
(1991) 03 MAD CK 0044
In the Madras High Court
Case No : W.A. No. 1284 of 1988

Venus Industries

APPELLANT

Vs

Regional Director, E.S.I. Corporation

RESPONDENT

Date of Decision : 05-03-1991

Acts Referred:

Employees State Insurance Act, 1948 — Section 85B

Citation : (1999) 3 LLJ 125

Hon'ble Judges : A.S. Anand, C.J.;Raju, J

Bench : Division Bench

Advocate : T.S. Rangarajan, for the Appellant; S.M. Ali Mohamed, for the Respondent

Final Decision : Allowed

Judgement

A.S. Anand, C.J.—The appellant herein is an Establishment covered under the Employees' State Insurance Act, 1948 (hereinafter called "the Act"). Alleging failure to pay the contributions within the stipulated time as provided by Regulation 26 of the Employees' State Insurance (General) Regulations, 1950 framed under the Act, a show cause notice was issued to the appellant by the Regional Director of the Employees' State Insurance Corporation, on July 18, 1980. The appellant, as the Principal employer of the establishment, was called upon to show cause within 15 days as to why damages proposed in the show cause notice be not recovered. In response to the show cause notice, the appellant submitted a reply on November 29, 1980. In the reply it was maintained that there had been continuous labour unrest in the establishment since 1976 which had paralysed administrative machinery of the appellant and resulted in the delayed submission of the contribution cards since 1977 period. It was stated that on account of the labour unrest, the establishment had ultimately to be closed. The appellant had brought it to the notice of the respondent herein that prior to 1976, there was ample proof available on the record of the Corporation of the prompt submission of the contribution cards. The

case of the appellant as spelt out in the show cause notice, besides highlighting the cause which led to the delay in the submission of the contribution cards was that there had been delay only in the submission of the contribution cards and there was no delay in the purchase of the requisite stamps during the entire period and in fact, the stamps had been purchased much earlier than the close of the respective sets of contribution cards. In the reply the dates on which the stamps had been purchased as well as the amount for which the stamps had been purchased were indicated. On the basis of that submission it was stated that the delay in the submission of the cards may be pardoned and the penalty proposed to be imposed be waived as a special case, keeping in view the peculiar facts and circumstances in which the establishment was placed. By an order dated December 15, 1980 the respondent, however, rejected the plea raised by the appellant. However, the appellant was held liable to pay reduced damages to the tune of Rs. 2,359/- u/s 85-B of the Act. The appellant thereafter, it transpires, on December 19, 1980 made some representations to the Director General, Employees' State Insurance Corporation, though styling it as an appeal, in which again it is reiterated that the only error the appellant had committed was the delayed submission of the contribution cards and it was asserted that they had not failed in remittances of contribution paid by the workers or their shares under the different sets since the stamps had been purchased by them within time. Finding no relief had been granted, the appellant filed writ petition in this Court. Writ Petition No. 5185/1981 came to be dismissed by the order dated August 4, 1988. The learned single Judge relied upon the law laid down in *Rallis India Ltd. v. E.S.I. Corporation*, 1980 56 HUR 430. The appellant has come up in appeal against the order of the learned single Judge.

2. u/s 36 of the Employees' State Insurance Act, all employees in factories or establishments to which the Act applies, shall be insured in the manner provided under the Act. Section 39 then deals with the contribution payable under the Act in respect of any employee and provides that the said contribution shall comprise the contribution payable by the employer to be referred to as the employer's contribution and contribution payable by an employee to be referred to as the employee's contribution and both the contributions together shall be paid to the Corporation. Sec. 40 places an obligation on the principal employer to pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution. Regulation 13 deals with the preparation of contribution card and enjoins upon the employer to prepare a contribution card in Form 2, in respect of every employee in his employment on the appointed day or who is taken into employment after that day. The manner of maintaining the contribution card, the period of its validity and the allied matter have also been provided for in the regulations. Regulation 26 then states, an employer, being in possession of a contribution card in respect of any person, shall send it by registered post or messenger, together with a return in triplicate Form 6 to the appropriate Officer within the period specified in the regulation. Under Regulation 21, the time for

payment of contribution had been regulated, and it is provided inter alia, that an employer who is liable to pay contribution in respect of any employee shall pay those contributions within 21 days of the last day of the wage period in which the contribution falls due. Regulation 34 provides that an employer shall, immediately after affixing a contribution stamp to any Contribution Card, cancel the stamp by writing in ink, or stamping with a metallic die with black indelible ink across the face of the stamp, the date upon which it is affixed, the employer's code number and such other particulars, if any, as the Corporation may specify. The Contribution Card with the affixed stamps is required to be submitted, as already noticed.

