

Sahni Silk Mills (P) Ltd vs E.S.I. Corpn.(N.P.Singh,J.) on 14 July, 1994

Equivalent citations: 1994 SCC (5) 346, JT 1994 (5) 11

Author: N.P Singh

Bench: N.P Singh, Kuldip Singh, P.B. Sawant

PETITIONER:
SAHNI SILK MILLS (P) LTD.

Vs.

RESPONDENT:
E.S.I. CORPN. (N.P.Singh,J.)

DATE OF JUDGMENT 14/07/1994

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
KULDIP SINGH (J)
SAWANT, P.B.

CITATION:
1994 SCC (5) 346 JT 1994 (5) 11
1994 SCALE (3) 324

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by N.P. SINGH, J.-

C.A. Nos. 2971-2974 of 1989 The Regional Directors of the Employees' State Insurance Corporation (hereinafter referred to as 'the Corporation') issued notices under Section 85-B of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the Act') to the appellants between the years 1979 to 1981, stating that they proposed to impose damages against the appellants because there had been delay on the part of the appellants in making payment of the contribution, in accordance with

the provisions of the said Act. Different amounts were mentioned in the said notices which were to be imposed, as damages against the different appellants. The appellants in pursuance to the notices aforesaid submitted their explanations indicating the reasons and circumstances, because of which the delay had occurred. The Regional Directors passed orders on different dates against the different appellants imposing damages, for the period in question. Being aggrieved by those orders the appellants filed petitions under Section 75 of the Act before the Employees' Insurance Court. The Employees' Insurance Court dismissed the petitions. Thereafter appeals were filed under Section 82 of the Act before the High Court which were dismissed in limine.

2. Before this Court, the validity of the impugned orders has been questioned on the ground that the power under Section 85-B could not have been exercised by the Regional Directors of the Corporation; it could have been exercised either by the Corporation or by the Director General of the said Corporation.

3. Section 3 of the Act provides for the establishment of the Employees' State Insurance Corporation and Section 4 provides for constitution of Standing Committee for the Corporation. Section 85-B vests power in the Corporation to recover from the employer such damages as it may think fit, whenever an employer fails to pay the amount due in respect of any contribution or any other amount payable under the said Act. Section 85-B on the relevant date was as follows:

"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 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 recoverable under sub-

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

In view of Section 94-A the Corporation may delegate any of its powers to any officer or authority subordinate to the Corporation.

"94-A. Delegation of powers.- 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."

4. In the present case, the power of the Corporation to recover the damages under Section 85-B has not been questioned. The controversy is as to whether this power could have been delegated under Section 94-A aforesaid to the Regional Directors. It may be mentioned that in exercise of the power under Section 94-A the Corporation delegated its power to impose and recover damages from the employers by a resolution dated 28-2-1976.

"Resolved that for purposes of levy of damages under Section 85-B(1) of the Employees' State Insurance Act, 1948, as amended up-to-date, the Director General or any other officer authorised by him may levy and recover damages from the employer/s not exceeding the rates as per Table annexed." (emphasis supplied) It was pointed out that when Section 94-A provides that the Corporation may direct that all or any of the powers and functions which may be exercised or performed by the Corporation may subject to such conditions, if any, as may be specified "be also exercisable by any officer or authority subordinate to the Corporation", the Corporation could not have delegated its power under Section 85-B(1) of the Act, to be exercised by any other officer authorised by the Director General. In this process there has been a sub- delegation, because the Director General in his turn can authorise any other officer to exercise that power. Such other officer has neither been named nor has been described by designation in the resolution of the Corporation.

5. The courts are normally rigorous in requiring the power to be exercised by the persons or the bodies authorised by the statutes. It is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. At the same time, in the present administrative set-up extreme judicial aversion to delegation cannot be carried to an extreme. A public authority is at liberty to employ agents to exercise its powers. That is why in many statutes, delegation is authorised either expressly or impliedly. Due to the enormous rise in the nature of the activities to be handled by statutory authorities, the maxim delegatus non potest delegare is not being applied specially when there is question of exercise of administrative discretionary power.

