



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

MISCELLANEOUS FIRST APPEAL NO. 3186 OF 2017 (ESI)

C/W

MISCELLANEOUS FIRST APPEAL NO. 3185 OF 2017(ESI)

IN MFA No. 3186/2017:

BETWEEN:

THE ESI CORPORATION
SRO-PEENYA
HARINI TOWERS, 3RD MAIN
3RD CROSS,
INDUSTRIAL SUBURB,
YESHWANTHPUR,
BENGALURU 560 022.

...APPELLANT

(BY SRI. C SHASHIKANTHA, ASG)

AND:

M/S RENRAM FASHIONS INDIA PVT. LTD.,
NO.1/1, 1ST CROSS,
SOMESHWARA NAGAR INDUSTRIAL,
SUBURB, APMC YARD,
YESHWANTHPURA
BENGALURU 560 022
BY ITS MANAGING DIRECTOR
SRI. VEERA MARE GOWDA.

...RESPONDENT

(BY SRI. J KANIKARAJ.,ADVOCATE)

THIS MFA IS FILED U/S 82(2) OF EMPLOYEES STATE INSURANCE ACT 1948, AGAINST THE ORDER DATED 31.01.2017 PASSED IN ESI. APPLICATION NO.28/2014 ON THE FILE OF THE EMPLOYEES STATE INSURANCE COURT, BENGALURU, PARTLY ALLOWING THE APPLICATION FILED UNDER SECTION 75 OF THE ESI ACT, 1948.

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Location: HIGH
COURT OF
KARNATAKA



IN MFA NO. 3185/2017:

BETWEEN:

1. THE ESI CORPORATION
SRO PEENYA
HARINI TOWERS, 3RD MAIN, 3RD CROSS,
INDUSTRIAL SUBURB,
YESHWANTHPUR,
BENGALURU 560 022.

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BENGALURU - 560 022.
BY ITS MANAGING DIRECTOR
SRI.VEERA MARE GOWDA.

...RESPONDENT

(BY SRI. J KANIKARAJ .,ADVOCATE)

THIS MFA FILED U/S 82(2) OF EMPLOYEES STATE INSURANCE ACT 1948, AGAINST THE ORDER DATED 31.01.2017 PASSED IN ESI. APPLICATION NO.27/2014 ON THE FILE OF THE EMPLOYEES STATE INSURANCE COURT, BENGALURU, PARTLY ALLOWING THE APPLICATION FILED UNDER SECTION 75 OF THE ESI ACT, 1948.

THESE APPEALS, ARE COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE H.P.SANDESH



ORAL JUDGMENT

Heard learned ASG for the appellant and learned counsel for the respondent.

2. MFA No.3185/2017 is filed against the order of the ESI Court dated 31st January 2017 allowing the E.S.I. Application No.27/2014 in part and setting aside the order dated 13.6.2014 passed under Section 85-B of the Employees' State Insurance Act, 1948 ('**the ESI Act**' for short) claiming the contribution of Rs.26,34,569/- and directing the applicant to pay the damages to an extent of Rs.6 lakhs only by modifying the order passed under Section 85-B of the ESI Act to that extent.

3. MFA No.3186/2017 is filed against the order of the ESI Court dated 31st January 2017 allowing the E.S.I. Application No.28/2014 in part and setting aside the order passed under Section 45-A of the ESI Act claiming the interest of Rs.13,04,074/- for the disputed period of 01/2009 to 06/2013 and directing to pay Rs.3 lakhs only to the ESI Corporation by modifying the order passed under Section 45-A to that extent.



