



CNR: KAHC010153112020

NC: 2026:KHC:48189
MFA No. 2617 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 2617 OF 2020 (ESI)

BETWEEN:

1. THE JOINT DIRECTOR
ESI CORPORATION
SUB REGIONAL OFFICE
SUBHASH NAGAR
MYSURU-570 007
2. DEPUTY DIRECTOR
ESI CORPORATION
SUB REGIONAL OFFICE
SUBHASH NAGAR
MYSURU-570007

...APPELLANTS

(BY SRI. SHASHIKANTHA C., ADVOCATE)

AND:

M/S VIJAY GAS AGENCIES
GUNDLUPETE-571 111

...RESPONDENT

(NOTICE SERVED TO RESPONDENT & UNREPRESENTED)

THIS MFA IS FILED U/S 82(2) OF EMPLOYEES STATE INSURANCE ACT, AGAINST THE ORDER DATED. 30.10.2019, PASSED IN ESI APPLICATION NO.10/2017, ON THE FILE OF THE DISTRICT AND SESSIONS JUDGE, EMPLOYEES INSURANCE COURT, MYSURU, PARTLY ALLOWING THE APPLICATION FILED U/SEC.75 OF ESI ACT.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



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CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is preferred by the appellants-ESI Corporation against the respondent, who is a covered establishment, seeking to set aside the order dated 30.10.2019 passed in ESI Application No.10/2017 by the Employees' State Insurance Court, Mysuru.

2. The brief facts of the case are as under:

The respondent is a covered establishment carrying out business of supplying LPG cylinders to the public. The ESI Corporation issued notice on 25.10.2016 to the respondent for payment of contribution for the period from December 2013 to August 2016 to show cause within 15 days as to why contribution as proposed should not be determined and recovered and the date was given as 21.11.2016 for personal hearing. The respondent did not appear for personal hearing. The ESI Authorities passed an order on 04.01.2017 under Section 45A of the Employees' State Insurance Act, 1948 (for short 'the ESI Act') determining the contribution payable by the respondent to an extent of Rs.1,94,659/- for the period from



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December 2013 to August 2016 on assumed wages of Rs.8,250/- at 6.5% for 11 employees. Further, it was also held as the partner of the establishment due to personal inabilities, the respondent was unable to appear before the ESI Authorities. The respondent deposited 25% of the amount claimed by the ESI Corporation.

2.1. It was the case of the respondent before the Authorities that the respondent was not given an opportunity to verify the documents and the Authorities passed an order and therefore, the same was baseless, unambiguous and imaginary. Therefore, the respondent approached the ESI Court to set aside the order passed under Section 45A of the ESI Act to be not sustainable on the ground that no reasonable opportunity was given to establish the case of the respondent and no proper personal hearing was given thereby restricting it from producing the documents or Books of Accounts relevant for the purpose of deciding the matter.

2.2. Upon the application being filed before the ESI Court, the ESI Corporation appeared and contested the matter. The ESI Court formulated the following issues for consideration:



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- "1. Whether the Applicant proves that the Order passed by the respondent under Sec.45-A of ESI Act Dated 04-01-2017 is illegal, unjust and contrary to law?*
- 2. Whether the Applicant is entitled for relief sought for?*
- 3. What Order or Decree?*

2.3. After hearing the arguments of learned counsel for both parties, the ESI Court came to a conclusion that merely because the respondent has not produced records, it is not sufficient to pass order with respect to payment of contribution on assumed wages and that it was proper to reconsider the claim of the respondent by giving opportunity to it to produce relevant documents before the Authorities and no harm would be caused to the Authorities if the matter is remanded for reconsideration and hence, found it fit to remand the matter to the ESI Authorities for reconsideration afresh and consequently set aside the order passed under Sections 45A and 45AA of the ESI Act.

2.4. It is this order that is challenged by the ESI Corporation before this Court in this appeal.



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3. Learned counsel Sri C.Sashikantha representing the Corporation vehemently contends that the impugned order passed by the ESI Court is perverse, arbitrary and the same is unsustainable in law. He further vehemently contends that Section 75 of the ESI Act provides for the matters to be decided by the ESI Court with regard to the payment of contribution and it makes it mandatory for the ESI Court to decide all such dispute on hand. It is further vehemently contended that Section 75 of the ESI Act has been created as a special exclusive forum for determination of disputes and claims specified therein. It is also contended that there is no powers vested with the ESI Court to remit the matter to the Authorities for reconsideration for the reason that the Jurisdiction of the ESI Court under Section 75 is not in the nature of appeal against the determination under Section 45A of the ESI Act. It is also contended by learned counsel that the parties to the *lis* have let in evidence in support of their contentions, several Exhibits and documents were marked as Exs-R1 and R2. The respondent conveniently preferred not to appear before the Authorities. Despite sufficient opportunity having been given and personal appearance having been



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provided, the opportunity was not availed by the respondent. Therefore, the ESI Court ought to have concluded the proceeding by itself taking note of the negligence and the sufficient opportunity having been given to the respondent and could have arrived at a conclusion rather than remitting the matter to the ESI Authorities, having not done so by taking it to itself, has committed illegality by remitting the matter to the ESI Authorities for reconsideration afresh same is not the correct procedure to be followed.

