13. It necessarily calls for notice that Bains, J., in his order of reference as also in an earlier judgment in (*Rajpal Singh* v. *State of Haryana*) (8), had taken the view that it is open to the magistrate to disagree with the police report and issue process against an accused person shown in column No. 2 of the report and commit him to stand his trial. I am entirely in agreement with the observations made in *Rajpal Singh's case* (supra), which is hereby affirmed.

14. In view of the above, the answer to the question formulated at the very opening of the judgment is rendered in the affirmative and it is held that the Magistrate has the fullest jurisdiction to differ with the conclusions of the police in its report under section 173 of the Code of Criminal Procedure, 1973 and direct that the accused person mentioned in column No. 2 thereof should be summoned and committed to the Court of Sessions, for trial. Applying the said rule, the present revision petition is obviously, without merit and has to be necessarily dismissed.

S. P. Goyal, J.— I agree.

H.S.B.

Before S. S. Sandhawalia, C.J. and G. C. Mital, J.

EMPLOYEES STATE INSURANCE CORPORATION AND ANOTHER,—*Appellants*

versus

DHANDA ENGINEERS PRIVATE LIMITED,—*Respondent.*

First Appeal from Order 476 *of* 1978.

January 22, 1981.

Employees State Insurance Act (*XXXIV of* 1948)—*Sections* 3, 4, 5, 85, 85-B *and* 94-*A*—*Employees State Insurance* (*General*) *Regulations* 1950—*Regulations* 3, 26, 29, 31-*A and* 34—*Power of the Corporation to levy damages under section* 85-*B delegated to the*

(8) Cr. M. 5495 of 1978 decided on January 16, 1979.

Director General or any other officer authorised by him—Such delegation—Whether valid—Regulation 3—Whether stands in the way of delegation—Issuance of standard table for levy of damages and imposition thereof on its basis—Whether valid—Reply of the employer to the show cause notice—Whether ought to be considered—Passing of a speaking order thereon—Whether necessary—Payment of contributions—When complete—Non-submission of contribution cards as provided in regulation 26—Whether entitles the corporation to levy damages under section 85-B—Proviso to regulation 31 A—Whether retrospective—Payment of interest for delay in payment of contributions—Whether wipes away the failure to pay contributions within time—Penal provisions of section 85—Whether can be invoked despite the imposition of damages under section 85-B.

Held, that a plain reading of section 94-A of the Employees State Insurance Act, 1948, would show that it vests the Corporation with a plenary power to delegate all or any of the powers and functions, which may be exercised by it to any other officer or authority subordinate to the Corporation. Whilst the power to delegate by the Standing Committee may be hedged-in subject to any regulations made by the Corporation in this behalf, the Corporation itself has been vested with an unrestricted power to delegate all its functions to any one of its subordinates it may choose in its wisdom. Where the Corporation has by a resolution delegated its powers for purposes of levying damages under section 85-B of the Act to the Director General or any other officer authorised by him, the delegation is not made merely in favour of the Director General. Plainly enough it is a two-fold delegation—one in favour of the Director General and the other in favour of any other officer leaving the ministerial act of naming such an officer to the Director General. Either the Corporation could have itself named the other officer apart from the Director General to whom it visualised and authorised such delegation, or could delegate the naming of individual officers in the executive head of the Corporation. That it chose to do the latter, would not and cannot make the present case one of further delegation by a delegate and when all the requisite procedural formalities have been followed, the Regional Directors have been duly authorised and clothed with the powers under section 85-B of the Act in accordance with the Corporation's resolution and, therefore, delegation of powers in their favour does not suffer from any infirmity.

(Paras 6, 8 and 9)

Held, that Regulation 3 as also the rest of the Regulations were enforced by a notification dated October, 1950 and admittedly section 94-A of the Act was yet not on the statute book having been

inserted in 1951. It was by that section that the power to delegate was vested both in the Corporation itself as also in the Standing Committee. The significant proviso to Regulation 3(1) prescribing that no power shall be delegated under the Act which is required to be exercised by the Corporation only was anterior in time to section 94-A of the Act. The reasoning and rationale of its enactment was, therefore, obvious. It is plain, however, that after the enactment of section 94-A, an express power was vested in the Corporation and its Standing Committee to delegate their functions to the Director General or any other officer or authority subordinate to the Corporation. Therefore, any delegation by virtue of section 94-A of the Act cannot possibly be hit by the earlier and indeed the subservient second proviso to Regulation 3. In any case, in the event of any conflict, section 94-A of the Act would obviously override anything contrary to it in Regulation 3 including the second proviso to sub-section (1) thereof. Again, a reference to the opening part of Regulation 3 would indicate that it is meant to operate in a limited field. It prescribed that where a Regulation empowers the Corporation to do something, such power may be exercised by the resolution of the Corporation. It would thus, be plain that Regulation 3 is not intended to operate in the area where the Act itself confers certain powers on the Corporation. Thus, delegation of power by the Corporation to its Director General or any other officer authorised by him was valid and in no way affected by Regulation 3 or the second proviso thereto.

(Paras 12, 13 and 17)

Held, that the standard table prescribed for the levy of damages gives the power to recover damages not exceeding the rates specified in the said table. These words in the resolution are indeed the most material. It is not as if the hands of the delegate have been tied and his discretion entirely taken away so as to make incumbent upon him to levy damages as laid in the standard table. The discretion vested by section 85-B of the Act is continued. Whilst the statute had imposed an upper limit at 100 per cent, the standard table in fact goes in favour of the employer and suggests the imposition of damages at so low a figure as 2 per cent for the first penalty within one month or less. If at all, the table provides a guideline in order to avoid the whimsicality of each and every officer in the imposition of damages and further still leaves the discretion in the hands of the delegates with a discretion that the imposition is ordinarily not to exceed the rates in the table. The matter has to be viewed in the context of damages being imposed by various Regional Directors and even Deputy Regional Directors etc., in certain regions all over the length and breadth of this vast country. In this situation, to furnish a broad guideline in order to limit the wayward or whimsical exercise of discretion by innumerable authorities cannot be uncharitably assailed. On principle,

therefore, the standard table for the levy of damages neither involves any abdication of quasi-judicial function nor can be otherwise dubbed as arbitrary.