6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee is to exercise the power. The real problem or the controversy arises when there is a sub- delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place. In *Barium Chemicals Ltd. v. Company Law Board*, this Court said in respect of sub-delegation:

"Bearing in mind that the maxim delegatus non protest delegate sets out what is merely a rule of construction, sub-delegation can be sustained if permitted by express provision or by necessary implication."

7. Again in *Mangulal Chunilal v. Manilal Maganlal*², while considering the scope of Section 481(1)(a) of the Bombay Provincial Municipal Corporation Act (59 of 1949) this Court said that Commissioner of the Ahmedabad Municipal Corporation had delegated his power and function under the aforesaid section to a Municipal Officer to launch proceedings against a person charged with offences under the Act or the rules and that officer to whom such functions were delegated could not further delegate the same to another.

8. In *Halsbury's Laws of England*, 4th Edn., Vol. 1, in respect of sub-delegation of powers it has been said:

"In accordance with the maxim *delegatus non protest delegate*, a statutory power must be exercised only by the body or officer in whom it has been confided, (*H. Lavender & Son Ltd. v. Minister of Housing and Local Government*³) unless sub-delegation of the power is authorised by express words or necessarily implication (*Customs and Excise Comrs. v. Cure and Deeley Ltd.*⁴ and *Mungoni v. Attorney General of Northern Rhodesia*⁵). There is a strong presumption against construing a grant of legislative, judicial, or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of 1 AIR 1967 SC 295 : 1966 Supp SCR 311 :

(1966) 36 Com Cas 639 2 AIR 1968 SC 822: (1968) 2 SCR 401 :1968 Cri LJ 979 3 (1970) 3 All ER 871 :(1970) 1 WLR 1231 4 (1962) 1 QB 340: (1961) 3 All ER 641 : (1961) 3 WLR 798 5 (1960) 1 All ER 446: (1960) 2 WLR 389: 1960 AC 336, PC which the designated body should address its own mind. *Allam & Co. v. Europa Poster Services Ltd.*⁶ ... "

9. In the case of *Harishankar Bagla v. State of M.P.*⁷, while examining the scope of Section 4 of the Essential Supplies (Temporary Powers) Act, 1946 it was said:

"Section 4 of the Act was attacked on the ground that it empowers the Central Government to delegate its own power to make orders under Section 3 to any officer or authority subordinate to it or the Provincial Government or to any officer or authority subordinate to the Provincial Government as specified in the direction given by the Central Government. In other words, the delegate has been authorized to further delegate its power in respect of the exercise of the powers of Section 3. Mr Umrigar contended that it was for the Legislature itself to specify the particular authorities or officers who could exercise power under Section 3 and it was not open to the Legislature to empower the Central Government to say what officer or authority could exercise the power.

Reference in this connection was made to two decisions of the Supreme Court of the United States of America *Panama Refining Co. v. Ryan*⁸ and *Schechter v. United States*⁹. In both these cases it was held that so long as the policy is laid down and a standard established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. These decisions in our judgment do not help the contention of Mr Umrigar as we think that Section 4 enumerates the classes of persons to whom the power could be delegated or sub-delegated by the Central Government and it is not correct to say that the instrumentalities have not been selected by the Legislature itself."

In the aforesaid case, the sub-delegation was upheld because Section 4 itself enumerated the classes of persons to whom the power could be delegated or sub-delegated by the Central Government.

