

## KERALA HIGH COURT

Regional Director, E.S.I. Corpn

Vs

Bhaskaran

M.F.A. Nos. 506 & 508 of 1982

(Sivaraman Nair, Pareed Pillay, JJ.)

26.03.1987

### JUDGMENT

#### **Sivaraman Nair, J.**

1. The Regional Director of the Employees' State Insurance Corporation is the appellant in these appeals filed under Section 82 of the Employees' State Insurance Act. The appeal is against the common judgment of the Employees' Insurance Court in I.C. Nos. 26, 31, 33, 37, 40, 43, 49, 52, 53, 55 and 57 of 1982. In all these cases, the employer, against whom proceedings under Section 85B of the Employees' State Insurance Act (hereinafter to be referred to as the Act) for recovery of damages for failure to pay the contribution or any other amount payable under the Act, had challenged the competence of the Regional Director of the Employees' State Insurance Corporation. The argument is that the Regional Director got power only by virtue of a sub-delegation made by the Director-General of the Corporation and that sub-delegation was contrary to Section 94A of the Act. The Tribunal held in favor of the employer. The Regional Director challenges that order of the Insurance Court in these appeals.

2. It is necessary to advert to the relevant statutory provisions to understand the controversy involved in full. Section 85B of the Act deals with the power to recover damages and provides :-

"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 under Sub-section (1) may be recovered as an arrear of land revenue."

It is clear from the above provisions that the power to recover damages is quasi-criminal in character. It has been held that the damages recoverable under Section 85B of the Act is not compensatory, but penal and deterrent in character, and that is the reason why it is specifically provided that such damages may be recovered only after the employer is given a reasonable

opportunity of being heard. Therefore, the proceedings are quasi-judicial in character. The authority to recover damages is vested in Corporation.

3. Section 94-A deals with delegation of powers and provides :

"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 by any Officer or authority subordinate to the Corporation."

It is evident from the above provisions that ordinarily the power of the Corporation to recover damages may be capable of delegation. In other words, it may be necessary to designate specified officer or officers of the Corporation to exercise the power under Section 85B of the Act. The Director-General of the Corporation is a statutory functionary appointed under the Act. He has to exercise many statutory powers. Rule 16(2) of the Employees' State Insurance Rules, 1950, enables delegation of his powers subject to certain conditions to any person subordinate to him and provides :

"The Director-General may, with the approval of the Standing Committee, by general or special order, delegate any of his powers or duties under the rules or the regulations or under any resolution of the Corporation or the Standing Committee as the case may be, to any person subordinate to him. The exercise or discharge of any of the powers or duties so delegated shall be subjected to such restrictions, limitations and conditions, if any, as the Director-General may, with the approval of the Standing Committee, impose."

4. The Corporation, in its meeting held on 28-2-1976, adopted the following resolution :-

"Resolved that for the purpose of levy of damages under Section 85B(1) of the Employees' State Insurance Act, 1948 as amended up-to-date, the Director-General or any other officer authorized by him may levy and recover damages from the employers not exceeding the rates as per table annexed."

The Director-General issued three office orders on 3-5-1976, 8-7-1977 and 15-12-1977, authorizing all the Regional Directors, Joint Regional Directors, etc., to exercise the powers of levy of damages on employers within their respective regions under Section 85B(1) of the Act. It was exercise of that power that the Regional Director sought to recover damages from the employers under Section 85(1) of the Act.

5. The employers, in their applications under Section 75 of the Act before the Insurance Court, in resisting the recovery of damages, raised a preliminary objection that the Regional Director was not competent to recover damages because, the authorization in his favor was a sub-delegation by a delegate, viz. the Director-General of the Corporation. They relied on the maxim 'delegatus non-potest delegate'. Reference was made, to the observations of the Supreme Court in the

decisions in *Barium Chemicals Ltd. v. Company Law Board*<sup>1</sup> *Mangulal Chunilal v. Manilal Magan Lal*<sup>2</sup> and *Bombay Municipal Corporation v. Dhondu Narain Chowdhary*<sup>3</sup>). The Insurance Court held that the authorisation in favor of the Regional-Director was a sub-delegation in contravention of Section 94-A of the Act, and therefore held that he had no power to impose damages. In this view, all the orders of the Regional Director were set aside.

6. Counsel for the appellant submits that the resolution of the Corporation dated 28-2-1976 had validly delegated the power under Section 85-B to the Director-General or any other Officer authorized by him and the specification of the Officers by subsequent proceedings of the Director-General did not amount to sub-delegation. According to him, Section 94-A has conferred authority on the Corporation unconditionally and on the Standing Committee subject to the regulations in that behalf, to direct that the powers and functions which may be exercised by the Corporation or the Standing Committee may be exercisable by any Officer or authority subordinate to the Corporation. We have to proceed on the basis that Section 94-A of the Act enabling delegation of powers to any Officer or authority subordinate to the Corporation is valid.

7. A delegation need not be in favor of one Officer alone. It may as well be in favor of all Officers. 'Any Officer' of the Corporation may as well mean every Officer of the Corporation. We have to examine the resolution dated 28-2-1976 adopted by the Corporation in the light of this legal position.

