

## **M/S. Prestolite Of India Ltd. vs The Regional Director And Another on 7 October, 1993**

**Equivalent citations: AIR1994SC521, (1995)ILLJ622SC, 1994SUPP(3)SCC690, AIR 1994 SUPREME COURT 521, 1993 AIR SCW 3962, 1994 (3) SCC(SUPP) 690, 1995 SCC (L&S) 202, (1995) 2 LBLJ 622, (1995) 2 LAB LN 667**

**Bench: G.N. Ray, S.P. Bharucha**

### **JUDGMENT**

1. This appeal arises out of the special leave granted by this Court on application under Article 136 of the Constitution of India against the decision of the Punjab and Haryana High Court in First Appeal from Order No. 7 of 1981 dated March 9, 1981. It may be stated here that the appeal was to be heard by the Single Bench of the High Court. But in view of the importance of the points raised in a number of similar matters a reference was made before the Division Bench of the High Court and the Division Bench answered the reference in F.A.O. No. 476 of 1978. In terms of the decision rendered in the said First Appeal, the appeal preferred by the appellant in the High Court namely, F.A.O. No. 7 of 1981 was dismissed in limine by the Division Bench. The said F.A.O. No. 7 of 1981 arose out of an adjudication dt. 24-12-1979 made by the Regional Director, Employees' State Insurance Corporation, Haryana imposing damages for a sum of Rs. 51,857.40 under Section 85(B)(1) of the Employees' State Insurance Act as contained in Annexure 'A' of the Special Leave Petition. The appellant-company thereafter made an application under Section 75 of the Act and such application was dismissed by an order dated 11-10-1980 passed by the Judge, Employees State Insurance Court, Ballabgarh. After disposal of the said application, F.A.O. No. 7 of 1981 was preferred before the High Court. The facts leading to the aforesaid proceedings are to the following effect:

The Regional Director proposed to impose damages on account of payment of the dues under the State Employees' Insurance Act beyond the time frame and a notice to that effect was issued to the appellant. The appellant made a written representation in response to the notice indicating the reasons for which there had been delay in making such payment. Such written representation has been annexed to the Special Leave Petition being Annexure A-1. Although an opportunity of personal hearing was afforded by the Regional Director to the appellant, such opportunity was not availed of. The written representation was stated to have been taken into consideration by the Regional Director and the same was dismissed by making the order to the following effect:

I have applied my mind to all the relevant facts and have gone into the reasons stated by the employer. My finding on each of the contentions of the establishment are as under:

The reasons advanced are not legally tenable. Opportunity of Personal hearing afforded on 22-11-1979 has not been availed of.

2. Mr. Mehta, learned Counsel appearing for the appellant has contended before us that although in the written representation various reasons were indicated by the appellant as to why the payment could not be made within the time frame, such written representation had not been taken into consideration by adverting to the grounds indicated in the representation by the Regional Director who passed the impugned order mechanically holding that the reasons were not legally tenable. He has submitted that the Regional Director being quasi-judicial authority was required to dispose of the objection or the representation made by the appellant by applying his mind to the facts and circumstances of the case and by clearly indicating why the objections were not tenable for basing his decision. But unfortunately, no reason was indicated by the Regional Director in support of the conclusion that the reasons were not legally tenable. It is quite apparent from the order of the Regional Director that there was total non-application of mind in discharging quasi-judicial duties and functions. In this connection, reference was made by the learned Counsel to the decision of this Court made in *Organo Chemical Industries v. Union of India* AIR 1979 SC 1803. In the said decision, power under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, was taken into consideration. On the question of reasoned order to be made by the adjudicating authority, this Court has referred to an earlier decision of this Court in *Siemens' case* by quoting the observations made therein to the following effect at p. 1789 of AIR: It is now settled law that where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with *N. M. Desai v. Testeels Ltd., C.A. No. 245 of 1970, D/-17-12-1975 (SC):* .

Mr. Mehta has submitted that unfortunately the High Court having upheld the validity of Section 85-B of the Act, in the said reference, summarily dismissed the appeal of the petitioner without considering the merits of the case. Mr. Mehta has contended that even if it is assumed that imposition of damages can also be made in a case where the payment has been made beyond the statutory time, the imposition of damages was required to be quantified by the adjudicating authority after considering the objection or representation made by the employer in the case. In the instant case neither the tribunal nor the High Court considered the grounds for delayed payment in basing the impugned orders. It has also not been indicated in the impugned decisions as to why imposition of damages at the rates determined by the adjudicating authority was just and proper. The orders impugned in this appeal therefore should be set aside.

3. Mr. Goswami, learned Counsel for the respondents has, however, submitted that it would have been appropriate if the Regional Director had given reasons in some details for disposing of the show cause proceeding. But in the facts and circumstances of the case, the adjudication made by the Director was quite just and fair and on the face of the representation no other order was warranted. Since no injustice has been made to the appellant, for the mere technicality that the adjudicating authority has not indicated detailed reasons for its finding the impugned orders should not be set aside. He has also contended that specific case of prejudice suffered on account of impugned adjudication had not been raised in the application under Section 75 of the Act and it also does not

appear that before the High Court such contentions were specifically raised. Hence, the appellant should not be permitted to raise such contentions at the time of hearing of this appeal. Mr. Goswami has submitted that the grounds taken in the written representation were vague and the appellant was given the opportunity of personal hearing but such opportunity was not availed of and no material was produced before the adjudicating authority to substantiate the grounds made in the representation for delayed payment. Accordingly, the Regional Director had rightly rejected the representation by holding that the reasons advanced were not legally tenable. Mr. Goswami has also submitted that under the Employees' State Insurance General Regulations guidelines have been indicated as to how damages for delayed payment are to be imposed. Since such guidelines have been followed no exception should be made to the impugned adjudication.

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 case, the mitigating circumstances can be taken into consideration by the adjudicating 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 case, 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.