

(1986) 04 PAT CK 0033

In the Patna High Court

Case No : Civil Writ Journ. Case No's. 827 of 1981 and 3162 of 1982

Rameshwar Jute Mills Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-04-1986

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 3(1)
Employees State Insurance Act, 1948 — Section 85B, 94A, 97

Citation : AIR 1986 Patna 288

Hon'ble Judges : S.S. Sandhawalia, C.J.; Uday Sinha, J.; S. Ali Ahmad, J

Bench : Full Bench

Advocate : S. Tibrewal, Amar Singh and Prabhat Kumar Verma, for the Appellant; Sachchidanand Sahay, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—The significant issues felling for determination by this Full Bench in the context of the Employees' State Insurance Act, 1948 (Act 34 of 1948), may well be succinctly formulated as under : --

(i) Whether Section 94A of the Act aforesaid authorises the delegation of the powers conferred by Section 85B of the Employees' State Insurance Corporation to officers or authorities subordinate to the said Corporation?

(ii) If so, whether the Resolution dated the 24th February, 1976 (published in the Government of India Gazette dated the 15th December, 1979), authorising the Director General or any other officer authorised by him to levy and recover damages from the employers u/s 85B(1) of the Act is valid in its totality?

(iii) Whether the second proviso to Regulation 3 of the Employees' State Insurance (General) Regulations, 1950, would be attracted to the situation and would bar further delegation by the Corporation?

(iv) Whether the Division Bench judgment of this Court in Rameshwar Jute Milk Limited v. Union of India (Civil Writ Journ. Case No. 3815 of 1982 - decided on the

4th October, 1982), lays down the law correctly in this context?

2. The representative matrix of facts may be noticed with brevity in so far as it is relevant to the pristinely legal issues aforesaid and are picked from Civil Writ Jurisdiction Case No. 827 of 1981, in this set of two identical and connected writ petitions.

3. The petitioner, Rameshwar Jute Mills, is undisputedly amenable to the provisions of the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act). It seeks to impugn and quash Annexures "1" to "4", the orders passed by the authorities under the said Act. It has been averred that by a notice dated the 25th October, 1977, the Assistant Regional Director informed the petitioner-Mills that damages amounting to Rs. 3,71,239.83 Paise had been levied against it for repeated failure to make payment of the contributions for different periods beginning from the 27th September, 1975, and ending with the 28th May, 1977. The petitioner-Mills, vide Annexure "5" sent a detailed explanation in pursuance of the notice aforesaid and, inter alia, stating therein that the delay in the submission of the contribution cards was due to the nonavailability of the required stamps at the Samastipur Branch of the State Bank of India. This explanation was duly considered by the Regional Director, who seriatim noticed the grounds raised by the petitioner, and, by a reasoned order, he granted substantial relief to the petitioner and reduced the damages to Rs. 92,810.00, whilst observing that this was the first case of default (vide Annexure "3" dated the 7th October, 1978). It was further directed that the said amount of damages be paid within a period of thirty days from the date of that order. After the receipt of the said order, the petitioner, on the 16th January, 1980, sent another letter to the Regional Director, making a grievance about the imposition of damages. However, vide Annexure "2" dated the 7th October, 1980, the authority informed the petitioner that even after re-examining the matter in the light of the facts furnished by the petitioner, it was regretted that no further relief was possible and the petitioners were peremptorily directed to pay the assessed damages of Rs. 92,810.00, within ten days of the receipt of the communication. Later, vide Annexure "1", dated the 5th January, 1981, the petitioners were informed that the competent authority, namely, the Regional Director, Patna, had levied the damages after considering all the facts of the case and they were directed to pay the damages so levied. Aggrieved by the action of the respondents, the present writ petition was filed challenging the validity of the impugned orders.

4. It would appear that Certificate proceedings were also initiated against the petitioners in the Court of the District Collector, Samastipur, within whose jurisdiction the petitioner-Mills are situate. Later, on the 21st July, 1982, the petitioners filed a supplementary affidavit, expressly taking additional grounds that Section 94A of the Act empowers the Corporation to delegate its powers to its officers and by a resolution, the said Corporation had empowered the Director General to levy and recover damages u/s 85B of the Act. It was, however,

claimed that the Director General had further sub-delegated his power to levy the damages to the Regional Director, which was without jurisdiction and contrary to Section 94A, and, consequently the levy and recovery of the damages by the Regional Director was wholly without the authority of law.