(Para 20)

Held, that the proviso to section 85-B(1) of the Act itself in categoric terms lays down that before recovering such damages, the employer shall be given a reasonable opportunity of being heard. This obviously implies that he must be called upon to show cause against the proposed levy of damages and any explanation rendered by him has to be taken into consideration. The statute is itself clear but even otherwise it is now well settled that in the exercise of quasi-judicial functions, the requirement of natural justice itself is that the party against whom the adverse order is to be passed, must be heard in his defence. It must, therefore, be held that it is incumbent on the authority under section 85-B of the Act to duly consider any explanation which the employer may have to make before the levy of damages against him. It is axiomatic that in the exercise of quasi-judicial functions when opportunity has to be given to the parties to present their case, it is normally necessary to record a reasoned order. It must, therefore, be held that it is incumbent on the authorities to not only consider the explanation of the employer, if duly rendered, but also to pass a speaking order for the imposition of damages.

(Paras 24, 25 and 26)

Held, that prior to November 23, 1977, when Regulation 31A of the Regulations was added, cancellation of the stamps duly affixed on the contribution cards in accordance with Regulation 34 was the essence of payment and once this had been done the mere non-submission of the contribution cards to the appropriate office would not amount to a failure to pay the amounts due under the Act and section 85-BR would not be attracted to the situation. However, after the promulgation of Regulation 31-A on November 23, 1977, the submission of the contribution cards with the stamps thereon duly cancelled to the appropriate office within the time prescribed under Regulation 26 alone would become the essence of payment and be deemed a complete payment in the eye of law. Consequently, the non-submission of the contribution cards in Regulation 26 would amount to a failure to pay the amounts due and straightaway attract the penal provisions of section 85-B of the Act.

(Paras 35 and 36)

Held, that it would be plain from the language of Regulation 31-A that it does not give the faintest indication that the same is to apply retrospectively. Therefore, the normal canon of construction would be applicable that all legislation is prospective unless either expressly or by necessary implication it has to be given

retrospective effect. Far from there being any indication, express or implied of retrospectivity, the circumstances are indeed a pointer to the fact that the provision was to apply prospectively. What calls for pointed notice here is the fact that the notification seeking to insert regulation 31-A was dated August 13, 1977 but the proviso was to come into effect later in November 1977. The framers apparently wished to give adequate notice to the employers who were liable to pay the contribution about the change sought to be made with regard to the completed date of the payment of contributions. Prior to Regulation 31-A the law had been construed to mean that the essence of completed payment was the cancellation of the stamps on the contribution cards under Regulation 34. This Regulation 31-A was, therefore, enacted to bring about the change in the existing position as its language plainly implies. Lastly, Regulation 31-A would immediately bring in the heavy penal liabilities under section 85-B of the Act in all cases where there had been non-submission of the contribution cards within the time prescribed. It is a sound canon of construction that unless expressly and clearly so provided, a penal provision must necessarily be construed as prospective. It is, therefore, held that Regulation 31-A is only prospective in its operation and not retrospective.

(Paras 37 and 39)

Held, that the mere payment of interest under Regulation 31-A, for delay or defaults in the payment of contributions, would in no way take away the liability to civil damages under section 85-B of the Act.

(Para 45)

Held, that obligation to pay interest under Regulation 31-A, the liability to pay damages under section 85-B of the Act and punishment for offences under section 85 of the Act can all co-exist.

(Para 46)

First Appeal from order under section 82(2) of Employees State Insurance Act against the order of the court of Shri S.N. Chadha, E.S.I. Judge, Ballabgarh dated 21st September, 1978, reversing the order of the Regional Director, Employees State Insurance Corporation, New Delhi accepting the application and setting aside the order dated 21st February, 1973, which is illegal, void and without jurisdiction and the applicant is not liable to pay the said damages.

K. L. Kapur, Advocate with H. N. Mehtani and Harish Kumar, Advocates, *for the appellants.*

R. S. Mittal, Advocate with N. K. Khosla, *for respondents.*

V. K. Bhandari and K. C. Choudhry, Advocates as intervenor, *for the respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Significant issues ranging over a wide spectrum of the beneficient legislation contained in the Employees' State Insurance Act, fall for determination in this reference. These have been succinctly formulated as under by the learned Single Judge:—

(1) Whether in view of the provisions of section 94-A of the Act, the Corporation could delegate its powers under section 85-B of the Act to the Director General or any other officer authorized by him and, if so, whether by resolution dated 28th February, 1976, published in the Government of India Gazette, dated 15th December, 1979, it was validly done; second proviso to regulation 3 of the Employees' State Insurance (General) Regulations, 1950 (hereinafter referred to as the Regulations) notwithstanding ?

(2) Whether the damages under section 85-B of the Act could be levied in abdication of the quasi-judicial functions on the basis of the standard table of levy of damages, published in the Government of India Gazette, dated 15th December, 1979, alone without considering the explanation of the employer and passing a speaking order ?

(3) Whether the submission of contribution cards under Regulation 26 of the Regulations or the purchase of stamps under Regulation 29 of the Regulations and its cancellation under Regulation 34 of the Regulations, is the essence of payment of contribution ?

(4) Whether the non-submission of contribution cards, as provided under Regulation 26 of the Regulations, entitles the Corporation to pass the orders under section 85-B of the Act ?

(5) Whether the proviso to regulations 31-A of the Regulations, which was added on 23rd of November, 1977, could be given retrospective effect ?

(6) Where the payment of the contribution with interest, as provided under regulation 31-A of the Regulations, is made, whether it still amounts to failure to pay the contribution as contemplated under section 85-B of the Act ?

(7) Whether the employer, who fails to pay contribution within the periods specified in regulation 31 of the Regulations shall be liable to pay interest as contemplated under regulation 31-A of the Regulations and, on the payment so made, is the Corporation still authorised to recover damages under section 85-B of the Act and, at the same time, does he also incur the liability for punishment under section 85 of the Act ?

It is manifest from the above that the issues here are pristinely legal and the particular facts would pale into relative insignificance. Nevertheless it does become necessary to make a brief recount of the matrix of facts giving rise thereto.

