

(1993) 03 MAD CK 0042
In the Madras High Court
Case No : A.A.O. No. 163 of 1986

Thirunelveli Co-operative Milk Supply Society Ltd.	APPELLANT
Vs	
Joint Regional Director, E.S.I. Corporation Madras	RESPONDENT

Date of Decision : 19-03-1993

Acts Referred:

Employees State Insurance Act, 1948 — Section 2A, 43, 85B, 94A

Citation : (1995) 1 LLJ 662

Hon'ble Judges : Thangamani, J

Bench : Single Bench

Judgement

Thangamani, J.—The Tirunelveli Co-operative Milk Supply Society Limited. Tirunelveli is an establishment covered by the Employees"

State Insurance Act 34 of 1948. Ex. A-1 is the notice dated 24-8-1978. Ex. A-1 is the notice dated 24-8-1978 from the Regional Director of E.

S. I. served on the Society informing it that the society comes within the purview of the Act with effect from 14-5-1978 and that a code number

had been allotted to it. The Society was called upon to pay the required contributions for the periods from 14-5-1978 to 30-9-1978 and from 1-

10-1979 by the regional Director. As per Ex. A-3 dated 20-12-1979 the Society has informed the Regional Director that they have already sent

the contributions for the period from 1-11-1978 to 31-3-1979 and requested for the cancellation of the contribution for the period from 14-5-

1978 to 31-10-1978. Thereupon, the Regional Director sent Ex. A-6 communication dated 20-9-1994 requesting the Society to pay sum of Rs.

2,626.85 towards interest for late payment of contribution for the wage periods of May, 1978 to November, 1978 March, 1979 and November,

1979, to March, 1980 Ex. A-7 is he reply sent by the society on 18-10-1984

mentioning that they have remitted Rs. 2,626.85 in the State Bank of India, Tirunelveli Branch towards interest for the late payment of contribution. Thereafter the Corporation issued Ex. A-9 notice dated 5-10-1984 calling upon the Society to show cause as to why damages at the rate of 19% per annum may not be imposed and recovered for the failure of the society to pay the contribution under the Act within the stipulated time. Ex. A-8 is the reply sent by the society on 22-10-1984 stating that the delay was not intentional. However, as per Ex. A-10 on 9-11-1984 the Joint Regional Director has passed orders under Sec. 85-B of the E. S. I. Act rejecting the reasons given by the society for the delay and levying an amount of Rs. 8,319 as damages. Thereupon, the Society preferred E. S. I. O. P. No. 1 of 1984 before the E. S. I. Court (District Judge), Tirunelveli challenging the above said order under Ex. A-10 and its liability to pay interest. Since the E. S. I. Court has dismissed that petition, the Society has come forward with this Civil Miscellaneous Appeal assailing the correctness of the findings of learned E. S. I. Judge.

2. Miss K. Suguna, learned counsel for the appellant submitted that the court below has erred in holding that the Joint Regional Director has valid authority to exercise the power vested in Sec. 85-B of the E. S. I. Act. The said Sec. 85-B reads as under :

(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-sec. (1) may be recovered as an arrear of land revenue.

According to the appellant, the Corporation alone has got power under Sec. 85-B to levy damages. The Joint Regional Director has no jurisdiction to issue Ex. A-10 notice levying damages under the said section. In support of her contention she relied on the decision of a Division Bench of this Court in Writ Appeal No. 126 of 1986 dated 19-7-1989. That appeal arose against the decision of a single Judge of this Court in Writ Petition No. 2718 of 1979. Learned single Judge was of the view that under Sec. 94-A of

the E. S. I. Act, the E. S. I. Corporation alone is authorised to delegate its powers exercisable by it under the Act but an officer named by the Corporation cannot further delegate them. The question arose whether the officer authorised by the Director could exercise the powers under Sec. 85-B. The Division Bench held that by a careful reading of Sec. 94-A of the Act it would be clear that power of delegation is given to the Corporation alone. A resolution passed by the Corporation enabled the Director General or any other officer authorised by him to levy and recover damages. On the plain language of Sec. 94-A and Sec. 85-B of the Act the power exercisable by the Corporation is nothing but quasi-judicial and that they could not subscribe to the proposition that a delegate from the Corporation could validly exercise the powers under Sec. 85-B.

3. However, in this case as per notification No. 4/13-1-82 Ins. III, dated 29-4-1983 the E. S. I. Corporation has passed the following resolution

to delegate fresh powers to levy and recover damages from the employers under Sec. 85-B of the E. S. I. Act to the officer of the Corporation.

Resolved that the power to levy and recover damages from the employer(s) under Sec. 85-B of the E. S. I. Act, 1948 as amended upto date,

may be exercised by the Director General, all Regional Directors, Joint Regional Directors, Deputy Regional Directors, Assistant Regional

Directors. Director, Sub Regional Officer, Pune and Deputy Regional Director-in-charge, Sub-Regional Officer, Nagpur.

Delegation of powers is dealt with in Sec. 94-A of the Act in this manner.

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 conditions, if any, as may be specified, be also exercisable to any officer or authority subordinate to the

Corporation.