4. For the sake of convenience, these appeals are taken up together for common disposal.

5. The factual matrix of the case in MFA No.3186/2017 is that respondent paid ESI contributions belatedly for the period from January 2009 to June 2013, in all amounting to Rs.40,30,086/-, warranting action to levy interest, as a statutory mandate and hence the respondent was issued a notice claiming Rs.13,04,074/- as interest on account of delay in payment of contributions invoking Section 39(5) of the ESI Act. The respondent filed ESI application No.28/2014 before the ESI Court and the same was allowed in part reducing the claim to Rs.3,00,000/-. Hence, the appellant/ESI Corporation approached this Court contending that respondent did not remit the contributions on due dates as envisaged under Section 40 of the ESI Act r/w Regulation 31 of the Employees' State Insurance (General) Regulations, 1950 ('**the Regulations**' for short) and the contributions were paid belatedly and delay ranged from 212 days to 1813 days and the delay in payment of contributions warranted levy of interest under Section 39(5) of the ESI Act.



6. The factual matrix of the case in MFA No.3185/2017 is that respondent paid ESI contributions belatedly for the period from January 2009 to June 2013, in all amounting to Rs.40,30,086/-, warranting action to levy damages, as a statutory mandate and hence the respondent was issued a notice claiming Rs.26,34,569/- as damages on account of delay in payment of contributions invoking Section 85B of the ESI Act. The respondent filed ESI application No.27/2014 before the ESI Court and the same was allowed in part reducing the claim to Rs.6,00,000/-. Hence, the appellant/ESI Corporation approached this Court contending that respondent did not remit the contributions on due dates as envisaged under Section 40 of the ESI Act r/w Regulation 31 of the Regulations and the contributions were paid belatedly and delay ranged from 212 days to 1479 days and the delay in payment of contributions warranted levy of damages under Section 85B of the ESI Act.

7. Learned ASG appearing for the appellant vehemently contended that the ESI Court committed an error in reducing the damages to Rs.6,00,000/-. He brought to the notice of this Court Section 85B of the ESI Act and also Regulation 31C of



the Regulations and contends that the ESI Court is not justified in arbitrarily reducing the amount of damages claimed under Section 85B of the ESI Act.

8. Learned ASG in support of his arguments also relied upon judgments of the Apex Court as well as this Court.

9. Firstly, learned ASG relied upon judgment of this Court in the case of ***The Director, ESI Corporation -vs- M/s Vikram Hospital Pvt. Limited*** in MFA No.5144/2017 (ESI) dated 2nd June 2023, wherein this Court with regard to damages is concerned relied upon the judgment of the Apex Court in the case of ***Horticulture Experiment Station Gonikoppal, Coorg -vs- Regional Provident Fund Organization*** reported in (2022)4 SCC 516, wherein the Apex Court held that failure to deposit contribution - breach of civil obligations/liabilities committed by employer, is sufficient for imposition of penalty or damages and there is no further requirement on authority concerned to examine the existence of element of *actus reus/mens rea* or to examine issue of justification, for imposing damages and having applied the



principle, this Court allowed the appeal and set aside the impugned order therein.

10. Secondly, learned ASG relied upon the judgment of this Court in the case of **ESI Corporation -vs- Karnataka State Open University** in MFA 3912/2021 (ESI) dated 21st June 2013, wherein also this Court discussed the very same judgment of the Apex Court in the case of **Horticulture Experiment Station Gonikoppal, Coorg** (supra) and also taken note of the judgment in the case of **ESI -vs- HMT Ltd., and another** reported in 2008(116) FLR page 543 (SC) and allowed the appeal and set aside the impugned order therein.

11. Thirdly, learned ASG relied upon the judgment in the case of the **Director -vs- M/s N J K Enterprises** in MFA No.3055 of 2017 (ESI) dated 24th August 2023, wherein also this Court discussed the very same judgment in the case of **Horticulture Experiment Station Gonikoppal, Coorg** (supra) as well as **HMT Limited** (supra) and allowed the appeal.



12. Learned ASG contends that the ESI Court is not justified in arbitrarily reducing the interest to Rs.3,00,000/- in MFA No.3186/2017.

