



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO.6383 OF 2019

Regional Director,
Employees' State Insurance
Corporation, Panchdeep Bhawan,
N. M. Joshi Marg, Lower Parel,
Mumbai – 400 013

...Appellant
(Org. Respondent)

Versus

M/s. Bombay Gymkhana Ltd.,
Mahatma Gandhi Road,
Fort, Mumbai – 400 001
Through its Authorized Signatory

...Respondent
(Org. Applicant)

Mr. Shailesh S. Pathak for the Appellant.

Mr. Manoj Gujar a/w Mr. T. R. Yadav i/by C. R. Naidu & Co. for the
Respondent.

CORAM : JITENDRA JAIN, J.

DATE : 24 FEBRUARY 2026

JUDGMENT :

1. On being disclosed about me being a service member of the respondent-gymkhana, both learned counsel stated that they do not have any objection to this Court hearing the present appeal.

2. **Admit** on following substantial question of law :-

“Whether, the Employees’ State Insurance Court (ESI Court) was justified in setting aside the order passed under Section 85-B of the Employees’ State Insurance Act, 1948 (ESI Act) on the ground that the same is passed beyond the time limit provided by proviso to explanation (b) to Section 77(1A)?



3. Since the issue revolves around a narrow compass, by consent of the parties, the appeal is heard finally at the admission stage.

Brief Facts:-

4. The respondent is a gymkhana incorporated and registered under the Companies Act with the object to promote, manage, assist in the promotion of all forms of athletic sports, pass time, recreation, etc.

Proceedings with respect to applicability of the ESI Act:-

5. There was some difference of opinion between the appellant-corporation and respondent-gymkhana as to whether the respondent-gymkhana was covered by the provisions of the ESI Act.

6. The respondent-gymkhana challenged the applicability of the ESI Act by filing an application to the ESI Court which was numbered as Application (ESI) No. 88 of 1983. The said application came to be dismissed on 29 May 1987. The appeal filed against the said order of the ESI Court before this Court by respondent-gymkhana was also dismissed for non-appearance on 12 April 1996 and there has been no application for restoration of the said appeal till today. Therefore by this dismissal, the respondent-gymkhana accepted applicability of the ESI Act.

7. On 15 March 1989, appellant-corporation demanded contribution of Rs.14.92 lakhs on adhoc basis by issuing Form C-18, being contribution for the period from 1972 to 1989. The respondent-gymkhana vide letter dated 30 August 2000, addressed to the appellant-corporation, without prejudice to its rights and contentions, paid amount of Rs.14.92 lakhs which was the demand made by the appellant-corporation on 15 March 1989. It was specifically mentioned



in the said letter that this is without prejudice and with an understanding that no interest would be charged.

8. Admittedly thereafter, the appellant-corporation on 7 September 2000 paid the contribution and the matter stood at rest insofar as the contribution aspect is concerned.

Proceedings with respect to levy of interest:-

9. On 23 March 2011, appellant-corporation demanded interest of Rs.29.17 lakhs on above delayed contribution by issuing notice in Form C-18 for the period from 1972 to 1989. The said demand was challenged by the respondent-gymkhana by filing an application to the ESI Court which was numbered as Application (ESI) No.11 of 2011. The said application was rejected by the ESI Court on 20 August 2015. The respondent-gymkhana challenged the said rejection by filing an appeal before this Court being Appeal No.1149 of 2015 and this Court on 8 February 2022 dismissed the appeal filed by the respondent-gymkhana. The issue raised in this appeal was only *qua* the rate of interest for the delayed payment of contribution.

Proceedings with respect to imposition of impugned damages/penalty:-

10. On 16 April 2014, the appellant-corporation issued notice to the respondent-gymkhana in Form D-18 to show cause as to why the damages should not be imposed and recovered for default in making the payment of contribution within the time stipulated under the ESI Act. The said show cause was accompanied by calculation of damages of Rs.16.26 lakhs which pertains to the delay in payment of contribution from 1975 to 1994.



11. The said show cause notice was replied by the respondent-gymkhana vide letter dated 13 May 2014. The respondent-gymkhana contended that the demand for damages have been raised after lapse of almost thirty years and, therefore, by relying on provisions of Section 77(1A)(b), the Limitation Act and various decisions of the Hon'ble Supreme Court on reasonable period, pleaded for withdrawal of the claim for damages.

