IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-4102-2018 (O&M)
Date of Decision : 17.07.2025

Managing Committee Ch. Balbir Singh Sr. Sec. Public School and another

… Appellants

Versus

Employees State Insurance Corporation and others

…Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Jyoti Sareen, Advocate,
for the appellant.

Mr. Ashwani Talwar, Advocate,
for respondents No.1 to 6.

Ms. Komal Tuteja, Advocate, for
Mr. Ajay Singla, Advocate,
for respondent No.7.

*****

PANKAJ JAIN, J. (Oral)

The establishment is in appeal aggrieved of the order passed by ESI Court under Section 75 of Employees' State Insurance Act, 1948 whereby damages of ₹ 2,06,419/- imposed by ESI Court against the establishment for delayed payment of contribution for the period from June, 2009 to March, 2011 and the proceedings initiated to recover the same and after direction to recover damages for late payment of contribution for the period commencing from June, 2009 to March, 2011 and further refund of ₹

35,777/- already recovered as damages for the period from April, 2011 to September, 2011 stands dismissed.

2. While issuing notice of motion, this Court observed as under : -

> *" Counsel for the appellants inter alia contends that no such finding has been recorded by the authority imposing damages that there was mens rea or actus reus to contravene a statutory provision and as such imposition of damages despite payment of outstanding liability along with interest for the period of delay cannot be allowed to sustain. In support of her contention, she has relied upon judgment of Hon'ble Supreme Court Employee State Insurance Corporation Vs. H.M.T. Ltd. And another, 2008(1) SCT 641 . Further reference has been made to judgment of Gauhati High Court The Employees State Insurance Corporation, Gauhati Vs. M/s Associates Industries (Assam), Chandrapur, 1990 Labour Industrial Cases, 195. Counsel for the appellants would inform that the disputed amount has already been deposited with the respondents.*
>
> *Notice in the application for condonation of delay in re-filing the appeal as well as in the main appeal for 28.08.2019."*

3. So far as the issue of *mens rea* is concerned, counsel for the appellant has fairly admitted that the same no longer survives in view of the ratio of law laid down by Supreme Court in **Horticulture Experiment Station Gonikoppal, Coorg** v. **Regional Provident Fund Organization** reported as **(2022) 4 SCC 516** wherein the Supreme Court after considering the entire thread of judgment observed as under : -

> *"17. Taking note of three-Judge Bench judgment of this Court in **Union of India and others** v. **Dharmendra Textile Processors and others** (supra), which is indeed binding on us, we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the*

Act is a sine qua non for imposition of levy of damages under Section 14B of the Act 1952 and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities."

4. Counsel for the appellant, however, submits that it is not a case wherein establishment should have been saddled with damages in view of mitigating circumstance involved. She refers to the records to submit that prior to inspection conducted on 27.7.2011, 28.7.2011, 29.7.2011 that the Code was allotted to the institution via communication dated 12.09.2011 though with effect from 12.06.2009. She submits that keeping in view that the establishment is running an educational institution, the adjudicating authority after considering the fact that the interest on the delayed payment already stands paid and thus, damages ought not have been imposed.

5. *Per contra,* Mr. Talwar, however, submits that once notification dated 12.06.2009 was issued, the establishment was covered under the ambit of 1948 Act and it was mandatory upon the establishment to apply for registration under ESI Act. The establishment having evaded registration for 2 years, the adjudicating authority rightly resorted to the provisions as contained under Section 85B of the ESI Act and ordered for recovery of damages.

6. I have heard the learned counsel for the parties and have carefully gone through the record of the case.

7. In order to appreciate the rival contentions of the counsel representing the parties, it will be apt to peruse Section 85B of the Act which reads as under : -

> ***85B. Power to recover damages.—***
>
> *(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 by way of penalty such damages not exceeding the amount of arrears as may be specified in the regulations:*
>
> *Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard:*
>
> *Provided further that the Corporation may reduce or waive the damages recoverable under this section in relation to an establishment which is a sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in regulations.*
>
> *(2)Any damages recoverable under sub-section (1) may be recovered as an arrear of land revenue 4or under section 45C to section 45-I.*

8. Perusal of the provisions reveals that expression used is ‘may’. Thus, in considered opinion of this Court, damages need to be imposed and recovered not as a routine but where the employer has exhibited behaviour which smacks of intent to evade the contribution. Where the establishment is not being run for charitable or educational purposes, authorities need to be slow in penalizing the establishment and need to show restraint. After all, discretion needs to be exercised judiciously. The order having civil consequence needs to be not only reasoned but justified also. The intent of legislature is explicit from the use of the expression, ‘may’ and not, ‘shall’. Thus, while imposing damages, the adjudicating authority must be alive not only to the behaviour and intent shown by the management but also to the activity which shall form part of the mitigating circumstance as observed by

the Supreme Court in **M/s Prestolite of India Limited** v. **The Regional Director and another** reported as **1994 AIR (Supreme Court) 521** observing as under : -

> "*4. It however appears to us that the contention of Mr. Goswami in the facts of the case, should not be accepted. Even if the regulations have prescribed general guidelines and the upper, limits at which the imposition of damages can be made, it cannot be contended that in no casin the mitigating circumstances can be taken into consideration by the adjudeating authority in finally deciding the matter and it is bound to act mechanically in applying the upper most limit of the table. In the instant case, it appears to us that the order has been passed without indicating any reason whatsoever as to why grounds for delayed payment was not to be accepted. There is no indication as to why the imposition of damages at the rate specified in the order was required to be made. Simply because the appellant did not appear in person and produce materials to support the objections, the employee's case could not be discarded in limine. On the contrary, the objection ought to have been considered on merits. We therefore, allow this appeal and set aside the impugned orders. The Regional Director is directed to dispose of the representation of the appellant by indicating reasons after taking into consideration the grounds for delayed payment. Since the matter is going to be reheard, the appellant is permitted to make personal representation at the hearing of the show cause proceeding. As the matter is pending for a long time, the representation should be considered and disposed of within three months from the date of the receipt of the order by giving notice of the date of hearing in advance to the appellant. In the facts and circumstances of the casee there shall be no order as to costs. By way of abundant caution it is made clear that we have not considered the case of the appellant on merits.*"

9. Applying the aforesaid parameters to the present case, there is no denial to the fact that the establishment is running educational institution.

It has also come on record that after the establishment was allotted code and was registered under ESI Act, there was no major default in payment of the contribution. In these circumstances, this Court finds that the adjudicating authority and the ESI Court should not have saddled the establishment with damages without there being any evidence to show intent to evade contribution.

10. In view thereof, this Court finds that the order dated 23.05.2013 passed by the adjudicating authority whereby the appellant-establishment has been saddled with damages under Section 85B of the Act and the order passed by the ESI Court affirming the same cannot be sustained and need to be set aside.

11. At this stage, Ms. Sareen refers to the fact mentioned in the grounds of appeal that the amount of ₹ 35,777/- already stands recovered. Keeping in view the aforesaid circumstance, it is ordered that amount of ₹ 2,06,419/- and that of ₹ 35,777/- along with interest @ 6% per annum shall be calculated and conveyed to the appellant. The amount may not be refunded but shall be adjusted qua future contributions.

12. Disposed off. Pending application, if any, stands disposed off.

(PANKAJ JAIN)
JUDGE

July 17, 2025
Paritosh Kumar

Whether speaking/reasoned Yes/No
Whether reportable Yes/No