13. Learned ASG relied upon the judgment in the case of ***M/s Goetze (India) Limited -vs- Employees State Insurance Corporation*** reported in AIR 2008 SC 3122, wherein the Apex Court held that "Section 39 of the ESI Act - Regulation 31A - Contribution - Delay in making payment - Liability to pay interest is statutory - There is no power of waiver - No question of compromise or settlement arises".

14. Learned counsel appearing for respondent concedes that payment of interest is a statutory liability and does not dispute payment of interest is concerned and submits ESI Court committed an error.

15. Per contra, learned counsel appearing for the respondent in respect of damages is concerned, has relied upon the judgment of the Apex Court in the case of ***M/s Hindustan Steel Limited -vs- The State of Orissa*** reported in AIR 1970 SC 253 and brought to the notice of this Court regarding imposition of penalty - considerations - persons in charge of



affairs of a Company failing to register it as a dealer in honest and genuine belief that it was not a dealer - imposition of penalties, held not justified. The Apex Court further held that the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or of guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a *bonafide* belief that the offender is not liable to act in the manner prescribed by the statute.



16. Learned counsel for the respondent relying upon the judgment in the case of **M/s Hindustan Steel Limited** (supra) contend that the said judgment was delivered by three-Judge Bench and the judgment in the case of **Horticulture Experiment Station Gonikoppal, Coorg** (supra) was delivered by Division Bench and the same cannot be relied upon by this Court.

17. Learned counsel for respondent also relied upon the judgment in the case of **The Regional Director/Recovery Officer & Another -vs- Nitinbhai Vallabhai Panchasara** reported in 2022 LiveLaw (SC) 983, wherein it is held that the liability to pay the interest is from the date on which such contribution has become due and till the date of its actual payment.

18. Learned counsel for the respondent relied upon the judgment in the case of **Horticulture Experiment Station Gonikoppal, Coorg** (supra), which has also been relied upon by the counsel for the appellant and brought to the notice of this Court paragraph-12, wherein while referring to the judgment in the case of **Union of India -vs- Dharmendra**



Textile Processors and others reported in (2008)13 SCC 369 held that as far as the penalty inflicted under the provisions is a civil liability is concerned, *mens rea or actus reus* is not an essential element for imposing civil penalties and overruled the two-Judge Bench judgment in **Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai and Another** reported in (2007)6 SCC 329 and approved the view expressed by a two-Judge Bench of the Apex Court in the case of **Chairman Sebi -vs- Shriram Mutual Fund** reported in (2006)5 SCC 361 and held in paras 18 and 20 accordingly. It is also held that it is well- settled that *mens rea or actus reus* is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities.

19. Learned counsel for respondent also relied upon the judgment of this Court in the case of **The Director, ESI Corporation and another -vs- M/s Vijaya Vittala Vidyashala** in MFA No.5438/2017 dated 16th February 2018 and brought to the notice of this Court paragraph-7, wherein also having taken note that the applicant therein had pleaded its financial inability to pay the contributions on time and taking into consideration that establishment is a social service



organization and also keeping the interest of the Corporation, has reduced the damages to an extent of 50% and balance 50% has been waived and also observed that the said finding recorded by the ESI Court is a finding of fact and no question of law is involved for being formulated and adjudicated and the appeal came to be dismissed. Counsel referring to this judgment contend that it is the discretion and the Court can take into note all the material on record.

20. In reply, learned ASG for the appellant brought to the notice of this Court Section 85B of the ESI Act, wherein it is observed that where an employer fails to pay the amount due in respect of any contribution, the 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. Further, the proviso to Section 85B prescribes 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. Learned counsel referring to this contend that in case of sick industrial company, a specific proviso is made and under said circumstances only can reduce the damages.

21. Learned ASG also brought to the notice of this Court Regulation 31C of the Regulations and while referring to tabular column in the said regulation contend that if there is a delay of more than 6 months in payment of contributions, maximum rate of damages would be 25%. Learned ASG contend that in the case on hand, for more than 5 years, contribution was not paid. Hence, the maximum rate of damages has to be levied.