12. The appellant-corporation, on 30 June 2014, rejected the above contentions of the respondent-gymkhana and passed an order under Section 85-B of the ESI Act and imposed damages of Rs.16.26 for the delayed payment of contribution for the period 1975 to 1983. The order under Section 85-B states that there is no limitation period for claiming damages under Section 85-B though there is a limitation of five years provided in Section 45-A for passing orders insofar as contribution is concerned.

13. The above order under Section 85-B of the ESI Act was challenged by the respondent-gymkhana by filing an application with the ESI Court which was numbered as Application (ESI) No.63 of 2004. On 16 October 2018, the ESI Court quashed and set aside the order dated 30 June 2014 passed under Section 85-B of the ESI Act, primarily relying on first proviso to Explanation (b) to Section 77(1A) of the ESI Act.

14. Being aggrieved by the above order of the ESI Court, the appellant-corporation has filed the present appeal.

Submissions of the Appellant-Corporation:-

15. Briefly, Mr. Pathak, learned counsel for the appellant-corporation submits that there is no limitation period provided for



passing order under Section 85-B. The limitation provided by first proviso to Explanation (b) to Section 77 (1A) deals with commencement of proceedings and not for passing of an order under Section 85-B. He further submits that wherever the legislature wanted orders to be passed within limitation period, same has been provided under the Act. For e.g. Section 45-A which provides for period of five years to pass an order for demanding contribution. Mr. Pathak further submitted that penal provisions should be strictly enforced and moreso while dealing with beneficial social statutes. He further relied upon following decisions in support of his submissions and prayed for reversal of the impugned order of the ESI Court :-

- (a) *ESI Corporation vs. C. C. Santhakumar*¹
- (b) *Horticulture Experiment Station, Gonikoppal, Coorg vs. Regional Provident Fund Organization*²
- (c) *Premchand Jute & Industries Pvt. Ltd. & Anr. vs. Employees State Insurance Corporation & Ors.*³
- (d) *The Deputy Regional Director & Anr. Vs. M/s. Aashu Engineering Works*⁴

Submissions of the Respondent-Gymkhana:-

16. Per contra, Mr. Gujar, learned counsel for the respondent-gymkhana submitted that assuming provisions of Section 77(1A) are not applicable to the orders under Section 85-B still the Hon'ble Supreme Court in the case of *C. C. Santhakumar (supra)* has observed in paragraphs 32 to 36 that such orders should be passed within reasonable period. He relied on provisions of Section 45-A, Regulation 32(2) of the Employees' State Insurance (General) Regulations, 1950

1 (2007) 1 SCC 584

2 (2022) 4 SCC 516

3 2020 SCC OnLine Cal 1574

4 First Appeal No.756 of 2011 dated 17 February 2026



and provisions of Section 77 (1A) and contended that period of five years would be reasonable period for passing order for recovery of damages. He submitted that in the instant case, the payment was made by the respondent-gymkhana for the period 1972 to 1989 on 7 September 2000 and the order under Section 85-B was passed on 16 April 2014 i.e. almost after close to fourteen years from date of payment. He, therefore, submitted that this period of fourteen years would not constitute “reasonable period” and, therefore, even if the limitation period is not provided under the Act, the impugned order is passed beyond reasonable period and, therefore, is bad in law. He further relied upon the following decision to submit that the appeal court can affirm the order of the Trial Court on different reasons :-

*(i) Santosh Hazari vs. Purushottam Tiwari & Ors.*⁵

17. Heard learned counsel for the appellant-corporation and the respondent-gymkhana.

Analysis & Conclusions:-

18. I propose to decide the question of law on the premise that there is no limitation period provided under the ESI Act to pass an order under Section 85-B of the ESI Act for claiming damages. This is on a demur of no express provision providing limitation. In this judgment, I am not adjudicating whether any express provision exists in the Act which provides for limitation period to pass an order under Section 85-B of the ESI Act.

19. Relevant provisions of the ESI Act are 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

⁵ 2001 (3) SCC 179



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, 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 sections 45C to 45-I].