2. Messrs Dhanda Engineers (Private) Limited are running a factory in the industrial area, Faridabad which is covered by the provisions of the Employees' State Insurance Act (hereinafter called the Act). It is the respondent's case that whilst the concern was in infancy, it incurred heavy financial losses and therefore, was unable to pay the prescribed contributions under the Act within time. The stamps for affixing the same on the contribution cards, according to the respondent, can be purchased only if the share of both the employees and the employer is to be deposited and there is no provision in the statute to purchase separate stamps in parts for any contribution period. It is the admitted position that the payment through the submission of duly stamped contribution cards was made late and beyond the time fixed though these were received and acknowledged by the Regional Director. The respondents paid interest for the delayed payments and for the contributions as well. However, despite the payment of the said contribution and interest, the Regional Director issued to the respondent a notice dated February 2, 1978 requiring it to show-cause as to why damages to the tune of Rs. 43,480, as detailed in the statement annexed to the notice, be not levied under section 85-B of the Act. To the aforesaid notice the respondent submitted a reply by way of explanation and claimed

that without affording any opportunity of being heard, the Regional Director passed a summary order on February 21, 1978 imposing damages amounting to Rs. 43,480.

3. Aggrieved by the above, the respondent-Company preferred an application under Section 75 of the Act challenging the said imposition on a wide variety of grounds in the Employees' State Insurance Court, Ballabhgarh. This application was contested on behalf of the appellant-Corporation and its officials and allegations on behalf of the respondent were stoutly controverted. On the pleadings, the Employees' State Insurance Court framed the following issues:—

(1) Whether the impugned order is illegal, void on the grounds mentioned in the application?

(2) Whether no cause of action has accrued to the applicant?

Under issue No. (1), the Court took the view that the delegation by the Corporation in favour of the Regional Director was unsustainable in law. Further it opined that the order of the Regional Director imposing damages was not an adequately reasoned one and therefore, stood vitiated. It also took the view that delay in payment of the contribution cannot be equated with a failure to pay the amount. It further held that there had been a violation of the principles of natural justice in so far as the notice exhibited a pre-determined mind of the Regional Director because the amount of damages to the tune of Rs. 43,480 had been proposed in it. However, it held in favour of the appellant-Corporation that there was no violation of the provisions of Article 20 of the Constitution of India by way of the violation of the rule of double jeopardy. On these findings, issue No. (1) was decided in favour of the respondent-Company and the impugned order was set aside. It deserves passing mention that issue No. (2) was not pressed at the time of arguments and was also decided in favour of the respondent-Company.

4. Aggrieved by the aforesaid order, the appellant-Corporation has preferred this appeal which first came up for hearing before J. V. Gupta, J., and as already noticed, he referred the same to a Larger Bench in view of the significant questions of law arising for determination therein.

5. Inevitably one must first turn to question No. (1) with regard to the validity of the delegation of the powers under Section 85-B of the Act to the Regional Directors. It is apt that the matter of this nature must be viewed against the backdrop of the relevant statutory provisions. Herein what initially calls for notice is that Section 3 of the Act provides for the establishment of the Employees' State Insurance Corporation with effect from such date as the Central Government may notify in the official gazette. This Corporation would be a body corporate having a perpetual succession and the other indicia of a legal person. The constitution of the Corporation is provided for in Section 4 of the Act. Now a plain reading of sub-sections (a) to (j) thereof would show that the membership of the Corporation, when complete, may well extend beyond 40 or more members. Reference to sub-section (d) would show that one person each representing each of the States in which the Act is enforced may be nominated by the State governments concerned to the Corporation. Similarly, the other sub-sections would indicate that apart from the numbers, the membership of the Corporation would be drawn from all the four and wide spread corners of a big country like India. Learned counsel was, therefore, right in his contention that the membership of the Corporation would be a large unwieldy body which obviously is not designed to deal with or take over the day-to-day burden of its working. That this is so, is further evident from Section 8 of the Act, which provides for the constitution of a Standing Committee of the Corporation consisting of sixteen members. Sub-sections (a) to (d) thereof would indicate that this would be a relatively compact body comprised of about 16 members. It would, however, be apparent that even a body of this nature cannot be visualised to competently handle the day-to-day course and working of a Corporation whose operation may ultimately extend to all the States within the country.

6. When originally enacted in 1948 the Act apparently did not have an express statutory authority for delegation. This was added by the insertion of Section 94-A by Act No. 53 of 1951. It is this provision and the action thereunder which primarily calls for interpretation and therefore needs quotation *in extenso* :—

> "*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."

Now a plain reading of the aforesaid provision would show that it vests the Corporation with a plenary power to delegate all or any of the powers and functions, which may be exercised by it, to any officer or authority subordinate to the Corporation. As at present advised, it appears to me that whilst the power to delegate by the Standing Committee may be hedged-in subject to any regulations made by the Corporation in this behalf, the Corporation itself has been vested with an unrestricted power to delegate all its functions to any one of its subordinates, it may choose in its wisdom.

7. In passing, it may be noticed that Section 85-B of the Act conferring the power to recover damages was not brought on the statute book till as late as September 1, 1975 (by virtue of Act No. 38 of 1975), but it was not even remotely disputed before us that the power to delegate under Section 94-A of the Act would equally include within its ambit the power of imposing damages vested in the Corporation by virtue of Section 85-B of the Act.

8. It is the admitted position before us that acting under Section 94-A, the Corporation passed a resolution on February 28, 1976, the terms of which also call for notice *in extenso* :—

> "Resolved that for purposes of levy of damages under Section 85-B(1) of the Employees' State Insurance Act, 1948 as amended upto date, the Director General or any other officer authorised by him may levy and recover damages from the Employers not exceeding the rates as per Table annexed."

The language of the aforesaid resolution is significant and calls for some analysis. It is plain that the delegation by the Corporation was not made merely in favour of the Director General. Plainly enough it was a two-fold delegation. Firstly, in favour of the Director General, and secondly; in favour of any other officer

authorised or named by the Director General. Learned counsel for the appellant is, therefore, right in his contention that the aforesaid resolution clearly aimed at a twin delegation one in favour of the Director General and the other in favour of any other officer leaving the ministerial act of naming such an officer to the Director General. It is forcefully submitted that either the Corporation could have itself named the other officer apart from the Director General to whom it visualised and authorised such delegation, or could delegate the naming of individual officers in the executive head of the Corporation. That it chose to do the latter, would not and cannot make the present case one of further delegation by a delegate. I find the aforesaid stand of the learned counsel appellant to be not only plausible but indeed impeccable.

