

(1996) 02 MAD CK 0105
In the Madras High Court
Case No : C.M.A. No. 784 of 1985

Gnanambika Mills Ltd.

APPELLANT

Vs

The Director General, Employees State Insurance Corporation
and Another

RESPONDENT

Date of Decision : 28-02-1996

Acts Referred:

Employees State Insurance Act, 1948 — Section 85B, 94A

Citation : (1996) 74 FLR 1917 : (1996) 2 LLJ 149 : (1996) 1 MLJ 665

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Advocate : R. Venkataraman, for the Appellant; Radha Srinivasan, for the Respondent

Final Decision : Allowed

Judgement

Govardhan, J.—This appeal is against the order passed by the Principal District Judge, Coimbatore in E.S.I. O.P.No. 162/1984 on July 2, 1985.

2. The said O.P. was filed by the petitioner for declaring the order, passed by the first respondent on November 24, 1980 which was confirmed by the second respondent on June 18, 1984 in which the petitioner was directed to pay damages of Rs. 3,37,208/-

3. The learned District Judge, after an enquiry has dismissed the said application. In the present appeal, among other grounds, the appellant has taken a ground to the effect that the Court below ought to have seen that as per the decision of this Court in Diocesan Press v. Regional Director (E.S.I.) Corporation (W.P.No. 2391/1978) the order levying damages by the second respondent is not sustainable.

4. During the pendency of the appeal, the appellant has filed C.M.P. No. 13394 of 1993, a petition under Order 41, Rule 2 of the CPC seeking the permission of this Court to raise an additional ground challenging the order of the E.S.I. Judge. In

this petition, it is contended by the petitioner- appellant that the first respondent viz., The Director General, E.S.I. Corporation had no power of delegation u/s 94-A of the Employees State Insurance Act (hereinafter referred to as "the Act") to delegate the second respondent to pass an order u/s 85-B(i) of the Act for levying and recovering damages, on the ground that the first respondent himself was delegated the power to pass an order levying damages by the E.S.I. Corporation u/s 94-A of the Act, and that the first respondent has no power to delegate this power to the second respondent.

5. When this appeal was taken up for hearing, the learned Counsels appearing for the appellant as well as respondents have contended that this ground taken by the appellant regarding the delegation of powers by the first respondent to the second respondent and the second respondent levying damages has been the subject matter of decision in Writ Appeal No. 126 of 1986 on the file of this Court and also the decision reported in *Sahni Silk Mills (P) Ltd. and Another Vs. Employees' State Insurance Corporation*, by the Supreme Court and in view of the decision of our High Court and also by the Supreme Court, the matter has to be remitted to the E.S.I. Corporation with a direction to enquire the matter afresh and levy damages in accordance with law.

6. In Writ Appeal No. 126/1986, on the file of this Court, the question that arose for determination by the Division Bench is whether the impugned notification could be held to suffer from the vice of sub-delegation. The said appeal is against the judgment of a learned Single Judge of this Court following the decision in *E.S.I. Corporation v. Shoba Engineers* 59 F.J.R.343 to the effect that u/s 94-A of the Act, the Corporation alone is authorised to delegate its power exercisable by it under the Act, but an officer named by the Corporation cannot further delegate them. The learned Judges of the Division Bench have considered the decision relied by the learned counsel appearing for the E.S.I. Corporation in *Rameshwar Jute Mills Ltd. Vs. Union of India (UOI) and Others*, and other decisions and have held that the powers exercisable by the Corporation u/s 85-B of the Act, is quasijudicial and that the question would be whether it can be delegated and ultimately held that such a power cannot be delegated. The Division Bench has also referred to the observation of G.P. Singh in his book on Principles of Statutory interpretation, wherein the Author has observed as follows:

"....It is also well established that judicial or quasijudicial power conferred by a Statute cannot be delegated except when specifically permitted. When delegation of judicial power is permitted by a statute and is made, the delegation is absolute but the delegate may yet remain in the administrative control of the authority delegating the power...."

The Division Bench has held that the general delegation contemplated u/s 94-A would not amount to specific permission and with these observations, the judgment of the learned Single Judge was confirmed and the Writ Appeal was dismissed.

7. Similarly, in the decision reported in Sahni Silk Mills P. Ltd v. E.S.I. Corporation (supra), the Supreme Court has held that u/s 94-A Parliament only conceived of direct delegation by the Corporation to different officers or authorities subordinate to the Corporation and there was no scope for the delegate to subdelegate that power, by authorising for any other officer to exercise or perform the power so delegated. That part of the resolution of the Corporation dated February 28, 1976 which authorised the Director-General to permit any other officer to exercise the power u/s 85-B(1) was ultra vires Section 94-A. From the above two decisions, it is apparent that the stand taken by the appellant that the first respondent in this appeal had no power of delegation u/s 94-A of the Act to delegate the second respondent to pass an order u/s 85-B(1) of the Act for levying and recovering damages is wellfounded. Therefore, I am of opinion that the learned counsel appearing for the appellant and the respondents have fairly requested this Court to remand the matter to the E.S.I. Corporation for fresh disposal according to law and therefore, this is a matter in which the appeal has to be allowed and the matter has to be remitted to the E.S.I. Corporation to decide the question afresh.

8. In the result, the appeal is allowed setting aside the order passed by the E.S.I. Judge, Coimbatore in E.S.I.O.P. No. 162/1984 and the matter is remitted to the E.S.I. Corporation Madras for fresh disposal according to law in the light of the above decisions. No costs.