

(1999) 08 MAD CK 0092

In the Madras High Court

Case No : Writ Petition No. 12029 of 1991

Guindy Machine Tools Pvt. Ltd.

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 19-08-1999

Acts Referred:

Employees State Insurance Act, 1948 — Section 14B

Citation : (2000) 84 FLR 262 : (2000) 1 LLJ 287 : (1999) 3 MLJ 595

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Ashok Menon, for the Appellant; G. Desappan, for the Respondent

Final Decision : Partly Allowed

Judgement

P. Sathasivam, J.—Aggrieved by the order of the respondent dated January 31, 1991 issued u/s 85B of the Employees' State Insurance Act, the petitioner has filed the above writ petition.

2. The case of the petitioner is as follows:

According to the petitioner they are engaged in the manufacture of machine tools and accessories. The Employees' State Insurance Act applies to the petitioner as per which the petitioner has to defray to the respondent each month certain amount from and out of the salary of each of the employee. The petitioner has been doing so regularly and without any default. While so, they received a show cause notice dated September 19, 1990 from the office of the respondent. Since the issues involved were quite exhaustive and over a period of five years earlier. They wrote a letter to the respondent's office dated September 28, 1990 requesting time for production of the necessary details. Nothing was heard in the matter from the respondent. However they received an impugned order dated January 31, 1991 from the respondent stating that a notice had been issued to the petitioner on September 18, 1990 in respect of proposed levy of damages for delayed payment of Employees' State Insurance Contribution during the period

May, 1985 to January, 1987 and that as the petitioner neither submitted any reply nor sought for any personal interview, the respondent was levying the damages of Rs. 80719.59. Prior to the said order no notice or instruction had been received by the petitioner. However the order passed by the respondent is not a speaking one and it does not give any reason whatsoever for the levy of damages. Then the Special Tahsildar, Employees' State Insurance Corporation has threatened to launch revenue recovery proceedings, in case the petitioner does not pay the amount immediately. Hence having no other remedy the petitioner has filed the present writ petition.

3. The respondent has not chosen to file counter affidavit disputing various averments made by the petitioner.

4. In the light of the above factual position, I have heard Mr. Ashok Menon, learned counsel for the petitioner as well as Mr. G. Desappan, learned counsel for the respondent.

5. Mr. Ashok Menon, learned counsel for the petitioner has raised the following contentions:

(i) Prior to the impugned order no notice was served on the petitioner u/s 85B of the Employees' State Insurance Act;

(ii) In view of the long delay in claiming the alleged damages at any rate, the respondent alone is responsible and the same cannot be mulcted with the petitioner; and

(iii) Inasmuch as the impugned order is a non-speaking one without any details, the same is liable to be set aside.

6. On the other hand, Mr. G. Desappan, learned counsel for the respondent by placing the relevant files would contend that, notice was served on the petitioner before passing the impugned order. He also submitted that delay has not caused any prejudice or loss to the petitioner. He also submitted that, inasmuch as even in the show cause notice all the details have been furnished and there is no need to once again refer those details in the impugned order, accordingly he prayed for dismissal of the writ petition.

7. I have carefully considered the rival submissions.

8. Regarding the first contention, though Mr. Ashok Menon has stated that there was no notice prior to the impugned order, after verifying the records produced by the learned counsel for the respondent it is not disputed that the petitioner was duly served with show cause notice prior to the impugned order, accordingly the first contention is liable to be rejected.

9. Regarding the second contention that there is a delay in the initiation of proceedings under the provisions of the Employees' State Insurance Act, the show cause notice dated September 18, 1990 clearly show that amount was due from May 1985. It is also clear that for non-payment of contribution on the due

