regulations. It is further contemplated that before imposing such penalty, opportunity must be given to the employer. Under sub-section (2) of Section 85-B, the damages payable under sub-section can be recovered as arrears of land revenue. Therefore, when the employer failed to make contributions, in time the Corporation is entitled to impose penalty and that penalty should not exceed the arrears recoverable from the employer.

5. Therefore, as seen from the facts and circumstances of the case, the Corporation has intimated to the respondent herein on 10-12-1986 that the establishment is covered by the ESI Corporation Act with effect from 1-4-1983 and an assessment order was passed on 18-7-1986. Questioning the same, EI Case No.42 of 1986 was filed and the ESI Court passed an order on 19-2-1987 and the respondent agreed to produce the records and the Court directed the Corporation to reassess the contributions after going through the records and after hearing the respondent herein. The Corporation has re-assessed the contributions from 1-5-1983 to 30-9-1986 to the tune of Rs35,502-80 ps., and as the respondent has taken one year time to pay the contributions, as determined by the Corporation, in terms of the direction of the ESI Court, in EI Case No.42 of 1986, the appellant herein has rightly invoked the provisions of Section 85-B of the Act, which empowers the Corporation to impose penalty by way of damages for the delayed payment of contribution made by the employer. The appellant has passed the impugned order after giving opportunity to the respondent herein. Therefore, it can not be said that the order passed by the ESI Corporation is illegal as it was not empowered by the ESI Court in its order dated 19-2-1987 to levy the penalty. Therefore, the reasoning given by the ESI Court in its judgment dated 31-1-1994 in EI Case No.10 of 1992 is not correct. For invoking the provisions of the Act, no direction is required when the respondent has violated the provisions of the Act. When the respondent herein has delayed the payments, even after a direction from the ESI Court in EI Case No.42 of 1986, he has no right to question the action initiated by the appellant herein.

6. The Employees State Insurance Act is a piece of social security legislation. It has to be interpreted in consonance with the aims and objects of the Act. The employers always try to default in payment of the contributions, as demanded by the Corporation and try to raise some dispute with a view to delay the payment

and to avoid the implementation of the provisions of the Act. The provisions of the Act are meant for the benefit of the employees. To avoid the mischief played by the employers, the provisions of the Act have to be interpreted in favour of the employees. Therefore, I have no hesitation in holding that in the present case, the Corporation has followed the procedure contemplated u/s 85-B of the Act and as such the order passed by the ESI Corporation dated 3-1-1992 demanding the imposed penalty of Rs.7,716/- is valid, proper and within the ambit of Section 85-B of the Act. Therefore, the order passed by the ESI Court in EI Case No.10 of 1992 dated 31-1-1994 has to be set aside and accordingly set aside.

7. In the result, the appeal is allowed without costs.