9. It is then not in dispute that in pursuance of the aforesaid resolution of February 28, 1976, the Director General on May 3, 1976 issued the following office order :—

> "In pursuance of the Resolution passed by the Employees State Insurance Corporation at its meeting held on 28th February, 1976, I, T. N. Lakshmi Narayanan, Director General, Employees' State Insurance Corporation hereby authorise all Regional Directors including Joint Regional Director Incharge, Poona, Sub-Region and Deputy Regional Director Incharge, Nagpur Sub-Region to exercise the powers for levy of damages on Factories/Establishments within their Regions under Section 85-B(1) of the Employees' State Insurance Act, 1948, as amended,—*vide* Act No. 38 of 1975."

It is evident that by conforming to all the requisite procedural formalities, the Regional Directors were duly authorised and clothed with the powers under Section 85-B of the Act in accordance with the Corporation's resolution of February 28, 1976. I am, therefore, of the view that the delegation of powers in favour of the Regional Directors of the Corporation, does not suffer from any infirmity.

10. It calls for notice that Mr. R. S. Mittal, learned counsel for the respondent, when faced with the aforesaid sequence of the statutory provisions and the resolution of the Corporation and other

procedural steps thereunder, has raised no meaningful argument what-so-ever against the validity of the delegation. Without making a formal concession he was candid enough to say that he had no precise challenge to raise against the delegation.

11. It, nevertheless, remains to advert briefly to the reasoning of the trial court in holding that the delegation herein was void. It would appear that for holding so, the considerable, if not primary reliance, was on Regulation-3 of the Employees' State Insurance (General) Regulations, 1950. This is in the following terms :—

> *"The manner in which the corporation may exercise its powers.—*
>
> (1) Where a regulation empowers the Corporation to specify, prescribe, provide, decide or determine anything or to do any other act, such power may be exercised by a resolution of the Corporation or subject to the provisions of Section 18 of the Act by a resolution of the Standing Committee :
>
> Provided that the Corporation or the Standing Committee may delegate any of the powers under these regulations to a sub-committee or to such officers of the Corporation as it may specify in that behalf :
>
> Provided further that no power shall be delegated under this regulation which under the Act is required to be exercised by the Corporation only.
>
> (2) Any appointment to be made by the Corporation under these regulations shall be made by the Director-General or by such other officers as may be authorised in this behalf by the Standing Committee."

In particular, the court below had rested itself on the second proviso of the aforesaid Regulation for opinion that the power to impose damages under Section 85-B of the Act could not be delegated.

12. Now it would appear that the conclusion of the trial court on this point suffers from a four-fold fallacy. What first calls for

notice here is the fact that Regulation-3 as also the rest of the Employees' State Insurance (General) Regulations, 1950 (hereinafter called the Regulations), were enforced by a notification dated October 17, 1950. Admittedly, at that stage, Section 94-A was yet not on the statute book having been inserted in 1951. It was by that Section that the power to delegate was vested both in the Corporation itself as also in the Standing Committee. The significant proviso to Regulation 3(1) prescribing that no power shall be delegated under the said Regulation, which under the Act is required to be exercised by the Corporation only was anterior in time to Section 94-A of the Act. The reasoning and rationale of its enactment was, therefore, obvious. It is plain, however, that after the enactment of Section 94-A, an express power was vested in the Corporation and its Standing Committee to delegate their functions to the Director-General or any other officers or authority, subordinate to the Corporation. Therefore, any delegation by virtue of Section 94-A of the Act cannot possibly be hit by the earlier and indeed the subservient second proviso to Regulation 3. In any case, in the event of any conflict, Section 94-A of the Act would obviously override anything contrary to it in Regulation-3 including the second proviso to sub-section (1) thereof. In this context it suffices to quote section 87(1) of the Act:—

> *Power of Corporation to make regulations.*—(1) The Corporation may, subject to the condition of previous publication, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation and for carrying into effect the provisions of this Act.
>
> * * * * * * * *
>
> * * * * * * * *

It is plain from its language that no regulation can be framed which is inconsistent either with the Act itself and even with the Rules made thereunder. Apart from the express provisions of Section 97 of the Act, it is otherwise evident on larger principle that the Rules or Regulations under the parent Act cannot expressly override or run counter to its statutory provisions.

13. Again a reference to the opening part of Regulation-3 would indicate that it was meant to operate in a limited field. It prescribed that where a Regulation empowers the Corporation to do something, such power may be exercised by the resolution of the Corporation.

It would thus be plain that Regulation-3 is not intended to operate in the area where the Act itself confers certain powers on the Corporation. To put it in other words, the provisions of Regulation-3 would be attracted primarily where a Regulation empowers it to do something and not in the larger field where it is clothed with a specific power by the Act itself. Consequently, where delegation has been done under the provisions of the Act, that is, under Section 94-A, which is the part of the statute itself, then indeed Regulation-3 may not at all be attracted to such a situation.

14. The court below had then proceeded on the assumption that the delegation here involved further delegation by the original delegate. It did not advert closely to the language of Section 94-A of the Act nor to the resolution of the Corporation dated February 28, 1976. As I have already shown earlier, the resolution in fact itself made a delegation in favour of any other officer merely leaving it to the Director-General to name and authorise him later. Therefore, to reiterate, the present is not the case of further delegation by a delegate and consequently suffer from no vice of excessive delegation.

15. Lastly the court below took the view that because the resolution of February 28, 1976, authorised the delegates to levy and recover damages from the employers not exceeding the rates as per the table annexed, the said resolution was *ipso facto* bad. The court observed that since this table had not been brought to its notice and had not been appended with the certified copy, the delegation was apparently void on this score. I am unable to appreciate this line of reasoning. Merely because the court did not choose to take notice of a table which was well publicised or that it had not been appended with the certified copy, is not an incurable vice. The argument with regard to the guidelines contained in the table for the imposition of damages, would be referred to in greater detail under the specific question on the point. It suffices to say here that the same does not in any way vitiate the delegation.

