IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

INS.APP.No. 106 of 2011

ORDER DATED 11-07-2011 IN IC 59/2009 OF E.I. COURT, PALAKKAD
....

APPELLANT(S)/OPPOSITE PARTY:

E.S.I.CORPORATION,
NORTH SWARAJ ROUND, THRISSUR-20,
[REPRESENTED BY ITS REGIONAL DIRECTOR].

BY ADV. SRI.P.SANKARANKUTTY NAIR

RESPONDENT(S)/APPLICANT:

VIYYUR REGIONAL IMITATION DIAMOND
MANUFACTURERS INDUSTRIAL CO-OPERATIVE SOCIETY,
VIYYUR P.O., THRISSUR-680 010, REPRESENTED BY ITS
SECRETARY.

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON
04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

P.B. SURESH KUMAR, J.

Insurance Appeal No.106 of 2011.

Dated this the 4th day of February, 2015.

J U D G M E N T

The decision of the Employees Insurance Court, Palakkad in I.C. No.59 of 2009 dated 11.07.2011 is under challenge in this appeal. The Employees' State Insurance Corporation, hereinafter referred to as 'the Corporation' for short, is the appellant.

2. The respondent is an establishment covered under the Employees' State Insurance Act, hereinafter referred to as 'the Act', for short. On a verification of the records of the respondent, an Inspector of the Corporation has reported that the respondent has not paid the contributions payable under the Act in respect of its employees for the periods, viz., October, 1985 to March, 1986, April, 1986 to September, 1986, October, 1986 to March, 1987, April, 1988 to September, 1991, November, 1996 to March, 1997, May, 1997 to

September, 1997, November, 1997 to March, 1998 and March, 1998 to September, 1998, on time. The contributions payable in respect of the said periods were paid only long after it fell due on 29.07.2008, 29.09.2008, 28.01.2009 and 03.10.2008. The Corporation, in the circumstances, initiated proceedings under Section 85B of the Act for imposing penalty on the respondent for non payment of contribution on time and issued notices directing the respondent to show cause why penalty shall not be imposed on them. Thereafter, after affording the respondent an opportunity for hearing, Exts.A1 to A4 orders were passed imposing penalty on them. It is seen that the penalty imposed on the respondent as per the said order was 25% of the contributions payable by them.

3. Exts.A1 to A4 were challenged by the respondent in the proceedings referred to above before the Insurance Court on the ground that the contributions could not be paid on account of financial constraints. The

Tribunal has taken the view that the Corporation has not disputed the fact that the respondent was under financial constraints for a pretty long period and that therefore, the imposition of penalty was not justified.

4. Heard Sri. Sandesh Raja, the learned counsel appearing for the appellant.

5. Exts.A1 to A4 orders indicate that the respondent has deducted the employees share of the contributions from their wages at the appropriate time and has not paid even the deducted portion of the wages. The aforesaid conduct of the respondent would indicate that they are guilty of contumacious conduct in not remitting the contributions payable on time. As such, the Corporation cannot be found fault with for having initiated proceedings for imposition of penalty under Section 85B of the Act. However, the employer being a Co-operative Society, I am of the view that the interests of justice demand that a lenient view has to be taken on the quantum of penalty to be imposed on the respondent.

According to me, 25% of the quantum of penalty imposed by the Corporation would be reasonable in the circumstances.

In the result, the appeal is allowed, the impugned order is set aside and Exts.A1 to A4 orders by which penalty was imposed on the respondent are restored, but limiting the penalty to 25% of the penalty imposed by the Corporation.

Sd/-
P.B. SURESH KUMAR
JUDGE

NS