The contention of the appellant on the basis of the Division Bench decision is that he delegation of powers in favour of Joint Regional Director and

others is beyond the scope of the authority of the Corporation under Sec. 94-A of the Act. However, the difference in the wordings of the

Resolution of E. S. I. Corporation in the Division Bench case and that in the

present case is. The delegation of powers in this case as per notification No. N 4/13.2.82 Ins. III, dated 29-4-1983 extracted above is in favour of Director-General, Joint Regional Director and all other offices named therein. Whereas in the Division Bench case the resolution enabled the Director General or any other officer authorised by him to exercise that power. In such a situation the Division Bench held that the powers under Sec. 94-A and Sec. 85-B being quasi-judicial in character a delegatee of the E. S. I. Corporation cannot further delegate. Janarthanam, J., who had occasion to consider the validity of delegation of powers in the Notification No. N 4/13.2.82 Ins. III, dated 29-4-1983 in C. M. A. No. 325 of 1985 has held that under this resolution there is no further delegation from delegate, but there is a valid deletion to various officers by the Corporation itself. This notification has obviously been issued, taking into account the legal hurdles posed by the earlier 1976 resolution passed by the corporation which was considered in the Division Bench. And with respect I agree with the view of learned Judge and hold that the Joint Regional Director has authority to pass orders under Sec. 85-B of the E. S. I Act from 29-4-1983 the date of the above said resolution.

4. However, as was the case in C. M. A. No. 325 of 1985 in the present appeal also the period from 14-5-1978 to 31-3-1979 covered by the impugned order under Ex. A-10 cannot come within the purview of this resolution dated 29-4-1983. Only the earlier resolution of the year 1976 of Corporation is applicable to that period as the later notification is not retrospective in operation. In such state of affairs, it goes without saying that the Joint Regional Director of the corporation in the instant case was not having the necessary and requisite powers to assess the damage under Sec. 85-B of the Act, as there was no valid delegation in his favour. As, such, the view of the court below that the Joint Regional Director has validly passed the order under Ex. A-10 is unsustainable. Needless to add that this does not prevent the Corporation to levy damages afresh according to law by the Director General of corporation who alone possessed power during the relevant time as per the notification dated 28-2-1976.

5. The next submission of learned counsel for the appellant is that only on 2-9-1978 the Society was furnished with code number for the purpose

of paying contribution and so the society should not be called upon to pay interest for the late payment of contribution for the period prior to 2-9-

1978. But as per the scheme of the Act under Sec. 2-A, every establishment to which this Act applies shall be registered with such time and in

such manner as maybe specified in the regulations made in this behalf. Under Regulation 13 of the Employees State Insurance (General)

Regulations, 1950, it is the duty of the employer to prepare a Contribution Card in Form 2 in respect of every employee in his employment on the

appointed day. Regulation 14 enjoins the employer to sent to the appropriate office all declaration forms. Regulation 15 requires the appropriate

officer to allot the code number on receipt of the return mentioned in Regulation 14. The liability to pay contribution by the employer under the Act

is contained in Sec. 43 enables the Corporation to make regulations relating to payment and collection of contribution payable under the Act.

Regulation 31 specifies the time for payment of contribution. So it is the duty of the employer to apply, get the code assigned and pay contribution

within the prescribed time. In this case, the employer made no such endeavor and only after the corporation initiated action, the appellant made the

contribution. He cannot be allowed to take advantage of his own fault and plead that he was not in a position to make the remittances in time since

no code number was assigned.

6. Yet another argument of learned counsel for the appellant is that under Ex. A-6 communication dated 20-9-1984 the Corporation has

recovered Rs. 2,626.85 towards interest for the payment of contribution for the relevant wage period. While so, by the order to pay damages the

Society is penalised twice for the same default. But learned counsel for the respondent point out that regulation 31(A) enables the Corporation to

charge interest while under Sec. 85-B the corporation is entitled to recover damages. Both are independent provides and one has nothing to do

with the other. Learned counsel also drew my attention to the judgment of Padmanabhan, J. in Writ Petition No. 3379 of 1977 dated 28-9-1979.

It was contended before learned Judge that Regulation 31(A) provides for the payment of interest on the contribution amount in the event of there

being delayed payment. Therefore, in such cases damages cannot be claimed as provided for under Sec. 85-B of the Act. Padmanabhan, J.

repelled this contention and pointed out that as per Explanation 2 found in Sec. 405, I.P.C. introduced by central Act 38 of 1975, if the employer makes default in the payment of contribution to the Employees' State Insurance Fund, in violation the Employees' State Insurance Act 1948, he shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law. So it has to be taken the levy interest on the amount of countersign under Regulation 31(A) is consistent with the provisions of the Act. Merely because provision of payment of interest on the arrears of contribution has been made under Regulation 31(A) it cannot be said that the Legislature has no power to levy a penalty by way of damages for the failure to pay the contribution amount under Sec. 85-B of the Act. Levy of damages under Sec. 85-B is intended by way of punishment and not by way of compensation as is ordinarily under-stood in the law of contract or law of tort. While, so, there is no force in the claim of the appellant that in view of the payment of interest no damage is leviable.

7. In the result, the Civil Miscellaneous Appeal is allowed in part and the order of E. S. I. Court in E. S. I. O. P. No. 1 of 1984 is notified in that the order under Ex. A-10 for recovery of damages of Rs. 8,319 from the appellant is declared to be passed without jurisdiction. But this does not prevent the Corporation to initiate action afresh according to law by the Director General of Corporation who alone possessed power during the relevant time as per the notification dated 28-9-1976. The claim in respect of the order for refund of Rs. 2,626.85 paid by the appellant on 18-10-1984 towards interest is negatived. In the circumstances, parties are directed to bear their respective costs throughout.