16. To conclude on this aspect, I hold that all the reasons enumerated by the trial court for invalidating the delegation in favour of the Regional Directors, are untenable. The finding on this score has to be necessarily reversed.

17. The answer to question No. (1) is rendered in the affirmative and it is held that the delegation was valid and in no way affected by Regulation-3 or the second proviso thereto.

18. Coming now to question No. (2) referred for decision, the frame thereof calls for some notice at the out-set. In essence, the question is two-fold; firstly, whether the issuance of the standard table for the levy of damages and the imposition thereof on its basis, is sustainable in law; Secondly, whether the explanation of the employer to the Notice must be considered and a speaking order passed thereon? It is apt to deal with the two limbs of the question separately.

19. As earlier, so here, the first part of the question must be viewed against the back-drop of the relevant statutory provisions. Section 85-B of the Act which is the fountain head of the power to levy and recover damages was inserted with effect from September 1, 1975 and is in the following terms:—

> 85-B. "—(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."

The language of sub-section (1) makes it manifest that the legislature has itself imposed the upper-limit for the imposition of damages in case of a failure to payment or a delayed payment thereof. This has been prescribed to be not in excess of the amount in arrears due. In effect, therefore, the Act warrants the imposition of damages upto 100 *per cent* of the amount of arrears. However, below this maximum, discretion is left in the hands of the Corporation as is evident from the use of the words "as it may think to impose".

20. Coming now to the standard table for the levy of damages referred to in the resolution of the Corporation, dated February 28,

1976, it deserves highlighting at the out-set that the power here is to recover damages not exceeding the rates specified in the said table. These words in the resolution are indeed the most material. It is not as if the hands of the delegate have been tied and his discretion entirely taken away so as to make incumbent upon him to levy damages as laid in the standard table. The discretion vested by Section 85-B of the Act is continued. Whilst the statute had imposed the upper-limit at 100 *per cent*, the standard table in fact goes in favour of the employer and suggests the imposition of damages at so low a figure as 2 *per cent* for the first default within one month or less. If at all the table provides a guideline in order to avoid the whimsicality of each and every officer in the imposition of damages and further still leaves the discretion in the hands of the delegate with a direction that the imposition is ordinarily not to exceed the rates in the table. To repeat, the standard table limits the imposition of damages in most cases, at substantially below the maximum of 100 *per cent* provided by Section 85-B of the Act itself and further leaves the discretion in the hands of the delegate to impose damages below those figures. The matter has to be viewed in the context of damages being imposed by various Regional Directors and even Deputy Regional Directors, etc., in certain regions all over the length and breadth of this vast country. In this situation, to furnish a broad guideline in order to limit the wayward or whimsical exercise of discretion by innumerable authorities cannot be uncharitably assailed. On principle, therefore, the standard table for the levy of damages within the four corners of the resolution of February 28, 1976, neither involves any abdication of quasi judicial functions nor can be otherwise dubbed as arbitrary.

21. Apart from principle, the matter now seems to be well settled by the binding precedent of the final Court as well. Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 contains a provision bearing the closest similarity (short of identity), empowering the authority to recover damages where an employer makes defaults in the payment of contributions under the said statute. Under the said provision also the authority had issued a tabular chart to provide the requisite guidelines for the imposition of damages. In construing the aforesaid provisions, their Lordships in *Organo Chemical Industries and another* v. *Union of India and others* (1), held that the power to impose damages on the

(1) A.I.R. 1979 S.C. 1803.

employer in default of the payment of contribution towards the Provident Fund, in the broad context, was unassailable. Within this Court, the Division Bench, to which I was a party in [*M/s. T. C. M. Woollen Mills (P) Ltd., etc.* v. *The Regional Provident Fund Commissioner etc., and another*] (2), has taken an identical view.

22. However, the judgment more directly on the point though rendered in the context of the similar provisions of Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is that of the Division Bench of the Delhi High Court reported in *M/s. Atlantic Engineering Services (P.) Ltd., New Delhi* v. *Union of India and another* (3). Chief Justice Deshpande, speaking for the Bench observed as follows with regard to the standard table under the said statute:—

> "The learned counsel then questioned the determination of damages by the Government as arbitrary. He said that the very fact that a table has been prepared by the Government and it was sent to the petitioner with the show cause shows that the Government did not apply its mind and was mechanical in making the demand for damages. On the contrary, we are of the view that framing of the table of damages by the Government is a salutary measure for the guidance of the Officers of the Government who act under S. 14-B. Under the table the amount of damages is related to the delay in payment of the contribution.
>
> This method of detemining damage is entirely reasonable and it shows that no officer acting under S. 14-B can act arbitrarily but must follow this reasonable guideline made by the Government. Further, this is only a guideline. It is not a determination. The actual decision as to what the damages should be in a particular case is made only after hearing the employer and assessing the particular facts of his case. This was done in the present case....".

I am entirely in agreement with the aforesaid observations and in my view they virtually cover the present case on all fours as well.

(2) CWP No. 4155 of 1977, decided on May 27, 1980.

(3) 1979 Lab. I.C. 695.

23. To conclude on the first part of question No. (2) it, therefore, must be held that the assessment and levy of damages on the basis of the standard table in no way involves any abdication of the *quasi*-judicial function nor is otherwise assailable as invalid.

24. Adverting now to the second part of the question, the answer thereto appears to be plain and not to be the subject-matter of any great controversy. The proviso to section 85-B(1) itself in categoric terms lays down that before recovering such damages, the employer shall be given a reasonable opportunity of being heard. This obviously implies that he must be called upon to show cause against the proposed levy of damages and any explanation rendered by him has to be taken into consideration. The statute is itself clear but even otherwise it is now well settled by precedent that in the exercise of *quasi*-judicial functions, the requirement of natural justice itself is that the party against whom the adverse order is to be passed, must be heard in his defence. It must, therefore, be held that it is incumbent on the authority under section 85-B of the Act to duly consider any explanation which the employer may have to make before the levy of damages against him.