10. So far as the present Section 94-A is concerned, it says that the Corporation subject to any regulation made by the Corporation in that behalf, may direct that particular or any of the powers and functions which may be exercised or performed by the Corporation, 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". Section 94-A does not specifically provide that any officer or authority subordinate to the Corporation to whom the power has been delegated by the Corporation, may in his turn authorise any other officer to exercise or 6 (1968) 1 All ER 826: (1968) 1 WLR 638 7 AIR 1954 SC 465, 468 :(1955) 1 SCR 380: 1954 Cri LJ 1322 8 (1934) 293 US 388 :79 L Ed 446 9 (1934) 295 US 495 : 79 L Ed 1570 perform that power or function. But by the resolution dated 28-2-1976 the Corporation has not only delegated its power under Section 85-B(1) of the Act to the Director General, but has also empowered the Director General to authorise any other officer to exercise the said power. Unless it is held that Section 94-A of the Act, enables the Corporation to delegate any of its powers and functions to any officer or authority subordinate to the Corporation, and he in his turn can sub-delegate the exercise of the said power to any other officer, the last part of the resolution dated 28-2-1976 cannot be held to be within the framework of Section 94-A. According to us, Parliament while introducing Section 94-A in the Act, only conceived direct delegation by the Corporation to different officers or authorities, subordinate to the Corporation, and there is no scope for such delegate to sub-delegate that power, by authorising any other officer to exercise or perform the power so delegated.

11. It may be mentioned that on 19-2-1983 the Corporation by another resolution in supersession of resolution dated 28-2-1976 has delegated its powers under Section 85-B to recover damages in the following terms:

"Resolved that the power to levy and recover damages from the employer(s) under Section 85- B of the ESI Act, 1948, as amended up-to-date, may be exercised by the Director General, all Regional Directors, Joint Regional Directors, Deputy Regional Directors, Assistant Regional Directors, Director Sub-Regional Office, Pune and Deputy Regional Director In-charge Sub- Regional Office Nagpur."

In this resolution the Corporation has delegated the power to recover damages under Section 85-B to the Director General, all Regional Directors, Joint Regional Directors, Deputy Regional Directors, Assistant Regional Directors and other officers mentioned in the resolution by designations. Neither any grievance has been made nor can it be made so far as this resolution is concerned because the Corporation has directly delegated its power under Section 85-B to different officers with reference to their designations, throughout the country, and no power is given in this resolution to the Director General to authorise any other officer to levy and recover damages from the employers.

12. It has to be borne in mind that the exercise of the power under Section 85-B(1) is quasi-judicial in nature, because there is always a scope for controversy and dispute and that is why the section itself requires that before recovering any such damages, a reasonable opportunity of being heard shall be given to the employer. The employer is entitled to raise any objection consistent with the provisions of the Act. Those objections have to be considered. After consideration of objections, if any, an order for recovery of damages has to be passed. The maxim delegatus non protest delegate

was originally invoked in the context of delegation of judicial powers saying that in the entire process of adjudication a judge must act personally except insofar as he is expressly absolved from his duty by a statute. The basic principle behind the aforesaid maxim is that "a discretion conferred by statute is prima facie intended to be exercised by the authority on which the statute has conferred it and by no other authority, but this intention may be negated by any contrary indications found in the language, scope or object of the statute". (Vide John Willis, "Delegatus non protest delegate, (1943) 21 Can. Bar Rev. 257, 259)".

13. It cannot be disputed that by the impugned resolution dated 28-2-1976 the Corporation not only delegated its power under Section 85-B(1) of the Act to the Director General, but also left it to the Director General to authorise any other officer to exercise the power under Section 85-B(1). From Section 94-A it does not appear that Parliament vested power in the Corporation to delegate its power on any officer or authority subordinate to the Corporation, and also vested power in the Corporation to empower such officer or authority, to authorise any other officer to exercise the said power under Section 85-B(1). If Section 94-A had a provision enabling the Corporation, not only to delegate its power to any other officer or authority subordinate to the Corporation, but also to empower such officer or authority in its own turn to authorise any other officer to exercise that power, the resolution could have been sustained on the principle indicated in the cases *Harishankar Bagla v. State of M. p.7* and *Barium Chemicals Ltd. v. Company Law Board*'. As such it has to be held that the part of the resolution dated 28-2-1976, which authorises the Director General to permit any other officer to exercise the power under Section 85-B(1) of the Act is ultra vires Section 94-A.