5. In the counter-affidavit filed on behalf of the respondent, preliminary objections have been taken that the petitioner has alternative remedy of taking resort to Section 74 of the Act. It is expressly pleaded that the Employees' State Insurance Court has been duly constituted at Patna, which has full jurisdiction over the dispute. It has then been objected that the certificate proceedings having been admittedly initiated, the petitioners should resort to the remedy by way of appeal and revision provided against the orders of the Certificate Officer. On merits, it has been averred that the notice issued to the petitioners had expressly directed them to show cause within 15 days why damages proposed may not be recovered, and it also requested Shree B.L. Soni, the principal employer, to inform, whether he would like to avail of the opportunity of personal hearing in the matter or not. It is pointed out that there is a clear admission of the petitioners that they did not pay the contribution through submitting cards duly affixed with the required stamps within the stipulated time. The factual allegations made on behalf of the petitioners have been categorically controverted, and, in particular, it has been averred as follows : --

"That the contentions of paras Nos. 6 and 7 of the writ application are totally false. The respondents always supply or supplied the required stamps in the State Bank of India at Samastipur, Bhagalpur, Muzaffarpur, Patna, etc., for submitting the contribution cards in time. This deponent asserts that the respondents always allowed or allow the petitioner to submit contribution cards in time. The petitioner has falsely stated in Para No. 7 that the contribution on cards were not submitted in time due to the lack of the supply of the required stamps."

It has been specifically averred that full consideration was given to the letters, representations and explanations furnished by the petitioners, and, it was only thereafter that the Regional Director passed orders levying the damages. With regard to the authorisation of the Regional Director to levy damages, it is unhesitatingly asserted that the same has been validly done and the action of the authorities is wholly within jurisdiction.

6. Both these writ petitions originally came up for hearing before a Division Bench. On behalf of the petitioners basic reliance was placed on the Division Bench order of this Court in Civil Writ Jurisdiction Case No. 3815 of 1982 (supra), whilst, on the other hand, the respondents firmly rested themselves on an exhaustive Division Bench judgment of the Punjab and Haryana High Court in Employees' State Insurance Corporation v. Dhanda Engineers Private Limited, 1981 Lab IC 658 taking a contrary view, Yet again, the matter was considered by a Division Bench of the Karnataka High Court in Employees' State insurance Corporation, Bangalore v. Sobha Engineering, Bangalore (1981) 59 FJR 343

which dissented from the view in *E.S.I. Corporation, Bangalore v. Messrs Dhanda Engineers Pvt. Ltd.* (supra). Noticing the conflict of precedent, the matter was referred for an authoritative decision by a larger Bench, and, that is how it is before us now.

7. Inevitably, the significant issues noticed at the very outset have to be viewed against the backdrop of the relevant statutory provisions, the larger scheme of the statute and its legislative history. Herein what initially calls for notice is that Section 3 of the Act provides for the establishment of the Employees' State Insurance Corporation with such date as the Central Government may notify in the official Gazette. This Corporation would be a body corporate, having a perpetual succession and other indicia " of a legal person. The constitution of the Corporation is provided for in Section 4 of the Act Now a plain reading of Sub-sections (a) to (j) of Section 4 would indicate that the membership of the Corporation, when complete, would well extend beyond even 40 or more members. A reference to Sub-section (d) thereof would show that one person, each representing each of the States in which the Act is enforced, has to be nominated by the State Governments concerned to the Corporation. Similarly, the other sub-sections would make it plain that apart from the larger number, the membership of the Corporation inevitably is drawn from all the four and wide spreading corners of our big country. It is thus manifest that in totality the membership of the Corporation would be a large unwieldy body, which is obviously not designed to deal with or take over the day to day burden of its working. This was so viewed by the Statute is further evident from Section 4 of the Act, which provides for constitution of a Standing Committee for the Corporation. Sub-sections (a) to (d) thereof would then indicate that this would be a relatively compact body comprised of about 16 members. It would, however, be apparent that even a body of this nature cannot be visualised to competently handle the day to day course and working of the Corporation, whose operation may ultimately extend to all the States within our vast country.

8. When originally enacted in 1948, the Act apparently did not have express statutory authority for delegation. This was, however, remedied by the insertion of Section 94A by Act No. 53 of 1951. It may then be noticed that Section 85B of the Act, conferring the power to recover damages was not brought on the statute book till as late as Sept. 1, 1975, by virtue of Act No. 38 of 1975.

9. It is common ground that the issues herein would turn primarily on the provisions of Sections 85B and 94A of the Act These may, therefore, be noticed in extenso at the outset.

"85-B. (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 such damages not exceeding the amount of arrears as it may think fit to impose :

Provided that before recovering such damages, the employer shall be given a

reasonable opportunity of being heard.

(2) Any damages recoverable under Sub-section (1) may be recovered as an arrear of land revenue."

"94-A. Delegation of powers -- The Corporation, and, subject to any regulations made by the Corporation in this behalf, the Standing Committee may direct that all or any of the powers and functions which may be exercised or performed by the Corporation or the Standing Committee, as the case may be, may, in relation to such matters and subject to such conditiong, if any, as may be specified, be also exercisable by any officer or authority subordinate to the Corporation."

