

**An order levying damages under Section 85-B of the Employees' State Insurance Act, 1948 (ESI Act) cannot be set aside on the grounds of being 'mechanical', if inspection revealed that the wage and attendance records were manipulated and did not reflect the correct employment position**

The **Bombay High Court** in the case of **Deputy Regional Director vs Aashu Engineering Works [First Appeal No. 756 of 2011] dated February 17, 2026**, has held that an order levying damages under Section 85-B of the Employees' State Insurance Act, 1948 (ESI Act) cannot be set aside on the grounds of being 'mechanical' if the adjudicating authority has considered the specific submissions made by the employer in response to the show cause notice. The Court clarified that the onus is on the employer to plead specific mitigating factors (such as the number of defaults, extent of delay, etc.) before the authority.

The Court emphasised that it cannot subsequently fault the authority for not considering factors that were never raised, and that the judicial power to interfere with the quantum of damages is discretionary and should not be exercised in cases where the employer has not provided compelling reasons for the default and where there is evidence of malafide intention.

The Court found the Employees State Insurance Court's (ESI Court) observation that the order under Section 85-B was passed mechanically to be incorrect. The Court also noted that the original order had provided detailed reasons for not accepting the submissions made by the respondent.

The Court observed that the respondent had not raised factors such as the number of defaults, extent of delay, or frequency of defaults in its reply to the show cause notice. Therefore, the ESI Court could not expect the appellant to have considered these factors, and the respondent should have pleaded these points if they wanted the benefit of such considerations.

The Court noted clear evidence of malafide intention on the part of the respondent, as an inspection revealed that the wage and attendance records were manipulated and did not reflect the correct employment position. Further investigation showed that a wage register for the year 1997 was prepared in 2001 on forms bearing a 7-digit phone number, which was only introduced in 1999.

The Court opined that the appellant had exercised its discretion judiciously, and the damages levied of Rs. 27,849 were significantly lower than the maximum permissible amount, which could be up to the amount of arrears of Rs. 96,705. Further, the appellant had already taken a liberal view by considering the due date of contribution from the date of the visit notice rather than the actual due date.

Therefore, while acknowledging that a court can interfere with the quantum of damages, the Court clarified that such discretion must be exercised based on the specific facts of the case and the reasons advanced by the employer.