77. Commencement of proceedings –

(1) The proceedings before an Employees' Insurance Court shall be commenced by application.

[(1A) Every such application shall be made within a period of three years from the date on which the cause of action arose.

Explanation: For the purpose of this sub-section,—

(a) the cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependants' benefit, the dependants of the insured person claims or claim that benefit in accordance with the regulations made in that behalf within a period of twelve months after the claim became due or within such further period as the Employees' Insurance Court may allow on grounds which appear to it to be reasonable;

[(b) the cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time:

Provided that no claim shall be made by the Corporation after five years of the period to which the claim relates;

(c) the cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulations.]

(2) Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, as may be



prescribed by rules made by the State Government in consultation with the Corporation.

45A. Determination of contributions in certain cases –

(1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any [Social Security Officer] or other official of the Corporation referred to in sub-section (2) of section 45 is [prevented in any manner] by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment :

Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard:

Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable.

(2) An order made by the Corporation under sub-section (1) shall be sufficient proof of the claim of the Corporation under section 75 or for recovery of the amount determined by such order as an arrear of land revenue under section 45B or the recovery under section 45C to section 45-I.

20. Section 85-B provides for imposition of penalty under the nomenclature of damages.

21. It is settled law, by now, that whenever a Statute does not provide limitation period for doing an act or for passing an order then the said act should be done or order should be passed within a reasonable period. This is no more *res-integra* and the Hon'ble Supreme Court in a series of decisions have taken this view which I do not propose to deal with in the present judgment to avoid burdening it any further. This is more particularly while dealing with the penal provisions imposing civil financial liability. Where power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner which inheres



its exercise within a reasonable time. This does not require buttressing by any precedent – but for the sake of completeness following decisions support this proposition:

*(i) Ram Chand and Others vs. Union of India and others*⁶

*(ii) Mohamad Kavi Mohamad Amin vs. Fatmabai Ibrahim*⁷

*(iii) M/s. Samrat Industries vs. Regional Director, ESI Corp.*⁸

22. The reasonable period concept has been accepted by the Supreme Court in *C.C. Santhakumar* case (*supra*) while dealing with the ESI Act itself.

23. What should be reasonable period has to be examined by analysing various provisions of the Act with which the Court is concerned. In the present case, the second proviso inserted with effect from 1 June 2010, to Section 45-A of the ESI Act provides that no order shall be passed by the Corporation in respect of a period beyond five years from the date on which the contribution shall become payable. If this proviso prohibits passing of any order for the period beyond five years from the date on which the contribution becomes payable, then the question of passing any order for claiming damages for delay in payment of contribution for a period beyond five years would not arise. This analysis is for the limited purpose of ascertaining what should be the “reasonable period” to pass an order under Section 85-B of the ESI Act. The second proviso to Section 45-A gives a clue that five years period can be treated as a “reasonable period” in the absence of express limitation period.

24. Regulation 32 of the ESI (General) Regulations, 1950 provides that every employer shall preserve every register maintained

6 (1994) 1 SCC 44

7 (1997) 6 SCC 71

8 O.J.C. No.1842/1991 dtd. 3 August 1994



under this regulation for a period of five years from the date of last entry therein. This regulation also gives a clue for arriving at the “reasonable period” of five years for the purpose of passing an order for which there is no limitation period prescribed.

25. Section 77(1A) provides that every application before the ESI Court shall be made within a period of three years from the date on which the cause of action arose. The phrase “cause of action” is explained in the Explanation. Explanation (b) provides that the cause of action in respect of a claim by the Corporation for recovering contribution (including interest and **damages**) from the principal employer shall be deemed to have arisen on the day on which such claim is made by the Corporation for the first time. However, proviso to clause (b) provides that no claim shall be made by the Corporation after five years of the period to which the claim relates. For the purpose of the present judgment, I am proceeding on an assumption that this proviso does not provide a limitation period for passing an order under Section 85-B but certainly this proviso gives a clue as to what should be the “reasonable period”, if there is no express limitation period provided in the Act. Applying the principle of this proviso, we fall back to the reasonable period being of five years. Similarly application before the ESI Court should be made within three years.