9A. The stage is now set for considering the questions individually and inevitably one may first turn to question No. (i). Herein, learned Counsel for the petitioners, Mr. Tibrewal's primal stand was that the exercise of the power u/s 85B is inherently quasi judicial in nature. Counsel pointed out that the ingredients of natural justice have been incorporated in Section 85B itself by the proviso to Sub-section (1), and, consequently, the Corporation's discretion herein partakes the nature of an adjudication betwixt the alleged default in the payment of the amount and the explanation of the employer with regard thereto. It was further submitted that this would postulate the passing of a reasoned and speaking order. Reliance was placed on *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI)* and Another, . The suggestion and the stand was that what was at issue was a delegation of a quasi judicial power, which is not to be easily assumed.

10. On behalf of the respondents, a faint attempt was made to controvert this stand and it was argued somewhat half-heartedly that Section 85B had to be necessarily enacted as a sanction for the punctual payment of dues under a beneficent statute like the Act and was more in the nature of a procedural provision for the imposition and recovery of compensatory damages in order to ensure promptitude of payment Some emphasis was also sought to be placed on the words "as it may think fit to impose" for arguing that this phrase was more consistent with a subjective satisfaction of the Corporation than the exercise of a quasi judicial power.

11. Herein, I am firmly inclined to the view that the learned Counsel for the petitioners, Mr. Tibrewal, is on firm and impeccable ground. What first meets the eye here is the proviso to Section 85B(1), which, in categoric terms lays down that before recovering such damages, the employer should be given a reasonable opportunity of being heard. This obviously implies that he must be called upon to show cause against the proposed levy of damages and any explanation rendered by him has to be taken into consideration. The statute is itself clear. But, even otherwise, it is now well settled by precedent that in the exercise of a quasi judicial function, the requirement of natural justice may well be read into the provisions and the party against whom an adverse order is to be passed must be heard in his defence. In the converse, when the law itself mandates that a

reasonable opportunity "of being heard must be given, it would follow that the same, if availed of, has to be adjudicated upon and the proceeding would thus assume the character of a judicial or quasi judicial proceeding. Equally, the language of the proviso to Section 85B(1) is mandatory in form and employs the word "shall", and it must, therefore, be held that it is incumbent on the authority under this provision to duly consider an explanation, which the employer may have to make before the assessment and levy of damages against him. Once it is so held, the issue of passing a speaking order would be a necessary corollary. It is axiomatic that in the exercise of a quasi judicial function, when opportunity has to be given to the parties to present their case, it becomes normally necessary to record a reasoned order, however brief it may be. The employment of the words, "as it may think fit to impose" in Section 85B(1), far from aiding the respondents, may well go in favour of the petitioners. Their Lordships in *The Commissioner of Coal Mines Provident Fund, Dhanbad and Others Vs. J.P. Lalla and Sons*, , whilst construing the closely identical provisions of Section 10-F of the Coal Mines Provident Fund and Bonus Schemes Act, 1948, observed as follows : --

"The words of importance in Section 10-F of the Act are "such damages not exceeding 25 per cent of the amount of arrears as it may think fit to impose. Here the two important features are these. First, the words of importance are "damages not exceeding 25 per cent". These words show that the determination of damages is not an inflexible application of a rigid formula. Second, the words, "as it may think fit to impose", in Section 10-F of the Act show that the authorities are required to apply their mind to the facts and circumstances of the case."

It seems somewhat unnecessary to labour the point on principle, because, it appears to me as somewhat well settled on binding precedent. Under the similar provisions of Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, their Lordships in *Organo Chemical Industries and Another Vs. Union of India (UOI) and Others*, have held as follows : --

"The conferral of power to award damages u/s 14-B is to ensure the success of the measure. It is dependent on existence of certain facts, there has to be an objective determination, not subjective. The Regional Provident Fund Commissioner has not only to apply his mind to the requirements of Section 14B but is cast with the duty of making a "speaking order", after conforming to the rules of natural justice."

An identical view has again been taken in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, , *Toshiba Anand v. E.S.I. Corporation* 1980 Lab IC 907 (Ker) and *Regional Director, Employees' State Insurance Corporation v. Tungabhadra Steel Products Limited* 1981 Lab IC 96 Kar.

12. In view of the above, it must, therefore, be held that the exercise of the

power u/s 85B of the Act is quasi judicial in nature and it is incumbent on the Corporation to not only consider the explanation of the employer, if duly rendered, but also to pass a speaking order, if damages are imposed. However, it is axiomatic that the volume and the content of the speaking order must inevitably depend upon the nature of the particular case. The reasons expected to be recorded in a speaking order are directly related to the exhaustiveness or otherwise of the contentions raised or the explanations given in reply to the show cause notice. Obviously, where the objections raised are themselves vague and devoid of necessary particulars and the explanation is ex facie unsatisfactory, then even a finding that the plea is plainly untenable may be sufficient compliance of the requirement of a reasoned order. Their Lordships in *Siemens Engineering and Manufacturing Company of India Limited v. Union of India* AIR 1976 SC 1786) (supra), which has been firmly relied upon by the petitioners themselves have observed as under :--

"It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a Court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him."