25. Once it is so held, the issue of passing a speaking order would be a necessary corollary. It is axiomatic that in the exercise of *quasi*-judicial functions when opportunity has to be given to the parties to present their case, it is normally necessary to record a reasoned order. Principle apart, the matter now appears to be settled by precedent as well. Under the similar provisions of section 14-B Employees' Provident Funds and Miscellaneous Provisions Act, 1952, their Lordships in the *Organo Chemical Industries and another's case* (supra) have held as follows :—

> ".... The conferral of power to award damages under section 14-B is to ensure the success of the measure. It is dependent on existence of certain facts, there has to be an objective determination, not subjective. The Regional Provident Fund Commissioner has not only to apply his mind to the requirements of section 14-B but is cast with the duty of making a "speaking order", after conforming to the rules of natural justice."

26. On the second part of question No. (2), it must, therefore, be held that it is incumbent on the authority to not only consider the explanation of the employer, if duly rendered, but also to pass a speaking order for the imposition of damages.

27. However, it is axiomatic that the volume and the contents of the speaking order must inevitably depend on the nature of the particular case. The reasons expected to be recorded in a speaking order must inevitably depend on the nature and the exhaustiveness of the contentions raised in reply to the show cause notice. Obviously where the objections raised are themselves vague and devoid of necessary particulars, then even a finding that the plea is plainly untenable may be sufficient compliance of the requirement of a reasoned order. This has been so held by a Division Bench of the Allahabad High Court in *The Regional Provident Fund Commissioner U.P.* v. *M/s. Allahabad Canning Co., Bamrauli* (4). Following the same, the Division Bench in *M/s. T.C.M. Woollen Mills case* (supra), has also opined as follows :—

> "....As has already been noticed in the resume of facts despite a repeated number of opportunities given to the petitioners of personal hearing they chose not to avail most of them. Apparently it is plain that in such a situation unless the objections and the factual matters are pressed before the Commissioner he cannot imagine the same and pretend to adjudicate thereon ———"

The present case appears to be wholly covered by the aforesaid observations. It is manifest from the order of the Regional Director dated February 21, 1978 that the respondent-employer was duly served with a notice and granted a period of 15 days specifically mentioning the quantum of damages proposed to be imposed upon him and was directed to show cause within 15 days thereof. The respondent-employer, however, within the said period of 15 days made no representation written or oral in response to the said notice. The Director, therefore, was left with little option but to find that in view of the absence of any response, the proposed damages may be levied against the respondent. It may be noticed, that it appears to be the common case, that the payments were made far beyond the prescribed time.

(4) 1978 Lab. I.C. 998.

28. The trial court, in this context took a rather unusual view in holding that because the Regional Director, in the Notice had proposed the quantum of damages, therefore, he had a pre-determined mind to impose the said amount and struck down the imposition on this ground as well. I am unable to agree or appreciate this line of reasoning. I have already taken the view that the broad guidelines for the imposition of damages by way of standard table are in no way illegal. In such a situation, proposing a quantified amount of damages far from being in any way prejudicial to the employer, is indeed in a way fair to him. It would broadly indicate the charge he has to meet and the likely assessment of damages which he is to contest. Indeed the issuing of show-cause notice, without specifying in any way the quantum of the proposed levy, would leave the issue vague and make it very difficult for the employer to render his explanation and reply to the show-cause notice. Even the learned counsel for the respondent was hard put to sustain this view of the trial court as also the added observation that despite the service of the notice proposing the damages at Rs. 43,430 the principle of natural justice, stood violated in the case. Neither precedent nor principle could be cited in support of this view. This finding of the trial Court, therefore, has to be equally reversed.

29. Even from the frame of questions Nos. (3) and (4), it is plain that considerable field which they occupy is common and it is apt to discuss and dispose them of together. The relevant statutory provisions herein are Regulations 26, 29 and 34. From the provisions of the aforesaid Regulations, as also of the other relevant provisions, it would appear that the broad scheme is that an employer, to whom the provisions of the Act are applicable, has to ensure the maintenance of a contribution card with regard to the employees in his employment. The payment of every contribution under the Act (except as otherwise provided specifically) has to be made by affixing contribution stamps on the contribution card of the employed. These contribution stamps have to be purchased from any agency duly authorised by the Corporation and from no other source and the stamps so purchased are not transferable thereafter. The employer has then to affix the stamps on the contribution card and then cancel the same by writing in ink, or stamping them with a metallic die with black indelible ink across the face of the stamp, the date upon which it is affixed, the employer's code number and

such other particulars, if any, as the Corporation may specify. Regulation 26 then provides the time within which the contribution cards have to be sent to the appropriate office.

30. It is in the context of the aforesaid detailed and rather complicated procedural provisions that the crucial issue first arises with regard to the precise point of time when the statutory obligation to pay the contribution by the employer stands discharged. Is it when he merely purchases the contribution stamps from the authorised agency under Regulation 29 ? Or must he proceed a step further and affix the contribution stamps on the contribution cards and cancel the same in accordance with Regulation 34 ? Would this be sufficient compliance or is it that the payment would not be complete till the contribution cards are duly submitted to the appropriate office within the time prescribed in accordance with and within, the time prescribed by Regulation 26 ? In short, the question is what is the very essence of the payment of contribution by the employer and what stage should it be deemed complete in the eye of law ?

31. The question aforesaid has to be viewed in two distinct compartments. The dividing line here is the insertion of Regulation 31-A by notification dated November 23, 1977. It is apt first to examine the position in law prior to the said date.

32. Fortunately, this matter of relative procedural complexity is not without precedent. It arose directly before Misra, J. in the Delhi High Court in *The Birla Cotton Spg. & Wvg. Mills Ltd.* v. *Employees' State Insurance Corporation* (5). The learned Judge held as follows :—

> "The submission of the contribution card is also a requisite of Regulation 26, but I agree with the Court below that the submission of the card is not the essence of the payment. Nevertheless the affixation of the stamp on the contribution card and its cancellation is a necessary ingredient to constitute payment. A reference may with advantage be made to section 15 of the Stamps Act, which provides that unless and untill adhesive stamp

(5) 1977 Lab. I.C. 119.

affixed to an instrument is cancelled, so that it cannot be used again, it cannot be deemed to be stamped. Regulations 29 and 34 under the Act contain a similar provision for affixation of the stamp and its cancellation. As a result I hold that mere purchase of the stamps does not amount to payment, but purchase of stamps, their affixation on the contribution cards and cancellation of the same in the prescribed manner will amount to payment. Had that been done the employer could not be liable to pay interest....."

