(2013) 04 KL CK 0028

In the High Court Of Kerala

Case No : Ins. APP. No. 33 of 2008 (G)

The Regional Director, E.S.I. Corporation — APPELLANT

Vs

M/s. Chackolas Spinning and Weaving Mills Ltd. — RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:
Employees State Insurance Act, 1948 — Section 85B

Citation : (2013) 04 KL CK 0028

Hon'ble Judges : S. Siri Jagan, J;Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : P. Sankarankutty Nair, for the Appellant; E.K. Nandakumar, Sri. A.K. Jayasankar Nambiar, Sri. K. John Mathai, Sri. P. Benny Thomas and Sri. Anil D. Nair, for the Respondent

Judgement

S. Siri Jagan, J.—The Regional Director, ESI Corporation, Thirissur, is the appellant herein. They are aggrieved by the judgment of the Employees Insurance Court, Alappuzha in I.C. No. 50 of 2007, whereby their order imposing damages on the respondent, amounting to Rs. 3,14,120/- on the respondent u/s 85 B of the Employees State Insurance Act for delay in payment of contributions for the wage periods from 4/2003 to 4/2004 and 8/2004 was set aside. The I.C. was filed by the respondent herein, challenging the order of the appellant dated 22-2-2007 imposing Rs. 3,14,120/- as damages u/s 85 B of the Employees State Insurance Act for delayed payment of contributions for the wage period mentioned above. Their contention is that they could not pay the contributions in time because of their financial Ins. Appeal No. 33 of 2008 crisis which was plaguing not only the respondent but also all the textile mills in the state numbering 17 in the private sector at the relevant time. According to them, they could not pay even wages to their employees in time and it led to labour problems as well. The gratuity due to the retired employees were also not paid in time due to financial stringency. The establishment itself was closed in 2004 and much later in January 2006 the entire dues of all employees were settled along with which the contributions payable were also settled. As such, the delay in remittance of contributions was beyond the control of the respondent. Consequently the imposing of damages is also unjust and unreasonable was their contention. The E.I. Court, relying on the decision of the Division Bench of this court in Employees'' State Insurance Corporation and Another Vs. K.N. Premanandan and Another, held that since the delay in payment was only due to the financial stringency faced by the respondent, the respondent is not liable to pay damages u/s 85 B of the Act. That judgment of the Employees Insurance Court is under challenge at the instance of the Corporation in this appeal.

2. The contention of the appellant is that insofar as, wages were paid to the employees, it was the bounden duty of Ins. Appeal No. 33 of 2008 the respondent to deduct contributions from the wages of the employee and remit the same to the corporation within the time stipulated, in the Employees State Insurance Act and Scheme. Once they have failed to do so, Section 85 B of the Act automatically comes into operation and the damages calculated on the basis of Regulation 31 C of the Employees State Insurance (General) Regulations, 1950 have to be paid by the respondent is the contention raised.

3. On the other hand, the learned counsel for the respondent would contend that the respondent did not actually pay wages to the employees for the period in question on due dates and the wages along with the contributions were also paid long after in January 2006 as per a settlement, whereafter contributions were also paid. The same would prove beyond any reasonable doubt that the delay in payment of contributions was on account of delay in payment of wages as well, which was in turn because of acute financial crisis faced by the respondent. Consequently, going by Premanandan''s case (supra) no damages could have been validly imposed on the respondent is the contention raised. We have considered the rival contentions in detail. Ins. Appeal No. 33 of 2008 It is not a secret that in Kerala, in 2001, almost all the private textile mills were in dire financial crisis. In fact, some of the textile mills were later taken over by the National Textile Corporation on account of the financial crisis. It was widely known that the respondent company was also in dire financial difficulties at the relevant time. The documents produced before the E.I. Court would show that for the period in question the respondent did not actually pay wages to their employees and it was long after the due dates, the wages were paid, that too pursuant to a settlement between the employees and the company. In Premanandan''s case (supra) it has been categorically held that financial crisis is certainly a factor which has to be taken into account while imposing damages u/s 85 B of the Act. Of course, if the respondent had actually deducted contributions from the wages actually paid to the employees and there was delay in payment of that deducted amounts to the corporation, then may be to some extent the respondent would have been liable to pay damages for the delay despite the financial crisis. Here that is not the case. The delay was even in payment of wages to the employees. According to the respondent when they actually paid the wages, the Ins. contributions were deducted and paid to the Corporation. In the said circumstances, we do not think that the view taken by the E.I. Court is

perverse or unreasonable. Still we are of opinion that the entire damages could not have been waved insofar as it is a statutory prescription that for delay in payment of contributions damages u/s 85 B is payable. But taking into account all the facts and circumstances of the case we are of opinion that justice would be met if we direct the respondent to pay an amount of Rs. 15,000/- as damages u/s 85 B of the Act, instead of the amount demanded by the appellant. Accordingly in modification of the judgment of the E.I. Court, we direct the respondent to pay an amount of Rs. 15,000/- as damages to the appellant corporation instead of the amount demanded by the Corporation, within two months from today. The appeal is disposed of as above.