3. Section 85-B of the Act deals with the power to recover damages and lays down that where an employer fails to pay the due in respect of any contribution or any other amount payable under this Act, the Corporation may recover from the employer damages, after giving him a reasonable opportunity of being heard. It was this section which was invoked by the respondent to recover the damages from the appellant.

4. The facts are not in dispute. The principle of law settled in *Rallis India Limited, Madras v. Employees' State Insurance Corporation*. (1980) 56 FJR 430 and by a Bench of this Court in *Ratna Cafe v. The Regional Director, Employees' State Insurance Corporation, Madras 34* (Writ Appeal No. 611/1989 dated February 22, 1991) also does not admit of any controversy of debate. As a matter of fact, in fairness to the learned Counsel for the appellant, it must be stated that it was not canvassed before us unlike in the cases of *Rallis India Ltd.* (supra) and *M/s. Ratna Cafe* (supra) that the mere affixation of the stamps on the Contribution Cards would constitute payment and take the cases out of the ambit of Section 85-B of the Act. What was canvassed before us, however, was purely a matter based on the fact situation of the present case. It was submitted by the learned Counsel for the appellant that since the appellant had taken a specific plea in reply to the show cause notice that the stamps had been purchased in time and had been affixed the only error committed was of the delayed submission of the Contribution Cards and that in the circumstances, which had been created on account of labour unrest a lenient view was required to be taken by the respondent.

5. We find from the order of the respondent that he had not adverted to, much less considered and discussed the correctness or otherwise of the plea of the appellant viz., that the stamps had been purchased in time and that the only default was the delayed submission of the Contribution Cards. The respondent appears to have proceeded on the assumption that since contribution had not been made within time, in the sense the Contribution Cards had not reached the Competent Authority within the stipulated time, it had to be presumed that neither stamps were purchased in time nor, if the stamps were purchased in time, the same had been cancelled as required by law. We are afraid no such presumptions or assumptions can be permitted to be made, particularly in cases

where damages are sought to be recovered by way of penalty, from the party concerned. A clear, specific finding is required to be given by the respondent to the effect that (a) stamps had, not been purchased in time; and (b) if purchased in time, had not been cancelled in the manner prescribed by law. Mr. S. M. Ali Mohammed, appearing for the respondent submitted that without the cancellation of the stamps in the manner prescribed by the regulation, the mere affixation of the stamps would not amount to preparing of the Contribution Cards as required by law. We have no quarrel with that proposition. The fact, however, remains that there is nothing on the record to show that the Stamps had not been cancelled in the manner prescribed by law. The appellant had been canvassing throughout that the only error committed was the delayed submission of the Contribution Cards and that no other default had been committed by the appellant. Unless a finding was recorded that default, other than the delayed submission of the Contribution Cards, had also been committed, it was not appropriate or proper to saddle the appellant with damages by way of penalty.

6. We have noticed the peculiar facts and circumstances of the case. We have noticed the ground which led to the delayed submission of the Contribution Cards. We have also noticed that the establishment had to be closed with effect from September 9, 1980. i.e. 18 years after the setting up of the establishment itself. According to the appellant, this had all happened because of the labour unrest which had completely paralysed and crippled the administrative functions of the appellant. Since from the materials on record we do not find any reason to hold either that the stamps had not been purchased by the appellant in time or that the same had not been cancelled in the manner provided by the regulation, it apparently would only be a case where the Contribution Cards complete in all respects had been submitted belatedly for the reasons stated by the appellant. Taking these peculiar factors which are available in this case into consideration, we are of opinion that the imposition of reduced damages to the tune of Rs. 2,369/- by way of penalty was not called for. The learned single Judge did not advert to this aspect of the case and for what we have stated above, we are unable to subscribe to the judgment of the learned single Judge. The judgment under appeal, therefore, is set aside and this appeal succeeds. In the peculiar circumstances, however the parties shall bear their own costs.