

(1991) 09 CAL CK 0046
In the Calcutta High Court
Case No : Matter No. 2244 of 1989

National Jute Manufacturers Corpn.

APPELLANT

Vs

E.S.I.C. and Another

RESPONDENT

Date of Decision : 13-09-1991

Acts Referred:

Employees State Insurance Act, 1948 — Section 85B

Citation : 96 CWN 555 : (1994) 3 LLJ 704

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Advocate : P. Banerjee, for the Appellant; Subal Maitra and Jayanta Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Ray, J.—In this matter no affidavit in opposition has been filed. Counsel on behalf of the Employees State Insurance Corporation has resisted the matter on points of law. I think the respondent is successful in that attempt and that the writ application should be dismissed with costs. My reasons for thinking so are as follows:

2. The application has been made complaining against the levy of damages by the Employees' State Insurance Corporation u/s 85(B) of the Employees' State Insurance Act. The Annexures to writ petition as well as the statements in the writ petition show that the facts are practically admitted. The petitioner defaulted in payment of the amount of employees insurance contribution and the details of the default would be found at page 17 of the writ petition. Though the principal amounts were ultimately cleared up, yet the defaults once committed remained on record, and thus a notice dated 27th April, 1989 was served which was in the nature of a show-cause notice. After giving of hearing about which no complaint was made an order u/s 85(B) was passed. The point about the unconstitutionality of the said section has not been pressed before me. Two points in the main have been urged by Mr. Ajay Kumar Gupta in support of the

petition. The first point is that in view of the running of a period of three years since most of the payments as will appear from page 17, the levy of damages u/s 85(B) is said to be beyond the powers of the corporation. The second point urged was that since the levy was in the nature of damages there had to be certain basis to show how such damages could be estimated at the total figure of Rs. 2,59,348. It was suggested that similar principles as are applicable to situations in an action in contract or tort would also be applicable in this case and that without proof of some damage and without establishment of some basis for award of damages the said amount of damages cannot be awarded.

3. On behalf of the Employees' State Insurance Corporation, I think, sustenance has been appropriately drawn from the apposite case of *Prabartak Jute Mills Ltd. v. Employees' State Insurance Corporation Ltd.* reported in 1982 2 C L J 248. Justice Manas Nath Roy in that case explained the nature of Section 85(B). His Lordship said that the levy of damages as per that Section is a levy in the nature of penalty to teach the defaulter a lesson. Though the word used is "damages" yet it was His Lordship's opinion that in the context the ordinary concept of damages as flowing in a contractual or tortious action was inappropriate. His Lordship also considered the question of levy of damages in comparison with the levy of interest 6% as per Regulation 3 I(a) framed u/s 97 of the said Act. It was his Lordship's opinion that the aforesaid Regulation and the levy of damages u/s 85(B) covered two entirely different fields. It was also held by His Lordships that, being in the nature of a statutory penalty the question of levy of damages u/s 85(B) would not be subject to any ordinary period of limitation as prescribed under the Articles of the Limitation Act of 1963.

4. I have no hesitation in respectfully following the aforesaid propositions of law laid down by Justice Roy, and the same are also binding upon me.

5. Indeed, I might add with respect, that where the claim is put forward by the Employees' State Insurance Corporation and the imposing authority is also the Employees' State Insurance Corporation as is envisaged u/s 85(B) of the said Act, the situation is not at all like an ordinary situation in an action in contract or tort. In such an action the person who claims damages is not put in the position of Judge. But if the word "damages" is understood to be in the nature of penalty then the imposition of the penalty by the authority to whom the amounts levied should be paid, assumes a normal and ordinary character, Justice Roy's dicta in the above case thus tally completely with this usual framework of imposition of statutory penalties.

6. It was also argued on behalf of the respondent that as has been laid down in the case of *Sakuru Vs. Tanaji*, the ordinary periods of limitation are usually to be made applicable to proceedings in Court. Indeed, it is now probably good law that if a proceeding is in an ordinary Court of law all applications might be subject at least of the residuary period of limitation. But the point here is quite different. It is the point of any period of limitation being applicable, not to a particular proceeding, but to the proceeding before a particular tribunal or

authority. In my opinion on the authority of the aforesaid Supreme Court case it might safely be concluded, that proceedings for levy of damages or penalty u/s 85(B) of Employees' State Insurance Act would not be subject to periods of limitation prescribed in the 1963 Act as the same are applicable to proceedings in ordinary Courts of law. One looks in vain in the Employees' State Insurance Act as to whether any special period of limitation for levy of penalty u/s 85(B) has been prescribed. In the absence of such a prescription of a special period, the levy of damages or penalty for defaults beyond the period of three year can not be straight way rejected as outside the scope or jurisdiction of the Corporation.

7. In view of the above discussion, it is quite unnecessary to enter into the question-of the special period of limitation as prescribed by the West Bengal State Amendment which is applicable to Government companies and is made to be the same as the enlarged Government period of thirty years. The levy of penalty is not to be saved by application of any special provision of limitation because limitation itself is not in issue as in an ordinary suit or application.

8. It was also sought to be urged as a third point that the matter should have been decided by the Employees' State Insurance Court, and that regard the point of limitation was again sought to be raised in another way by saying that the dispute before the Employees' State Insurance Court would have to be raised by the respondent and initiated within the period mentioned u/s 77(1)(A) of the said Act. If I understand this contention of the petitioner rightly, then with respect, it is a weird submission. The Corporation has passed an order and has levied damages. If the submissions is that immediately thereafter the Corporation itself has to raise a dispute about its own award and refer the matter for decision to the Employees' State Insurance Court then it would be an argument that a person is to dispute his own stand in the matter. The proper and reasonable approach in my opinion would be that in the event the Employees' State Insurance Court has a jurisdiction in the matter of reconsidering the levy of damages u/s 85(B) then it would be for the person who has been called upon to pay damages to raise such dispute after the order of levy has been made, published and served upon him. If no disputes are raised by him as in this case it must be assumed that the person does not wish to raise a dispute in that regard or take recourse to the remedies, if any, provided under the said Act.

9. In the above view of the matter the writ petition is dismissed with costs.

10. The interim stay order passed on 13th July 1989 is vacated. The deposited amount Rs. 1,00,000/- put in pursuant to that order shall be made over forthwith to the Employees' State Insurance Corporation.

11. Stay of operation of this order is prayed for but, in view of the admitted defaults and the long lapse of time no stay should be granted. In any event no stay is necessary as in case of any success of the writ petitioner in any Court higher up, there will be no difficulty, I am sure about the adjustment of accounts as between the parties herein, both of whom are public parties, and by reason of

which, apparently, no prosecution had been initiated against the writ petitioner even for admitted defaults.

All parties are to act on the signed copy of this dictated order on the usual undertaking.