
(2009) 03 AHC CK 0081

In the Allahabad High Court

Case No : Writ Petition No. 3198 (M/B) of 1995

Gyan Security Press (P) Ltd. and another

APPELLANT

Vs

Director General and others

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 85B

Citation : (2009) 03 AHC CK 0081

Hon'ble Judges : Devi Prasad Singh, J and V.D.Chaturvedi, J

Final Decision : Disposed Of

Judgement

Devi Prasad Singh and V. D. Chaturvedi, JJ.—The petitioner M/s. Cyan Security Press (P) Ltd. have approached this Court under Article 226 of the Constitution of India raising grievance as to what extent the Employees State Insurance Corporation may impose penalty, interest or damage on account of default of deposit of contribution under the Employees State Insurance Act, 1948 (hereinafter referred to as "Act").

2. Heard Sri M. P. Singh learned Counsel for the petitioners and the learned Counsel for the opposite parties.

3. The submission of learned Counsel for the petitioner is that while imposing penalty, interest or damages the respondents have got no right to impose an amount which may exceed to the arrears of dues payable by the Employer. While approaching this Court, the petitioners have sought the following relief:

"(a) that the proceedings started under Section 45A of the Act by the Corporation be quashed by issuing a writ, order or direction in the nature of writ of certiorari, contained in Annexures No. 8 and 8A to the writ petition by which the Corporation determined the contribution to the tune of Rs. 5,52,902/ and Rs. 2,74,729/;

(b) that the orders issued to the recovery officer by the Authorised Officer of the Corporation for recovery of amount of Rs. 8,37,374/and Rs. 3,34,470/ contained

in Annexures No. 11 and 12 be quashed by issuing a writ of certiorari;

(c) That any other relief which this Hon"ble Court may deem fit and proper under the circumstances of the case, be granted to the petitioners, in the interest of justice;

(d) that the writ petition may be allowed with cost against the opposite parties."

4. Learned Counsel for the petitioners has invited our attention to the provisions of Section 85B of the Act which provides that if an employer fails to pay the amount due in respect of any contribution, the Corporation may recover the same by way of penalty not exceeding the amount of arrears as may be specified in the Regulations. For convenience, Section 85B of the Act is being reproduced below :

85B. 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 the Corporation may reduce or waive the damages recoverable under the section in relation to an establishment which is sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the Board or industrial and financial reconstruction established under Section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in regulations.]

(2) Any damages recoverable under subsection (1) may be recovered as an arrear of land revenue (or under Section 45C to Section 451).

5. The petitioners' Counsel has relied upon a judgment of Hon"ble Supreme Court, reported in Employees State Insurance Corporation v. H.M.T. Ltd. and another, (2008) 2 UPLBEC 1694. In the case of HMT Ltd. (supra) the Hon"ble Supreme Court held that the Employer is bound to make his part of the contribution under the Act. But the same does not mean that levy of damages in all situations would be imperative. Their Lordships further observed that the legislature has limited the jurisdiction of the authority to levy penalty, i.e., not exceeding the amount of arrears. For convenience, para 15 of the judgment is being reproduced below :

15. Section 85B of the Act uses the words "may recover". Levy of damages thereunder is by way of penalty. The Legislature limited the jurisdiction of the authority to levy the penalty i.e., not exceeding the amount of arrears. Regulations 31C of the Regulations, therefore, in our opinion, must be construed

keeping in view the language used in the Legislative Act and not de hors the same.

6. The submission of learned Counsel for the petitioners is that while imposing penalty the respondents have exceeded the quantum of compensation more than the arrears which was liable to be paid by the petitioners. It has been further submitted that the respondents have not adjudicated the controversy, yet they have started the proceedings under Section 45A of the Act.

7. Since the controversy involves the question, of facts, the Regional Director, opposite party No. 2 is directed to decide the controversy in accordance to law by passing a speaking and reasoned order within three months from the date a certified copy of this order is produced before him, by giving an opportunity of hearing to the petitioner. While deciding the controversy, the competent authority shall take into account the statutory provisions, rules and regulations on the subjectmatter as well as the law settled by the Hon"ble Supreme Court in the decision, referred to above. The liberty is given to the petitioners to move afresh representation to the authority concerned within 15 days from today.

8. For the period of three months or till a decision is taken on the subject matter, whichever is earlier, the recovery proceedings shall remain stayed.

9. With the above observations this writ petition is disposed of finally.

Decided accordingly.