

Employees' State Insurance Corporation

Vs

Narniat Pharmaceuticals & Chemicals Pvt. Ltd.

Civil Appeal No. 1218 of 1991

(S.B. Majmudar, B.N. Kirpal JJ)

11.09.1997

ORDER

1. The Employees' State Insurance Corporation as appellant has brought in challenge the decision rendered by the Division Bench of the High Court of Kerala dismissing the first appeal moved by the appellant against the decision of the Employees' State Insurance Court which had taken the view that the imposition of 19 per cent of defaulted arrears by way of damages for default in remission of contribution by the management was done in a mechanical manner and there was possibility of the said rate exceeding the arrears of contributions which would become ultra vires Section 85-B of the Employees' State Insurance Act, 1948. When we turn to the order passed by the authority, we find that the damages were calculated in the light of the extent of each default and a flat rate of damages of 19 per cent was applied for computation, it cannot necessarily be held that it would, therefore, exceed the ceiling provided by Section 85-B which reads as under :

"85-B. 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 or under Section 45-C to Section 45-I."

2. It is to be kept in view that even as per the said section, the rate of damages fixed by way of penalty should be within the ceiling of 100 per cent of the amount of arrears of contribution which were not paid in time. Subject to that ceiling any rate fixed could not be said to be contrary to Section 85-B by itself. In the present case, the damages were fixed at the rate of 19 per cent per annum. In recovering these damages if at a given point of time it is found that the extent of damages claimed would exceed the ceiling of 100 per cent, such damages would get frozen and could not be

recovered to the extent to which the ceiling prescribed by Section 85-B got exceeded. Consequently, the general observations made by the High Court to the aforesaid effect in the impugned judgment, in our view, cannot be sustained. However as the claim of damages was only Rs. 7553, we do not think any further orders are required in this connection at such late stage. Subject to the aforesaid observations and clarification, the appeal is disposed of.