HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JULY, 2025

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BEFORE

THE HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR

MISCELLANEOUS FIRST APPEAL NO. 3687 OF 2016 (ESI)

BETWEEN:

THE ASSISTANT DIRECTOR
ESI CORPORATION
REGIONAL OFFICE (KARNATAKA)
NO.10, BINNYFIELDS
BINNYPET, BANGALORE-560 023

...APPELLANT

(BY SRI. KUMAR M.N, ADVOCATE)

AND:

M/S. SANSERA ENGINEERING P. LTD
261/C, BOMMASANDRA INDUSTRIAL AREA
HEBBAGODI POST, ANEKAL TALUK
BANGALORE DISTRICT

...RESPONDENT

(BY SRI. SOMASHEKAR, ADVOCATE - [VIDEO CONFERENCE])

THIS MFA IS FILED U/S 82(2) OF EMPLOYEES STATE INSURANCE ACT AGAINST THE JUDGMENT DATED:29.2.2016 PASSED IN E.S.I. APPLICATION NO.34/2008 ON THE FILE OF THE EMPLOYEES STATE INSURANCE COURT, BENGALURU, PARTLY ALLOWING THE APPLICATION FILED U/SEC 75 OF THE ESI ACT, 1948.

THIS MFA HAVING BEEN RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT, DELIVERED/PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR)

This Court is called upon to adjudicate upon this Miscellaneous First Appeal preferred under Section 82(2) of Employees State Insurance Act, 1948 (in short `the ESI Act') at the instance of the Employees State Insurance Corporation (hereinafter referred to as `Corporation') assailing the legality and correctness of the order dated 29.02.2016 passed by the learned ESI Court, Bengaluru in ESI Application No.34/2008. The impugned order, while partly allowing the application filed by the respondent-employer, reduced the statutory contribution demand raised under Section 45-A of the ESI Act from Rs.13,52,825/- to Rs.3,50,000/-.

2. The facts material for the disposal of this appeal are not in serious dispute. The respondent is a private

limited company engaged in the manufacture of automobile components and is operating from multiple units within the jurisdiction of ESI Corporation, Bengaluru. It is admitted that, the respondent is a factory within the meaning of Section 2(12) of the ESI Act, and, therefore, squarely falls within the ambit of the Act.

3. During the course of inspection of records, the Corporation found that, for the period from April 1999 to March 2005, the respondent had engaged contractors for various construction works, maintenance and repair activities within its factory premises. However, no contribution had been paid in respect of the labour engaged in such activities nor were relevant wage records or registers furnished despite multiple opportunities. Corporation having formed an opinion that, respondent had failed to comply with its statutory obligation, proceeded to invoke the powers under Section 45-A of the Act and passed an order determining contribution payable in a sum of Rs.13,52,825/-.

4. The impugned demand was challenged by the respondent before the ESI Court primarily on the ground that, the workers engaged for construction and repair works were not under the control and supervision of the respondent and that the amounts paid to the contractors included substantial material costs rendering the labour component indeterminate. It was further urged that, the assessment was adhoc and lacked a rational basis.

5. The ESI Court, while recording a finding that, the demand appear to include non-wage element, proceeded to reduce liability from Rs.13,52,825/- to 3,50,000/- without assigning any precise calculation or logic for the said quantification. It is this act of reduction unsupported by evidentiary material or statutory rationale, which forms the core grievance of the present appeal.

6. This Court has meticulously considered the rival submissions advanced on behalf of both the parties and

has perused the records in detail. Upon such consideration, the following issues arise for adjudication:

(i) Whether the labourers engaged through contractors for construction and repair works undertaken within the factory premises are to be treated as `employees' within the meaning of Section 2(9) of ESI Act?

(ii) Whether the order passed by the Corporation under Section 45-A of the Act was validly made in accordance with law particularly in view of respondents failure to furnish necessary records.?

(iii) Whether the ESI Court was justified in modifying the statutory demands in the absence of cogent evidentiary basis or alternative computation?

(iv) What order is to be made in the facts and circumstances of this case?

7. It is imperative at the threshold to recall the scheme and object of the ESI Act, 1948. The Act is a social

welfare legislation designed to confer certain benefits upon employees in case of sickness, maternity, employment injury and related contingencies and for ensuring medical care to insured persons and their family members. It is well settled that the provisions of such a welfare statute should be construed liberally to advance its beneficent purpose and not in a manner that defeats its statutory intent.

8. Turning to the first issue (supra), the expression `***Employee'*** under Section 2(9) of the Act has been defined in conclusive and expansive terms. It not only encompasses persons directly employed by the Principal Employer but, also includes persons employed through an immediate employer (such as a contractor) so long as they are engaged in connection with the work of the factory or establishment or work which is incidental or preliminary to or connected with the main work of the factory.