Again, a Division Bench of the Allahabad High Court, in *Regional Provident Fund Commissioner v. Allahabad Canning Company* 1978 Lab IC 998 has pointedly taken the same view. Following the same, the Division Bench in *T.C.M. Woollen Mills (Private) Limited, Ludhiana v. Regional Provident Fund Commr.* 1981 Lab IC 267 has held as under : --

"As has already been noticed in the resume of facts, despite a repeated number of opportunities given to the petitioners of personal hearing, they chose not to avail most of them. Apparently it is plain that in such a situation unless the objections and the factual matters are pressed before the Commissioner he cannot imagine the same and pretend to adjudicate thereon."

It suffices to observe that I am entirely inclined to concur with the aforesaid view.

13. Having held as above in favour of the petitioners' stand, the question that now remains is whether the quasi judicial power u/s 85B can be delegated by the Corporation by virtue of Section 94A of the Act.

14. Even a plain reading of Section 94A would show that it vests the Corporation with a plenary power to delegate all or any of its powers and functions which may be exercised by it to any officer or authority subordinate to the Corporation. It seems manifest that whilst the power to delegate by the Standing Committee may be hedged in subject to any regulations made by the Corporation in this behalf, the Corporation itself has been vested with an unrestricted power to delegate all its functions to any one of its subordinates it may choose in its wisdom. This seems inevitably so because the Corporation itself is empowered to frame the regulations, and, so far as the delegation of the powers of the

Corporation is concerned, Section 94A has conferred unrestricted discretion on it for the purpose. I am unable to find any limitation or constriction on the Corporation as such in Section 94A.

15. Indeed, faced with the wide ranging language of Section 94A itself and a long line of unbroken precedent, learned Counsel for the petitioners ultimately did not seriously contest the position that the powers conferred by Section 85B on the Corporation can equally be delegated to officers or subordinate authorities u/s 94A. The question that was contentiously pressed on behalf of the petitioners, indeed, was that there could not be any sub-delegation, and, even the Corporation could not expressly or impliedly authorise the same. This aspect would be discussed more elaborately and conveniently under the succeeding question (ii).

16. To conclude on this aspect, the answer to question (i) is rendered in the affirmative and it is held that Section 94A of the Act authorises the delegation of power conferred u/s 85B on the Corporation to Officers or Authorities subordinate to the said Corporation.

17. One may now advert to the somewhat more crucial question No. (ii). The factual base thereof may first be noticed. It is the admitted position before us that acting u/s 94A, the Corporation passed a resolution on the 28th February, 1976, the terms of which call for notice in extenso : --

"Resolved that for purposes of levy of damages u/s 85-B(1) of the Employees' State Insurance Act, 1948, as amended up-to-date, the Director General or any other officer authorised by him may levy and recover damages from the employer/s not exceeding the rates as per Table annexed."

18. For the sake of clarity, it is necessary to highlight that on behalf of the petitioners the delegation in favour of the Director General, vide the aforesaid resolution is not challenged. Indeed, it is conceded and admitted that by virtue of Section 94A, the power u/s 85B could validly be delegated to the Director General and, it has indeed been so done. What, however, is put in issue is the delegation in favour of any other officer of the Corporation. It is the stand of the petitioners that this delegation in the resolution amounts to conferring the power to sub-delegate, which is invalid.

19. The somewhat hyper-technical contention aforesaid merits testing on the anvil of the language of the aforesaid resolution. Therefore, the same calls for a somewhat closer analysis. It is plain that thereby the delegation by the Corporation has not been made only in favour of the Director General. The resolution does not say that the Director General is the sole person authorised to levy and recover damages u/s 85B. By the very nature of things, it is inconceivable that in a country of such wide dimension as India, the Corporation would authorise the solitary Director General to levy and recover damages from thousands of establishments throughout the length and breadth of the country. The intention of the Corporation to authorise other officers as well is too