22. Learned ASG also brought to the notice of this Court proviso to Regulation 31C, which provides that the Corporation, in relation to a company in respect of which a Resolution Plan has been sanctioned by the National Company Law Tribunal under the Insolvency & Bankruptcy Code, 2016 may waive up to 50% of the damages levied or leviable depending upon merits of the case and in exceptional hard cases, waive either totally or partially the damages levied or leviable. Learned ASG referring to these provisos contend that no such circumstances



are made out by the respondent. Only plea taken is ignorance of law and the same cannot be a ground. Therefore, the ESI Court committed an error in passing the impugned orders.

23. There is no dispute with regard to payment of interest is concerned in MFA No.3186/2017 and respondent also concedes that payment of interest is a statutory liability and the ESI Court ought not to have reduced the same and hence, the MFA 3186/2017 has to be allowed setting aside the order of the ESI Court.

24. Regarding the other appeal - MFA 3185/2017 is concerned, since issue is only imposing of damages and it is purely question of law, admitting the appeal, calling for records and framing substantial questions of law is not required.

25. Having heard learned counsel for the appellant and learned counsel appearing for respondent and also considering the grounds urged before this Court, the main issue is whether the ESI Court is justified in reducing the damages to Rs.6,00,000/-. Section 85B of the ESI Act is very clear and in case payment has not been made within the time stipulated,



powers are given to recover damages. No doubt, damages is levied by way of penalty for non-payment of contributions.

26. On perusal of the impugned order, it is seen that the ESI Court has come to the conclusion that levying of damages to the tune of Rs.26,34,569/- is erroneous and reduced the same to Rs.6,00,000/- and while doing so, in paragraph-20, the ESI Court observed that the applicant was not aware of the quantification of payment of contribution to the ESI during the disputed period and he has not paid the contribution and soon after orders came to be passed under Section 45A, he had paid the entire contribution, which discloses that the applicant has no intention to hold the payment of contribution to the ESI Corporation. It seems that the situation was beyond his control as he has stated in his chief examination that, he was not keeping good health and therefore not attended the personal hearing and orders came to be passed under Section 85B of the ESI Act, prior to the order under Section 45A of the ESI Act and the applicant had paid total contribution within one payment. Considering all these aspects, the ESI Court has come to the conclusion that there is no *mens rea* for the delay in making



the payment and hence, exercised the powers in reducing the damages.

27. Having considered the reasoning, admittedly the contribution is not paid and the ground urged is that respondent was not aware of quantification of the contribution and also he was not keeping good health. No other defence is raised by the respondent. Once the respondent is registered, it is the bounden duty to pay the contribution and admittedly, the contribution is not paid, that too from 2009 to 2013 for a period of five years. Law is also very clear and in the judgment of **Horticulture Experiment Station Gonikoppal, Coorg** (supra), it is held that *mens rea* is not required and the same is not an essential consideration for imposing the penalty.

28. In the case on hand, admittedly contribution is not paid for a period five years from 2009 to 2013 and also the ground urged is that same was not quantified. There are no disputed facts in the case. Law is very clear that contribution should be voluntarily paid and it is the bounden duty to pay the same and need necessary to quantify the same. No doubt, counsel for respondent relied upon the judgment in the case of



The Director, ESI Corporation and another -vs- M/s Vijaya Vittala Vidyashala in MFA No.5438/2017 dated 16th February 2018, which was dismissed at the time of admission considering the factual aspects and the same is not applicable to the facts of the case on hand and the facts of the said case are different.

29. It is also very clear from the proviso to Section 85B of the ESI Act that the Corporation may reduce or waive the damages 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 and it is not the case of the respondent before the ESI Corporation that the respondent company is a sick company.