9. In the instant case, the respondents are to exclude the construction workers on the ground that they were engaged by independent contractors and that their work did not constitute regular factory activity. This argument is devoid of merit. It is well established that, construction and maintenance work undertaken for the expansion or operational upkeep of the factory premises of the factory are not alien or external to the functioning of manufacturing unit. On the contrary, such works are integral to the continuity, efficiency and safety of the factory's operations.

10. The construction of additional sheds, installation of new units, renovation of existing structures and replacements to support utility systems are all activities intimately connected with the efficient running of the factory. Such works cannot be compartmentalized as non-core or detached for the purpose of the establishment. Therefore, persons employed in such work even though

from contractors even they fall in the ambit of definition of `***Employee'*** under Section 2(9) of the Act.

11. As regards the second issue supra, the power vested in the Corporation under Section 45-A is a statutory mechanism designed to safeguard the integrity of social securities system against non-co-operation of employers. When an employer fails to submit report, maintain records, obstructs the Corporation from verifying compliance, Section 45-A empowers the Corporation to determine the contribution payable based on the available information and reasonable estimates.

12. In the present case, the records clearly demonstrate that the respondent was provided sufficient opportunities to furnish requisite details of the payments made to the contractors including bifurcation of labour and material components. Despite this, no such details are provided. In such circumstances, the Corporation upon evaluating the nature of work and based on prevailing

wage patterns and internal assessments, estimated 25% of the contractor payments to represent labour component and computed contribution accordingly.

13. This Court finds no infirmity in the method adopted by the Corporation. When an employer withholds material records, it cannot later be heard to complain that the assessment was speculative. The law does not permit a defeating party to take advantage of its own wrong. The statutory presumption under Section 45-A of the Act is not merely procedural; it has substantial legal force and must be given due weight.

14. On the third issue, the approach adopted by the learned ESI Court is found to be perverse. The Court has not recorded any finding to the effect that, the `Labour' Component was less than 25% nor has it relied on any contrary material or expert testimony. There is no computation offered to support the revised figure of Rs.3,50,000/- A judicial authority cannot indulge in

conjectural quantification especially, when dealing with statutory dues under a welfare legislation. Such arbitrariness defeats the purpose of the Act and undermines the powers conferred upon the Corporation.

15. The reduction of demand by nearly 75% without any basis not only lacks legal justification but, also sets a dangerous precedent whereby employers may feel emboldened to suppress records and escape liability through evasive tactics. Such an approach is neither legally tenable nor socially desirable.

16. In summation, this Court is of the clear and considered opinion that, the order passed by the ESI Court modifying the demand is legally unsustainable and calls for interference. The determination made by the Corporation was in accordance with the statutory framework and supported by the facts available. The respondent had every opportunity to rebut the demand by furnishing the records, but, failed to do so.

17. The learned counsel for the appellant relied upon Division Bench Judgment of this Court where, I am one of the member i.e. in Misc.First Appeal No.7749/2013 (ESI) and submits that, in similar situation the Division Bench of this Court has categorically discussed with regard to the provisions of Section 45-A of the ESI Act. The observation with regard to the said provision is found at para.31 and 32 of the said judgment. They read as under:

> *"31. Considering Section 45A of the Act, the Hon'ble Supreme Court in para 15 of the judgment in* ***C.C.Santhakumar's*** *case referred to supra held that the order under Section 45A(1) of the Act shall be used as sufficient proof of the claim of the Corporation. It was further held that when there is a failure in production of records and when there is no cooperation, the Corporation can determine the amount and recover the same as arrears of land revenue under Section 45B of the Act.*
>
> *32. In the present case since the records were not produced before the Corporation during determination under Section 45A of the Act, the ESI Court had to accept such determination unless and until the same was disproved by the appellant. Therefore the question is whether the appellant had let in such evidence to disprove the determination made by respondents under the order under Section 45A of the Act."*

18. The said observation squarely applies to the present facts of the case.

19. In conclusion, for the reasons stated above, this appeal deserves to be allowed and the impugned order passed by the ESI Court is liable to be set aside and the order passed by the Corporation under Section 45-A of the ESI Act is to be restored.

20. Resultantly following :

ORDER

(i) Appeal is ***allowed***.

(ii) Order dated 29.2.2016 passed by the ESI Court, Bengaluru in ESI Application No. 34/2008, is hereby set aside.

(iii) The contribution demand raised by the Corporation under Section 45-A of the ESI Act, in a sum of Rs.13,52,825/- is restored.

(iv) The respondent is directed to pay the said amount to the Corporation within a period of eight weeks from the date of receipt of this Judgment. If the amount is not paid

within the stipulated period, it shall attract interest and other statutory consequences as provided under the provisions of the ESI Act.

There shall be no orders as to costs.

Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE

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List No.: 1 Sl No.: 41