8. If that resolution delegated the power of the Corporation in the matter or levy of damages under Section 85-B(1) of the Act only on the Director-General, and enabled him to sub-delegate that power to any subordinate of his, that resolution may be contrary to" the provisions of Section 94-A of the Act. Let us now see that resolution. The conferment of power by delegation is on the Director-General or "any other Officer authorized by him". The delegation is, therefore, in favor of two classes of persons; one consisting of the Director-General alone, and the other consisting of any other Officer who may be designated by the Director-General. The second part of the resolution may not be an authorization for a sub-delegation. It may only be a power in the Director-General to designate the Officers who already had the designate powers. The meaning of the 2nd clause may as well be that the power is delegated to every Officer subordinate to the Corporation. But such officers had to be identified by the Director-General. Viewed in this manner, there may not be any sub-delegation of the power which was given to the Director-General by the Corporation, to his subordinates. It may only be a process of identification and designation of some among the Officers subordinate to the Corporation, to all of whom, the power to recover damages under Section 85B of the Act was validly delegated under the resolution dated 28-2-1976.

<sup>1</sup>( AIR 1967 SC 295)

<sup>3</sup> AIR 1965 SC 1486

<sup>2</sup>( AIR 1968 SC 822)

9. We feel that is a possible interpretation. We also feel that this interpretation may be more realistic. We are also of the opinion that this interpretation will make the provisions of Section 85-B of the Act more workable. The Insurance Court has accepted an alternative construction which found favor with the Karnataka High Court in *E.S.I. Corporation v. Shoba Engineers*<sup>4</sup> The Karnataka High Court understood the resolution of the Corporation dated 28th February, 1976 as a delegation of its powers in favor of the Director-General and an authorisation

to sub-delegate such powers by the Director-General. In adopting that view, a Division Bench of the Karnataka High Court differed from the view expressed by the *Punjab and Haryana High Court in E.S.I. Corporation v. Dhanda Engineers (P) Ltd*<sup>5</sup>. where Sandhawalia, C.J. speaking for the Bench observed with reference to the resolution, dated 28-2-1976 that :-

"... It is plain, that the delegation - by the Corporation was not made merely in favor of the Director-General. Plainly enough it was a two-fold delegation. Firstly, in favor of the Director-General and secondly, in favor of the Officer authorized or named by the Director-General."

Counsel for the appellant argued that it may not be possible for the Director-General to exercise the power of recovery of damages under Section 85-B of the Act in all cases, and as such, he has necessarily to have other Officers competent to exercise the same powers in different parts of the country. It appears to us that we have to understand Section 94-A of the Act and the resolution dated 28.2.1976 adopted by the Corporation admittedly under the provisions therein, reasonably. If so done, the more acceptable view is that the delegation of powers was not in favor of the Director-General alone, but in favor of other Officers subordinate to the Corporation as well. It was left to the administrative determination of the Director-General of the Corporation as to who shall be specifically identified and designated to exercise that power. The process of such identification and designation of some among the many Officers, in whose favor the delegation was validly made, may not amount to sub-delegation.

10. Counsel for the appellant stand before us that if the view of the Insurance Court is to be upheld, recoveries so far made by the Regional Directors and other designated Officers would be rendered invalid and unworkable. We see considerable force in this submission. We feel that it shall not be our anxiety to adopt interpretations which will result in a stalemate in the working of the Corporation which was constituted to administer a beneficial legislation.

11. We have no doubt about the proposition that there shall be no delegation of judicial or quasi-judicial powers except in cases where there is specific authorization. We are also clear in our mind that such powers shall not be capable of sub-delegation even if the statute authorizes that. But in the latter case, the governing statute itself may have to be specifically challenged. The Insurance Court, which is the creature of that very statute, may not be able to hold that the provisions enabling such delegation

<sup>4</sup>(1981) 59 FJR 343

<sup>5</sup>(1981) 48 FJR 402

is invalid. Happily, there is no challenge to Section 94-A of the Act which authorizes delegation of the power of the Corporation under Section 85-B(1) of the Act in favor of Officers or authorities subordinate to the Corporation. The only question is whether the resolution dated 28.2.1976 and the subsequent office orders passed by the Director-General authorizing the Regional Directors and other designated Officers to exercise powers under Section 85-B(1) of the Act amounted to sub-delegation contrary to the provisions contained in Section 94-A of the Act. We are of the opinion that there was no such sub-delegation. The resolution dated 28.2.1976 was a valid delegation in favor of Officers subordinate to the Corporation and included the Director-General, who was separately designated. Delegation in favor of unspecified or unidentifiable

Officers of the Corporation as would invalidate the delegation, is not a point raised before us. Nor was that point urged before the Insurance Court. We are also of the opinion that if it was necessary for us to decide the question, we would have held that the expression "any officers subordinate to the Corporation" is sufficiently identifiable and adequately determinable. Neither the provisions of Section 94-A of the Act, nor the resolution, dated, 28.2.1976, can, therefore, be effectively challenged as conferring a statutory power on an unidentifiable indeterminate mass of people.

12. In this view, we have to hold that Insurance Court was not right in holding that the appellant had no power to impose damages on the respondents/employers and in setting aside the orders issued by the appellant.

13. The Insurance Court did not consider any of the individual cases involved, on merits, since it held in favor of the employers on the preliminary point. It is now necessary to remit the matter for reconsideration since we are inclined to set aside the judgment of the Insurance Court. The appeals have, therefore, to be, and are hereby allowed. Insurance Case Nos. 26, 31, 33, 37, 40, 43, 49, 52, 53, 55 and 57 of 1982 are remitted to the Insurance Court, Quilon for fresh consideration and disposal on merits in accordance with law. There will be no order as to costs. Appeal dismissed.