manifest, unless one wishes to lay a total absurdity at its door. Admittedly, later, these powers were conferred not only on Regional Directors, but even on Joint Regional Directors and Deputy Regional Directors of certain regions as well. Therefore, the Corporation, when exercising this power of delegation for the whole of the country, was alive to the fact that it had to be done to innumerable other officers apart from the Director General and said so in terms in the resolution. Plainly enough, it was a two-fold delegation; firstly, in favour of the Director General, and, secondly, in favour of any other officer. The word dividing the two is "or", and, consequently, the same has to be read disjunctively. The Corporation, when delegating, was clearly intending that apart from the Director General other officers would also be authorised to levy and recover damages. Significantly, when so delegating, the words employed are not "any other person", but, "any other officer", meaning thereby that the Corporation was visualising the conferment of this power on its own officers only. Learned Counsel for the respondents was, therefore, right in forcefully contending that the aforesaid resolution clearly intended a twin delegation -- one in favour of the Director General and the other in favour of other officers of the Corporation. It is true that the Corporation did not name or designate such of its officers. However, as has been noticed earlier, because of the nation wide activities of the Corporation and in all the different States of this vast country, this was a Herculean, if not impossible, task. As a counsel of perfection it might be said that the Corporation should have itself specified the names of each such officer in the said resolution, but, in the work-a-day world, such mathematical precision is neither expected nor possible. It was, in my view, rightly submitted by the learned counsel for the respondents that either the Corporation could have itself named all the officers to whom it visualised or authorised such delegation, or, could more properly leave this task of authorising and naming of individual officers for the executive head of the Corporation, namely, the Director General. That it chose to do the more practical and possible alternatives of the two would not and cannot make the present case one of sub-delegation by a delegate. It is plain that the Director General cannot authorise or name any or every person under the resolution. The Corporation has itself delegated such power only to one or the other of its own officers. The language of the resolution and the intent of the Corporation is manifest from the resolution in so far as it mandated the conferment of power on any other officer as well for the levy and recovery of damages. I find the stand of the learned Counsel for the respondent-Corporation to be not only plausible, but indeed impeccable.

20. The aforesaid view, which I am inclined to take has the support of an earlier Division Bench judgment in *E.S.I. Corporation v. Dhanda Engineers Private Limited* 1981 Lab IC 658 (Punjab & Har) (supra). Learned Counsel for the petitioners, however, chose to assail that view primarily on the reasoning of the Karnataka High Court in *Employees' State Insurance Corporation, Bangalore v. Shoba Engineers, Bangalore* (1981) 59 FJR 343. In view of the respect that must necessarily be accorded to the Karnataka judgment, I have very closely perused

its reasoning and it is with the deepest deference that I record my inability to agree with the same. In taking the contrary view, it has been observed therein that if the Corporation intended to delegate the powers itself in favour of those officers, nothing was easier for the Corporation than to name them in the resolution. With deference, it appears to me that it is neither an easy nor a practical task for a nation wide Corporation to collect the names of all its officers in the various regions of the country, who, under the resolution may have to be called upon to levy and recover damages. As I have said earlier, this is a counsel of perfection not easy of achievement in practical terms. In my view, the Corporation in its wisdom rightly left the authorisation and naming of these officers to its sole executive head, the Director General. It was common ground before us that there is only one Director General for the whole of the country. It was then observed that in the alternative the Corporation could have taken the designation of those officers from the Director General and should have passed another resolution, delegating the powers in their favour also. This suggestion appears to me to again suffer from the same pitfalls as noticed above with regard to the earlier observation. It was then held that the Corporation could not delegate its powers in favour of unknown officers. With respect, it is not a necessary prerequisite of delegation to personally know the delegatee, and, it is well settled and such delegation may be by designation, though the incumbent of the office is unknown personally to the delegator.

21. Much store was then set on the fact that in the resolution the phraseology employed did not say that such officer be named by the Director General, but, instead, it says that such officer be authorised by him. It seems to be implicit that if along with "authorised", or, instead of it the word "named", had been employed the resolution would perhaps be impeccably valid. In the broader perspective, in which I have viewed the matter, such technical emphasis on phraseology cannot possibly be made conclusive. A resolution of a Corporation is not to be read with the strictitude of a statute and every word employed therein is not to be interpreted as a term of art. In the context of appointing a delegate to authorise him or name him as such, would, for all practical terms, be a synonymous thing. To say that "X" is named as a delegate or is authorised as a delegate is not something which is divided by a wide chasm. With the deepest deference, therefore, I would wish to dissent on this aspect from the view in *E.S.I. Corporation v. Shobha Engineers* 1981 59 FJR 343 Kar (supra). The submission of Mr. Tibrewal, basically rested on the said authority, therefore, must fail.

22. In the alternative, even assuming, entirely for the sake of argument (without holding so), that the resolution involves any further delegation, the same nevertheless would still be within the four corners of Section 94A. It has to be kept in mind that the maxim *delegatus non potest delegare* is merely a rule of construction and not an inflexible statutory bar. The true test is whether the provision, either expressly or even by necessary implication, permits further delegation. This has been authoritatively observed by the Constitution Bench in

The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , as under :--

"Bearing in mind that the maxim *delegatus non potest delegare* sets out what is merely a rule of construction, sub-delegation can be sustained if permitted by an express provision or by necessary implication. Where, as here, what is sub-delegated is an administrative power and control over its exercise is retained by the nominee of Parliament, that is, here the Central Government, the power to make a delegation may be inferred. We are, therefore, of the view that the order made by the Chairman on behalf of the Board is not invalid."