The aforesaid view has than been unreservedly followed by a learned Single Judge of the Madras High Court in *The Management of Rallis India Ltd. Madras-58* v. *The Regional Director, Employees' State Insurance Corporation Ltd., Madras-34* (6).

33. Despite being pressed, Mr. Kapur, learned counsel for the appellant could cite no precedent taking a view contrary to the aforesaid two decisions. However, he had attempted to contend that the payment of contribution in the eye of law is not complete until the contribution cards have been duly submitted to the appropriate office within the time prescribed under Regulation 26. Apart from this argument, learned counsel could offer no criticism or distinguish the present case from the ratio of the decisions of the Delhi and the Madras High Courts. I am inclined to follow the settled line of precedent so far and hold that prior to November 23, 1977, the essence of the payment of contribution was the affixation and due cancellation of the stamps as provided under Regulation 24. However, in the context of this beneficient legislation enacted entirely for the benefit of the workers, Mr. Kapur seems to be wholly right in his submission that the purchase of stamps, their affixation to the contribution cards and their cancellation by the employer, are acts entirely within his knowledge and therefore, the burden of proving the relevant dates and strict compliance with Regulation 34 would inevitably lie on the employer himself.

34. On the aforesaid findings, it would inevitably follow that prior to the crucial date of November 23, 1977 (when Regulation 31-A

(6) C.W.P. No. 2379 of 1977 decided on 28th September, 1969.

was promulgated), the essence of payment of the contribution was the affixation and due cancellation of stamps in accordance with Regulation 34 and thereafter, the mere non-submission of the contribution cards to the appropriate office under Regulation 26 would not in any way affect the payment of contribution which stood completed. Section 85-B of the Act comes into play and is attracted only where an employer fails to pay the amount due in respect of any contribution or any other amount payable under the Act. Once it is held that the cancellation of the stamps on the contribution cards under Regulation 34 amounts to payment of contribution then obviously the mere failure to present these contribution cards to the appropriate office under Regulation 26 would not *ipso facto* render the employer liable to damages under section 85-B of the Act or to entitle the Corporation to pass an order under the said provision. However, as stands already noticed, the position is radically different and indeed in the converse after the crucial date of November 23, 1977. On this date, Regulation 31-A, which is in the following terms was promulgated :—

> "*Interest of contribution due but not paid in time.*—An employer who fails to pay contributions within the periods specified in Regulation 31 shall be liable to pay interest at the rate of 6 *per cent* per annum in respect of each day of default or delay in payment of contribution :
>
> Provided that where the contribution is paid by affixing the contribution stamps, the employer shall be deemed to have not paid the contributions in time if he fails to submit the contribution cards within the time prescribed under Regulation 26".

The aforesaid proviso would make it manifest that a significant change in the existing position was brought about by its enactment and it was in terms provided that the employer would not be deemed to have paid the contributions unless and until he submits the contribution cards to the appropriate office within the time prescribed by Regulation 26. The language of this proviso is plain and its intent categorical. Apparently to set any doubts on the point at rest and perhaps to override the existing case law on the subject it was

provided in express terms that the payments of the contributions in the eye of law would not be completed till the submission of the contribution cards to the appropriate office and that too within the prescribed time. Regulation 31-A and in particular its proviso, therefore, wholly altered the earlier position wherein essence of payment was judicially held to be the cancellation of the stamps in the contribution cards under Regulation-34.

35. To conclude on questions Nos. (3) and (4), it is held that prior to November 23, 1977, the cancellation of the stamps duly affixed on the contribution cards in accordance with Regulation-34 was the essence of payment and once this had been done the mere non-submission of the contribution cards to the appropriate office would not amount to a failure to pay the amounts due under the Act and Section 85-B would not be attracted to the situation.

Findings on

Questions (3) & (4).

36. However, after the promulgation of Regulation 31-A on November 23, 1977, the submission of the contribution cards with the stamps thereon duly cancelled to the appropriate office within the time prescribed under Regulation-26 alone would become the essence of payment and be deemed a complete payment in the eye of law. Consequently, the non-submission of the contribution cards under Regulation 26 would amount to a failure to pay the amounts due and staightaway attract the penal provisions of section 85-B of the Act.

37. Adverting now to question No. (5) with regard to the retrospectivity or otherwise of Regulation 31-A, promulgated on November, 23, 1977, it would be plain from the afore-quoted language of this Regulation that it does not give the faintest indication that the same is to apply retrospectively. Therefore, the normal canon of construction would be applicable that all legislation is prospective unless either expressly or by necessary implication it has to be given retrospective effect. Far from there being any indication, express or implied of retrospectivity, the circumstances are indeed a pointer to the fact that the provision was to apply prospectively. What calls for pointed notice here is the fact that the notification seeking to

insert Regulation 31-A was dated August 13, 1977, but the proviso was to come into effect later on November 23, 1977. The framers apparently wished to give adequate notice to the employers who were liable to pay the contributions about the change sought to be made with regard to the completed date of the payment of contributions. It deserves repetition that prior to Regulation 31-A, being brought on the statute book, precedent (*The Birla Cotton Spinning and Weaving Mills Ltd.'s case*, (supra) had construed the law to mean that the essence of completed payment was the cancellation of the stamps on the contribution cards under Regulation-34. This Regulation 31-A was, therefore, enacted to bring about the change in the existing position as its language plainly implies and admittedly there was no similar or corresponding provision either in the Act or in the Rules and Regulations. Lastly, in this contest is the fact that Regulation 31-A would immediately bring in the heavy penal liabilities under section 85-B of the Act in all cases where there had been non-submission of the contribution cards within the time prescribed. The direct and the indirect consequence of Regulation 31-A was to bring in a penal liability of damages for failure of payment. It is a sound canon of construction that unless expressly and clearly so provided, a penal provision must necessarily be construed as prospective.