26. Therefore, after examining the Scheme of the Act, in my view, the “reasonable period” for claiming damages under Section 85-B, which in the instant case is calculated on the basis of the default made for payment of contribution would be five years. In the instant case, admittedly, the contribution for the period 1972 to 1989 was made by the respondent-gymkhana on 7 September 2000. If five years period is taken as reasonable period from the date of this payment, then the



appellant-corporation should have passed the order under Section 85-B on or before September 2005. However, in the instant case, the order under Section 85-B has been passed on 16 April 2014, which is much beyond reasonable period of five years.

27. There is no explanation for the delay of fourteen years, when the damages are calculated on the basis of contribution and the said contribution was paid on 7 September 2000. The explanation that in the intervening period, the appellant-corporation has levied interest which was contested by the respondent-gymkhana and ultimately the appeal filed by the respondent-gymkhana was dismissed by this Court on 8 February 2022 cannot be accepted. This is so because, the damages have been levied admittedly on the default made for making contribution within the prescribed time provided under the Act. The levy of interest and the challenge to the said levy by the respondent-gymkhana has no relation whatsoever to the order passed under Section 85-B which levied damages on the delayed payment of contribution and not on the interest. Furthermore, even the damages are calculated on contribution and not on the interest. Therefore, this contention cannot be accepted.

28. The contribution pertains to 1972 to 1989. The first appeal challenging applicability of the Act was dismissed on 12 April 1996. In 2000, the respondent-gymkhana paid up contribution. After eleven years, in 2011, interest on delayed contribution was levied which ultimately on challenge only qua rate of interest was dismissed in 2022. The damages were imposed in 2014, i.e. fourteen years after payment of contribution. The application on applicability was dismissed by the ESI Court in 1987. There was no bar on appellant-corporation to initiate proceedings under Section 85-B by any Court at any point of time. In



my view, looking at these facts, the delay in imposing penalty is unreasonable.

29. The learned counsel for the respondent-gymkhana has relied upon the decision of the Hon'ble Orissa High Court in the case of *Samrat Industries (supra)* to contend that the Hon'ble Orissa High Court has considered ten years as unreasonable period. I do not wish to go that far since in the instant case, I have analysed the scheme of the Act and have come to a conclusion that the reasonable period would be five years. Even if this judgment has to be considered, then even in that case the impugned order under Section 85-B is passed after fourteen years, which is beyond ten years that was held as unreasonable as per the Hon'ble Orissa High Court.

30. The submission made by the appellant-corporation that the ESI Act being social welfare legislation and penalty provision should have deterrent effect cannot be disputed but even in such welfare legislation, the order of penalty should have been passed within reasonable period. Merely because legislation is a welfare legislation, it does not give a licence to the appellant-corporation to pass an order beyond reasonable period. There has to be a certainty to the litigation and moreso with regard to penal provisions. Nothing prevented the appellant-corporation to act swiftly to impose damages when in 2000, the respondent-gymkhana made the payment of contribution. A good cause has to be pursued within reasonable limitation period which gets lapsed on the expiry of the reasonable period. There is no explanation for the delay of fourteen years. For deterrent effect, penal provision should be invoked immediately and not after a long delay of fourteen years. Deterrent effect loses its essence if invoked after a long period of delay. Therefore, invocation of penal action should be before the deterrent effect evaporates in thin air.



31. The decision relied upon by the learned counsel for the appellant-corporation in the case of *Premchand Jute & Industries Pvt. Ltd. (supra)*, *Horticulture Experiment Station (supra)* and *M/s. Aashu Engineering Works (supra)* would not be applicable to the facts of the present case, since the issue before me is only the “reasonable limitation period” within which an order under Section 85-B should have been passed and I have proceeded on a premise that there is no express limitation period provided under the Act for passing an order under Section 85-B. This issue was not the subject matter of adjudication in these judgments.

32. I, once again, make it clear that whether there is an express provision under the Act to pass an order under Section 85-B within certain limitation period is expressly kept open to be adjudicated in an appropriate case.

33. The appeal is dismissed by answering the question against the appellant-corporation and in favour of respondent-gymkhana with the hope that the statutory authorities would act swiftly within reasonable time henceforth.

[JITENDRA JAIN, J.]