23. It is in the light of the above that Section 94A has to be construed. It is well to remind oneself that when originally enacted the statute did not have any express statutory authority for delegation. But, its need and imperative necessity had compelled the insertion of the aforesaid section only 2 years later in 1951. It is significant to note that though the heading of the section mentions the word "delegation" the body thereof does not employ the same. In substance it clothes the Corporation with the authority to direct that all of any of its powers may be also exercisable by subordinate authorities. As has been noticed earlier, in this context there was a sharp distinction between the power conferred on the Corporation itself to delegate and that of its Standing Committee. For ease of construction, Section 94A, as regards the Corporation, excluding the reference to the Standing Committee, would read as under : --

"The Corporation.....may direct that all or any of the powers and functions which may be exercised or performed by the Corporationmay, in relation to such matters and subject to such conditions if any, as may be specified, be also exercisable by any officer or authority subordinate to the Corporation."

Viewed as above, (in separation from the powers of the Standing Committee,) it is plain that Section 94A confers a very wide ranging power of delegation on the Corporation itself. The significant words herein are the ones underlined above, namely, "subject to such conditions, if any, as may be specified". These would leave no manner of doubt that the Corporation in its direction conferring its powers on its subordinates may do so on conditions expressly specified. Such a direction may well be to either exercise such power itself or with the added condition of authorising another to do so. The language employed with regard to the confirmment of the powers of delegation on the Corporation without any restriction, in my view, would either expressly or, in any case, by necessary implication, authorises a further delegation, where the Corporation in terms does so. There is no manner of doubt that by the impugned resolution, the Corporation had itself in terms delegated the power to the Director General and also to any other officer, imposing the specified condition that the Director General should authorise such officer. These specified conditions are thus plainly within the ambit of Section 94A, both expressly or by necessary implication. Therefore, in the alternative, it is also held that the delegation in favour of the other officers to be authorised by the Director General is well sanctified by the

wide ranging power u/s 94A of the Act.

24. Now once the aforesaid twin finding has been arrived at it is not in dispute that in pursuance of the aforesaid resolution of the 28th February, 1976, the Director General, on the 3rd May, 1976, issued the following office order : --

"In pursuance of the Resolution passed by the Employees" State Insurance Corporation at its meeting held on 28th February, 1976, I, T. N. Lakshmi Narayanan, Director General, Employees" State. Insurance Corporation, hereby authorises all Regional Directors, including Joint Director In charge, Poona, Sub-Region, and Deputy Regional Director In charge Nagpur Sub-Region, to exercise the powers for levy of damages on Factories/Establishments within their Regions u/s 85-B(1) of the Employees" State Insurance Act, 1948, as amended vide Act No. 38 of 1975."

It is evident that by conforming to all the requisite formalities, the Regional Directors were duly authorised and clothed with powers u/s 85B of the Act, in compliance with the Corporation's Resolution dated the 28th February, 1976. I am, therefore, of the view that the conferment of powers and the delegation in favour of the Regional Directors of the Corporation does not suffer from any infirmity.

25. Apparently, clutching at a straw, Mr. Tibrewal also drew our attention to certain fresh Resolutions passed by the Corporation, including those with regard to the delegation of powers u/s 85B, passed on the 19th February, 1983, vide Notification No. N4/13/2/82-Ins. III, dated the 29th April, 1983. On this premise, Counsel attempted to argue that the Corporation was apparently itself of the view that the earlier Resolution was not valid and has substituted the same by a fresh one.

26. The contention aforesaid has only to be noticed and rejected. A reference to the said notification would indicate that on the 19th February, 1983, the Corporation decided to replace the standard table of levy of damages as published earlier on the 15th December, 1979, as under : --

"(i) The maximum amount of damages shall not exceed 100% of the amount in arrears; and,

(ii) The amount of damages charged u/s 85-B plus the amount of interest charged under Regulation 31A of ESI (General) Regulations, 1950 read with Section 97(2)(iiiA) of the Act shall not exceed 25% per annum of the amount due."

Thereafter, the Corporation also passed a Resolution to delegate fresh powers to levy and recover damages u/s 85-B in the following terms : --

"Resolved that the power to levy and recover damages from the employees) u/s 85-B of the ESI Act, 1948, as amended up-to-date, may be exercised by the Director General, all Regional Directors, Joint Regional Directors, Deputy Regional

Directors, Assistant Regional Directors, Director Sub-Regional Office, Pune and Deputy Regional Director In charge Sub-Regional Office Nagpur."