30. It is also brought to the notice of the Court that the damages recoverable under sub-section (1) of Section 85B can be recovered as arrears of land revenue as per sub-section (2) of Section 85B and it is also by way of penalty. Also Regulation 31C of Regulations is very clear with regard to



damages and as per the periodical tabular column under Regulation 31C, it is clear that if the delay in payment of contributions is more than 6 months, the maximum percent of damages to be imposed is 25%. In the present case, the delay is more than 5 years and therefore damages at the rate of 25% has been imposed. Further, the proviso to Regulation 31C is very clear that the Corporation in relation to a company in respect of which a Resolution Plan has been sanctioned by the National Company Law Tribunal under the Insolvency & Bankruptcy Code, 2016 may waive upto 50% of the damages levied or leviable depending upon merits of the case and in exceptional hard cases, waive either totally or partially the damages levied or leviable. No such circumstances are warranted in the case on hand and the very admission is very clear that contribution was not paid and that too for a period of 5 years from 2009 to 2013. When such contribution was not paid, notice was issued and thereafter imposed the interest as per the statute. Under the circumstances, damages is also payable under Section 85B of the ESI Act as well as Regulation 31C of the Regulations and circumstances which have been explained in Section 85B and Regulation 31C is very clear as to



under what circumstances, the Corporation can reduce the damages and the reason assigned by the ESI Court is that it is pleaded that respondent was not keeping good health and he was not aware of quantification of contribution and the same cannot be a ground to reduce the damages. The other reason is that immediately after the issuance of the notice, the amount was paid and the same also cannot be a ground to reduce the damages and the same is not permissible as enshrined in Section 85B and Regulation 31 C.

31. To come to the conclusion that no intention for non-payment and in respect of the same also no such ground has been urged. The judgment relied upon by the respondent's counsel in **Hindustan Steel Limited** (supra) is also very clear. Only in case of any defiance in payment, the Court has to take note of the said fact into consideration. In the case on hand, for a period of five years, the contribution was not paid. Even in the case of **Hindustan Steel Limited** (supra), it is made clear that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty



of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform statutory obligation is a matter of discretion of the authority to be exercised judiciously and on a consideration of all the relevant circumstances.

32. There is no dispute with regard to the principle in the above judgment, but in the case on hand, the Court has to take note of the fact from 2009 to 2013, no contribution was paid and there are lapses on the part of the respondent and only on issuance of notice, respondent has come forward to make payment. That itself is nothing but defiance of law. When the statute says contribution has to be paid voluntarily, it is the bounden duty to pay the same and since the same has not been paid, the interest also levied as per the statute. The grounds urged are that the respondent was not aware of quantification of contribution and further he was not keeping good health and the same cannot be a ground to reduce the damages. This Court has come to the conclusion that it is a voluntary act to make payment of contribution. So also no bonafide belief is in existence and it is nothing but dishonest



intention contribution not paid and no valid reasons are assigned. Non quantification cannot be a bonafide belief and not keeping good health also only an attempt made to get the lenience from the Court. The payment of contribution is bounden duty and to pay the same voluntary and statute demands the same. Under the circumstances, damages is payable as per Section 85B of the ESI Act and Regulation 31C of the Regulations and not comes within the proviso of Exceptions.

33. Therefore, the reasoning given by the ESI Court is erroneous and exercising power to reduce the amount is also not in consonance with Section 85B of the ESI Act as well as Regulation 31C of the Regulations. Hence, it requires interference of this Court to set aside the order of the trial Court in MFA 3185/2017.

34. Accordingly, I pass the following:

ORDER

- i) The appeals are **allowed**.



NC: 2024:KHC:46817
MFA No. 3186 of 2017
C/W MFA No. 3185 of 2017

- ii) The impugned order dated 31st January 2017 passed in ESI Application No.27/2014 on the file of the ESI Court at Bengaluru, is set aside.
- iii) The impugned order dated 31st January 2017 passed in ESI Application No.28/2014 on the file of the ESI Court at Bengaluru, is set aside.

Sd/-
(H.P.SANDESH)
JUDGE

GSS
List No.: 1 SI No.: 39