38. In fairness to Mr. Kapur, it may be noticed that he had attempted to argue that Regulation 31-A was merely clarificatory and in effect a declaration of the law, as existing. He submitted that, therefore, it should always be deemed to have been a part of the statute. Apart from advancing the argument, learned counsel could rely on neither principle nor precedent to substantiate his submission. As has already been noticed Regulation 31-A does not even remotely hint at its being retrospective either expressly or by any deeming fiction. Admittedly, the legal position as expounded by precedent was to the contrary and even when pressed, Mr. Kapur could cite no judgment which had construed the pre-November, 1977 Regulations to hold that the payment of contributions was complete only by the submission of the contribution cards with duly cancelled stamps at the appropriate office within the prescribed time under Regulation 26. Consequently, far from being clarificatory or declaratory of the law, it appears to me, Regulation 31-A was intended clearly to enact a new provision to alter the existing legal position.

39. In the light of the aforesaid discussion, the answer to question No. (5) is rendered in the negative and it is held that Regulation 31-A is only prospective in its operation and not retrospective.

40. Coming now to questions Nos. (6) and (7), it is apparent that the answer thereto turns on the purpose and import of Section 85-B of the Act and Regulation 31-A framed thereunder. It is, therefore, apt to deal with them together.

41. Viewing the matter in the legislative retrospect, the Employees' State Insurance Act was originally enacted in 1948. Apparently, certain defects and lacunae in its working came to the surface which necessitated the amendment already noticed by Act No. 53 of 1951. Subsequent amendments were then made in the years 1966 and 1970 and lastly by Act No. 38 of 1975, which calls for pointed notice. Paragraph No. 2 of the Objects and Reasons attached to the Bill was in these terms:—

> "2. The working of the Act has revealed that the penal provisions in the Act are not effective in checking defaults in the payment of contributions. It is, therefore, proposed to impose enhanced and more deterrent penalties for defaults in the payment of contributions."

In pursuance of the said Object, Sections 85-A, 85-B and 85-C were added in the Act. What is more, by the same amendment, an Explanation to Section 405 of the Indian Penal Code was also inserted in order to bring a delinquent employer (who deducts the employees' contribution from the wages payable to the employee, but defaults to pay the amount of the contribution under the Act), within the ambit of the offence of criminal breach of trust. A broad look at all these provisions would indicate that the legislature wished to take stringent legal steps against any defaults in the payment of contributions, both by way of imposing deterrent penalties as also by bringing in criminal liability and enhanced punishment for the offences under the Act. It would appear that even after the enactment of these provisions, some plugging of the loop-holes was still necessitated which was done by the insertion of Regulation 31-A. This provided for the liability to pay interest for each day of default or delay in the payment of contribution as also fixing a more stringent and firm date for the completed payment of the contributions in the eye of law, namely by the submission of the contribution cards to the appropriate office within the time prescribed by Regulation-26.

42. It is with the aforesaid back-drop of the legislative provisions, all indicative of the legislatures concern to check the persistent defaults in the payment of contributions that question No. (6) has to be viewed. The frame of the question is slightly ambivalent, but it is plain that the crux of the question here is—whether the payment of 6 *per cent* interest for the default or delay in the payment of contributions would wipe away the failure to pay the same within the prescribed time. I do not think so. Regulation 31-A, as has been repeatedly noticed, was inserted only in late 1977. Prior to that, there is hardly any doubt that delay or default in making the payment of the contribution beyond the prescribed time would amount to a failure to pay the contributions, thus attracting the liability to damages under Section 85-B of the Act. This apart, failure to pay contributions also involved criminal liability under Section 85 of the Act and enhanced punishment in certain cases after previous conviction under Section 85-A thereof. In this context, it becomes wholly implausible to assume that these stringent provisions could be neutralized by merely paying interest at the rate of 6 *per cent* for even wilful defaults in the payment of contributions. On the other hand, it would appear that Regulation 31-A was another string to the bow for preventing defaults or delays in the payment of contributions. Whereas the imposition of damages under Sertion 85-B of the Act or launching a prosecution under Section 85 thereof had an element of discretion, Regulation 31-A made out mandatory that an employer who delays or defaults in the payment of contribution, would not gain any monetary benefit thereby for with-holding the payment and would therefore, at once become liable for the commercial consequences thereof by way of liability to pay interest for the money so withheld.

43. From the above, it would appear that the mere payment of interest does not in any way condone or wash away the delay or default in the payment of contributions, which having been once made would continue to attract the penal provisions of Section 85-B of the Act.

44. On the above said finding, all that now remains to consider is whether despite the imposition of damages under Section 85-B of the Act, the employer would also be liable to the penal provisions of Section 85 thereof? The answer indeed appears to be

plain. The provision of a monetary penalty and criminal liability in a statute are neither unusual nor exceptional. Indeed, counsel for the respondents could cite neither principle nor precedent for the contention that civil and criminal liability for their defaults cannot co-exist. It is obvious that damages under Section 85-B of the Act are to be levied by the Corporation or persons authorised by it to do so whilst punishment for offences under Section 85 of the Act inevitably have to be imposed by a court of law, after trial. Even the trial court took the view that the rule of double jeopardy is not attracted nor is there any violation of Article 20 of the Constitution of India. It would follow, therefore, that the imposition of interest at the rate of 6 *per cent*, under Regulation 31-A, the imposition of damages under Section 85-B of the Act, as also the liability for punishment under Section 85-B of the Act are all within the four corners of the statute.

45. To conclude, the answer to question No. (6) is rendered in the affirmative to the effect that the mere payment of interest under Regulation 31-A, for delay or defaults in the payment of contributions, would in no way take away the liability to civil damages under Section 85-B of the Act.

46. The answer to question No. (7) is also rendered in the affirmative, holding that the obligation to pay interest under Regulation 31-A, the liability to pay damages under Section 85-B of the Act and punishment for offences under Section 85 of the Act, can all co-exist.

47. In view of the answers rendered to the legal questions and the findings arrived at in the light thereof, this appeal has necessarily to be allowed. The order of the Employees' State Insurance Judge, Ballabgarh, is hereby set aside and that of the Regional Director dated February 21, 1978, is restored. In view of the rather difficult questions of law, arising herein, I leave the parties to bear their own costs.

G. C. Mittal, J.—I agree.

H.S.B.