It is plain from the context that because of the replacement of the earlier standard table for the levy of damages, the Corporation was well advised to freshly delegate the powers on the subordinate authorities for the levy and recovery of damages on the new scale. This apart, it was not disputed before us that conflicting and discordant views were taken with regard to the delegation of powers, vide Resolution dated the 28th February, 1976. In the State of Karnataka, the Division Bench of the High Court authoritatively took the same view and, as is manifest from the judgment in *E.S.L Corporation v. Dhanda Engineers Private Ltd.* 1981 Lab IC 658 (Punj & Har) (supra) many Employees' State Insurance Courts in various jurisdictions had taken similar views as well. The Corporation, consequently, had no choice, but to render the matter free from doubt and, as a matter of abundant caution, delegated fresh powers by naming all the Regional Directors, Joint Regional Directors, Deputy Regional Directors, Assistant Regional Directors, and, even the Directors of Sub-Regional Offices, with these powers. Apparently, this fresh delegation became necessary also in order to confer these powers at ranks lower than the one on which the same had been conferred by the earlier Resolution of 1976. Equally well settled it is that the construction or legality of a provision is a matter for the Courts, and, is not to be inferred or governed by the views or the acts of a Corporation. The contention in this context, therefore, must be also rejected.

27. To finally conclude, the answer to Question No. (ii) is rendered in the affirmative and it is held that the Resolution dated the 28th February, 1976, authorising both the Director General as also the other Officers authorised by him, to levy and recover damages from the employers u/s 85-B(1) of the Act, is valid in its totality.

28. Adverting now to Question No. (iii), it may be noticed that, almost as the last throw of the gambler, it was urged on behalf of the petitioners that even with regard to the delegation u/s 94A, the second proviso to Regulation 3(1) of the Employees' State Insurance (General) Regulations, 1950 (hereinafter referred to as the Regulations), would be attracted. On that premise, it was sought to be submitted that no power can be delegated, which, under the Act is required to be exercised by the Corporation only.

29. To appreciate the contention, Regulation 3 aforesaid may first be noticed in extenso : --

"3. The manner in which the Corporation may exercise its powers.-- (1) Where a regulation empowers the Corporation to specify, prescribe, provide, decide or determine anything, or to do any other act, such power may be exercised by a resolution of the Corporation or subject to the provisions of Section 18 of the Act by a resolution of the Standing Committee :

Provided that the Corporation or the Standing Committee may delegate any of

the powers under these Regulations to a Sub-Committee or to such Officers of the Corporation as it may specify in that behalf :

Provided further that no power shall be delegated under this Regulation which under the Act is required to be exercised by the Corporation only.

(2) Any appointment to be made by the Corporation under these Regulations shall be made by the Director General or by such other officers as may be authorised in this behalf of the Standing Committee."

A plain reading of the aforesaid Regulation 3 would indicate that the contention of the learned Counsel for the petitioners resting thereon suffers from a four-fold fallacy. What first calls for notice here is that this Regulation, as also the rest of the Regulations, were enforced by a Notification dated the 17th October, 1950. Admittedly, at that stage, Section 94A was not yet on the statute book, having been inserted later, only in 1951. It was by that section that the power to delegate was vested both in the Corporation itself as also in the Standing Committee. The second proviso to Regulation 3(1) prescribing that no power shall be delegated under the said Regulations, which, under the Act is required to be exercised by the Corporation only, was thus anterior in time to Section 94-A of the Act. The reasoning and rationale of its enactment was, therefore, obvious. The Regulations could not possibly override or run contrary to the Act itself. It is, however, plain that later, after the insertion of Section 94-A an express and wide-ranging power was vested in the Corporation itself, and, somewhat limited powers in the Standing Committee, to delegate their functions to any officer or authority subordinate to the Corporation. Therefore, any delegation by virtue of Section 94-A of the Act cannot possibly be hit by the earlier and equally the subservient second proviso to Regulation 3(1) of the Regulations. In any case, in the event of any conflict, Section 94A of the Act would obviously override anything contrary to it in Regulation. 3, including the second proviso to Clause (1) thereof. In this context, it suffices to quote Section 97(1) of the Act: --

"97. Power of Corporation to make regulations.-- (1) The Corporation may, subject to the condition of previous publication, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation and for carrying into effect the provisions of this Act."

In the light of the above, it is well to recall, and, if necessary to repeat that u/s 94A, the power to delegate by the Corporation itself is not subjected to any regulations, whilst in contrast, such power of the Standing Committee is controlled and hedged in thereby. The reason is not far to seek. By the aforesaid provisions of Section 97, the Regulations herein are themselves the creature of the Corporation, which makes the same, whereas the Rules have to be framed by the State Government after consultation with the Corporation. By contrast, the Regulations are to be framed by the Corporation itself, without reference or consultation with any other body. Therefore, the Corporation, being itself the

author of the Regulations, was to advisedly constricted or bound down by the same. It is plain that an authority which is the creator of the Regulation cannot be constricted or limited by its own creature. It is for this reason that Section 94-A places the Corporation on a pedestal different from the Standing Committee. To put it picturesquely, the Legislature did not put a halter around the neck of the Corporation by limiting its powers by Regulations, which would be its own creation. Consequently, the exercise of the power to delegate u/s 94-A by the Corporation is unrestricted and uncontrolled by any Regulation, including Regulation 3. Yet, it is plain from the language of Section 97(1) of the Act that no regulation can be framed which is inconsistent either with the Act itself or even with the Rules made thereunder. Apart from the express provisions of Section 97 of the Act, it is otherwise evident on larger principle that Rules or Regulations under a parent Act cannot expressly override or run counter to the statutory provisions.