date, admittedly the respondent has initiated proceedings only on September 18, 1990. In other words, in the show cause notice dated September 18, 1990, steps were taken for non payment of contribution within the due date commencing from May, 1985 to January, 1987. To put it clear that, only after 4 years to 4 1/2 years, the respondent has initiated the proceedings to recover the damages for the belated payment. In this regard, even though there is no statutory limitation, learned counsel for the petitioner relying on the Division Bench decision of this Court in *Presidency Kid Leathers (P) Ltd. Vs. Regional Provident Fund Commissioner*, would contend that on the same line as observed by their Lordships in the Division Bench, damages may be reduced at least to the extent of 50 per cent. In the case before the Division Bench there was a delay of 4 1/2 years to 8 years in payment of provident fund contribution. Ultimately after notice to the person concerned the authority levied damages in some cases at 100 per cent and in few cases at 50 per cent, in other cases ranging from 20 to 40 per cent. It was pointed out before the Division Bench that the respondent Department had taken 4 1/2 years to 8 years in initiating the proceedings u/s 14-B of the Act which according to the Management is fatal to the claim of the Department. It is also stated by the employer, due to such inordinate delay they were not in a position to trace the reasons with supporting materials which prevented it from paying the contribution within the stipulated time. There also it is contended that, there is no period of limitation for levying damages, their Lordships in the Division Bench have observed that:

"We are of the view that the initiation of action after a delay of 4 1/2 years to 8 years is wholly unreasonable and therefore the order of the respondent is liable to be modified only with reference to the percentage of damages levied."

Again,

"We cannot also ignore the legitimate contention of the learned counsel for the petitioner that by reason of the delay in the initiation of the proceedings u/s 14-B of the Act, the petitioner/appellant was totally handicapped in putting forth the reasons for the alleged delay in the payment of the contribution and therefore, the order impugned is liable to be modified. Though it is contended by the petitioner/appellant that the respondent's failure in initiating the proceedings within a reasonable time viz., not later than one year, will render the impugned order non-est in law and liable to be set aside, we are unable to accept the said contention. But, however, we hold that the initiation of proceedings with a delay of 4 1/2 years to 8 years cannot at all be easily ignored. Therefore, the interest of justice and fair play will be amply met if we reduce the amount of damages levied by 50 per cent in both the writ petition and the writ appeal for the relevant periods in question."

Though the said observation and conclusion is in a different Act, in the light of the fact that the procedure contemplated in both the Acts are identical and similar, I am of the view that the petitioner is entitled to rely upon the said Division Bench decision. It is true that as per the decision of their Lordships of

Supreme Court in Employees" State Insurance Corporation Vs. Narniat Pharmaceuticals and Chemicals Pvt. Ltd., it is open to the respondent to award (sic) damages, within the ceiling of 100 per cent amount of the arrears of contribution, in view of un-explained delay by the respondents, I am of the view that the observation and conclusion of their Lordships of the Division Bench in Presidency Kid Leathers (P) Ltd. v. The Regional Provident Fund Commissioner, (supra), is applicable to the facts of the present case. I have already demonstrated that, in our case the period is ranging from May, 1985 to January, 1987. In the light of the factual position mentioned above and following the said Division Bench judgment, I reduce the amount of damages levied by 50 per cent.

10. Regarding the third contention that the impugned order is not a speaking one, learned counsel for the petitioner by relying on a decision reported in Organo Chemical Industries and Another Vs. Union of India (UOI) and Others, would contend that the same is liable to be set aside. No doubt, in the impugned order the respondent has not assigned any reason for levying damages for delayed payment of contribution. However, as rightly contended by Mr. Desappan, in the light of the fact that all the details have been mentioned in the show cause notice dated September 18, 1990 there is no need to once again reiterate the same in the impugned order. The perusal of the show cause notice referred above shows that it contains all the details viz., period of wage, amount due, due date, actual date of payment, extent of delay, interest at 6 per cent, 12 per cent, 19 per cent, etc., No doubt on receipt of the show cause notice the petitioner did not submit any reply. In such circumstance the impugned order cannot be assailed as a non-speaking one.

11. In the light of what is stated above, particularly in view of my conclusion on the second point by applying the ratio in Presidency Kid Leathers (P) Ltd. v. The Regional Provident Fund Commissioner, (supra), the interest of justice and fair play will be met by reducing the amount of damages levied by 50 per cent and the writ petition is allowed to the extent mentioned above. No costs.