14. It is an admitted position that the Regional Directors have exercised the power under Section 85-B(1) of the Act while passing the impugned orders for recovery of the damages from the appellants. The Regional Directors had been authorised to do so by the Director General of the Corporation by an office order dated 3-5-1976 made on the basis of the aforesaid resolution of the Corporation dated 28-2-1976. Once that part of the earlier resolution is held as invalid, the office order dated 3-5-1976 issued by the Director General also becomes invalid. The Regional Directors therefore could not have passed the impugned orders on the basis, of the invalid office order dated 3-5-1976.

15. Hence the view taken in the case of *Rameshwar Jute Mills Ltd. v. Union of India* 10 by the Full Bench of the Patna High Court as well as in the case of *Employees' State Insurance Corpn. v. Dhanda Engineers Pvt. Ltd. II*, by a Division Bench of the Punjab and Haryana High Court upholding the resolution dated 28-2-1976 and office order dated 3-5-1976 cannot be sustained and the opinion expressed in the case of *Employees' State Insurance Corpn., Bangalore v. Shoba Engineers*¹², by a Division Bench of the Karnataka High Court, that the aforesaid resolution dated 28-2-1976 and office order dated 3-5-1976 was invalid has to be upheld.

10 AIR 1986 Pat 288: 1986 Lab IC 1225: (1986) 2 LLN 610 (FB) 11 1981 Lab IC 658: (1981) 2 LLN 106: (1981) 42 FLR 282 (P&H) 12 (1981) 59 FJR 343: (1982) 44 FLR 100 (Kant)

16. Unfortunately, these appeals have remained pending in this Court for the last many years and in the meantime, on the basis of the resolution dated 28-2-1976 and office order dated 3-5-1976 the

different Regional Directors of the Corporation in different parts of the country have exercised power under Section 85-B(1) of the Act for recovery of the damages from different employers. That exercise of power had been upheld by a Full Bench of Patna High Court and a Division Bench of the Punjab and Haryana High Court referred to above. In this background, it be improper to declare all such actions taken by the different Regional Directors as invalid. The Corporation has itself, later by its resolution dated 19-2-1983 superseded and recalled the aforesaid resolution dated 28-2-1976. As such, any exercise of power by the Regional Directors on and from 19-2-1983 cannot be questioned. The disputed period is only between 28-2-1976 and 19-2-1983. According to us, it will not be proper for this Court to upset and unsettle the settled position at this late stage. Nor is it in public interest to do so. The orders passed are in no way erroneous on merits. Taking all facts and circumstances into consideration, we direct that no actions or proceedings shall be entertained for refund of amounts which have already been realised as damages from the employers concerned. However, if from some employers, the damages under Section 85-B(1), on the basis of orders passed by the Regional Directors between 3-5-1976 and 19-2-1983 have not yet been realised, they shall not be realised. In such cases, it will be open for the Regional Directors to issue fresh notices and assess and recover the damages, if any.

17. The appeals are allowed to the extent indicated above. There shall be no orders for the costs.

C.A. Nos. 1689-1706 of 1982, 1708 to 1721 of 1982, SLP (C) Nos. 1200 of 1990, 3019 of 1990, 1584 of 1990, 15165 of 1991, 4505 to 4507 of 1983, 5026 to 5031 of 1983, 12843-52 of 1983

18. These appeals and special leave petitions have been filed on behalf of the Employees' State Insurance Corporation for setting aside the judgments of the different High Courts holding that in exercise of the power under Section 94-A of the Act, the Corporation could not have delegated its power under Section 85-B(1) by the aforesaid resolution dated 28-2-1976 to the Director General of the Corporation empowering him to authorise any other officer, to exercise the power under Section 85-B(1) of the Act.

19. In view of our judgment in Civil Appeal Nos. 2971 to 2974 of 1989 (see above), these appeals and special leave petitions are dismissed. But in the facts and circumstances of the case, there shall be no order as to costs.