30. Again, a reference to the opening part of Regulation 3 would show that it operated in a very limited arena. Earlier, in the absence of Section 94-A it had prescribed that where a regulation empowered the Corporation to do something, such power was to be exercised by the Resolution of the Corporation. It would thus be manifest that Regulation 3 is not intended to operate in the area where the Act itself confers certain powers on the Corporation. To put it in other words, the provisions of Regulation 3 would be attracted primarily where the source of the power emanates from the Regulations to do something, and, not in the larger field, where it is clothed with the specific powers by the Act itself. Consequently, where the delegation has been done under the provisions of the Act, i.e., u/s 94-A, which is a part of the statute itself, then indeed Regulation 3 cannot at all be attracted to such a situation.

31. The view aforesaid is again buttressed by the identical one taken by the Division Bench in *E.S.I. Corporation v. Dhanda Engineers Private Limited* 1981 Lab IC 658 (Punj & Har) (supra). However, Mr. Tibrewal, learned Counsel for the petitioners, assailed the correctness of the said judgment on this point. It was contended that this had been done on the basis that Regulation 3, because of the same being anterior in time to Section 94A, would be inapplicable. He submitted that it must be kept in mind that this Regulation 3 has been allowed to co-exist uptill now, even long after Section 94-A was brought on the statute book in 1951. According to the learned Counsel, the two provisions must now be read together, and, because of its categoric language, the second proviso to Regulation 3(1) must control or override the provisions of Section 94-A.

32. The aforesaid contention has only to be noticed and rejected. Firstly, as already elaborated earlier, Regulation 3 operates in an altogether different and narrower field than the wide spectrum of Section 94-A. Secondly, in case of any conflict between the two, it is plain that the Section must have pre-eminence, and, indeed, no Regulation inconsistent with the Act or even the Rules framed thereunder, can be visualised. Thirdly, the fact that Regulation 3 is anterior in

time cannot still be lost sight of. It is not to be expected that consequent upon every amendment in the Act, a research must be made of all the Regulations framed and those inconsistent therewith must be specifically repealed. The reasoning in *E.S.I. Corporation v. Dhanda Engineers Private Limited* 1981 Lab IC 658 (supra) is, therefore, impeccable and cannot be questioned on the untenable ground that there is a wrongful exclusion or misconstruction of Regulation 3.

33. To conclude on this aspect, the answer to Question No. (iii) is rendered in the negative and it is held that the second proviso to Regulation 3(1) of the Regulations would not be attracted to the situation, and, in any case, it does not bar or limit the delegation of power by the Corporation u/s 94-A of the Act.

34. Coming now to the last Question No. (iv), it seems somewhat manifest that the order of this Court in *Rameshwar Jute Mills Limited v. Union of India* (Civil Writ Jurn. Case No. 3815 of 1982), dated the 4th October, 1982, is hardly a judgment *stricto sensu*. It was merely an order passed at the motion stage itself. Learned Counsel for the respondent therein seems to have been wholly remiss in not bringing to the notice of the Division Bench the relevant provisions of the statute and even the particular contents of the resolutions passed by the Corporation and the Director General under Sections 94A and 85B of the Act. In the absence of noticing the said resolutions and their contents and equally the statutory provisions to which detailed reference has been made earlier, the order was apparently passed *per incuriam*. The whole thing was assumed as one of first impression and neither principle nor precedent seems to have been cited on behalf of the respondents with regard to an issue, which, to say the least, was not free from difficulties, and, with regard to which there was an existing conflict of precedent. Neither the case of *Employees' State Insurance Corporation v. Dhanda Engineers Private Limited* 1981 Lab IC 658 (Punj & Har), nor the *Employees' State Insurance Corporation v. Shoba Engineers, Bangalore* (1981) 59 FJR 343 and equally the numerous precedents discussed earlier were brought to the notice of the Division Bench. Consequently, in a few lines, the matter was disposed of with direction to the respondents-authorities to initiate a fresh proceeding in accordance with law and to pass an appropriate order. With the deepest deference, the view expressed therein does not lay down the law correctly, and has to be inevitably overruled. The answer to Question No. (iv) is, consequently, rendered in the negative.

35. In the light of the answers rendered to the four questions posed at the outset, it is plain that both the writ petitions are without merit and are hereby dismissed. However, in view of some intricacies involved and a conflict of precedent, we leave the parties to bear their own costs.

36. Uday Sinha, J.

I agree.

37. S. Ali Ahmed, J.

I agree.