3.1. Learned counsel for the appellants relies upon the judgment of the Co-ordinate Bench of this Court in the case of ***The Deputy Director, ESI Corporation vs. M/s. Elite Leather International Pvt. Ltd.***¹ and the judgment passed by this Court in the case of ***The Deputy Director, ESI Corporation vs. M/s. Aqua Seal Tech***². These two judgments are squarely applicable to the facts and the law on point involved in the present case.

¹ MFA No.3970/2001 dated 17.06.2003

² MFA No.2669/2020 dated 31.07.2026



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4. ***M/s. Elite Leather International Pvt. Ltd.,***'s case (supra) is reiterated in the judgment of ***M/s. Aqua Seal Tech*** (supra), wherein this Court held as under:

"13. The co-ordinate Bench of this Court in similar circumstances has dealt with a situation as to whether the ESI Court had the powers to remit the matter to the Corporation Authorities for consideration. While dealing with such a question, it was decided in the negative and it was held that the ESI Court was not right in remitting or remanding the matter back to the Corporation, as the ESI Court is required to decide the matter by itself as it has the original jurisdiction vested in it, and it does not have the powers to remit the matter to the ESI authorities to re-determine the contribution. It would be appropriate to extract the relevant portions of the judgment of the Co-ordinate Bench of this Court in the said MFA.No.3970/2001.

"14. The language employed in Sec 75 of the Act makes it Mandatory for the ESI Court to decide such questions or disputes enumerated in the said provision in accordance with the provisions of the ESI Act Section 76 provides for institution of proceedings and Section 77 deals with commencement of proceedings As per Section Sec 78 of the Act, the ESI Court



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has all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses and ESI Court is deemed to be a Civil Court It is thus clear that Section 75 has created a special exclusive forum for determination of disputes and claims specified therein There is no power vested with the ESI Court to remit the matter The jurisdiction of ESI Court under Section 75 is not in the nature of an appeal against the determination under Section 45A of the Act. In the case of Employees' State Insurance Corporation, Bhopal vs. The Central Press and Another reported in AIR 1977 SC 1351, the Hon'ble Supreme Court has observed that it is the mandatory duty cast upon the ESI Court to such disputes and it is also armed with the powers of the Civil Court including summoning enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects under Sec 78 of the Act and the observations of the Supreme Court are as follows,

"It appears that the respondents-employers failed to maintain the registers or records and to submit returns of wages paid as required under S 44 of the Act, Hence, the Insurance Court, which was called upon to adjudicate under S 75(1)(c) of the Act, on the matter is dispute found itself unable to decide the question in issue. It dismissed the application on the ground that there was no provision for deciding such a dispute on an 'ad hoc basis' We fail to understand what is precisely meant by 'ed Loc basis' We find



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that S.75(2) of the Act provides, inter alia, that a claim for the recovery of contributions shall be decided by the Employees' Insurance Court. Not only is the mandatory duty cast upon it to decide such disputes, but it is armed with the powers of a Civil Court, including summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, under S.78 of the Act."

The Division Bench of our High Court in the case *M/s.Escorts Ltd., vs. Regional Director, ESIC* reported in ILR 1986(4) Kar 3595 has held that the jurisdiction under Sec 75 of the ESI Court is a superior jurisdiction.

"On a careful consideration of the matter, it appears to us that the contentions advanced by Sri Ullal, if accepted, would put impediments in the way of the working of the statutory-scheme. The argument, in our opinion, also overlooks the inter-relationship between the functionaries exercising jurisdiction under Sec 45A on the one hand and Section 75 on the other. The jurisdiction of the ESI Court under Sec 75 is, it must be emphasised, not in the nature of an appeal against the determination under Section 45A. Nor does the ESI Court exercise powers of judicial review over the determination. The jurisdiction under Section 45A is an independent one, though, however, once there is an adjudication under Sec 75 that adjudication prevails over the corresponding matters determined under Sec 45A. The



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jurisdiction under Sec 75 is a superior jurisdiction. The jurisdiction of the Court of Reference under Section 18 of the Land Acquisition Act in relation to an award under Section 11 may provide some analogical assistance though we are sensible that the two positions may not, otherwise be comparable. A Court of Reference under Sec 18 does not sit in appeal over an award under Section 11. The proceedings before the Land Acquisition Officer are not ipso-facto a part of the record in the reference. The Court of Reference does not have the power to set aside the award and remit the award to the Land Acquisition Officer for a fresh determination"

Xxx XXX XXX
Xxx XXX XXX
Xxx XXX XXX

At paragraph-14, it is further held as follows:

"What emerges from an examination of the statutory scheme is that the ESI CourtSSS is made the arbiter of all disputes that arise between the employer on the one hand and the Corporation on the other in regard to the several questions or disputes particularised in Section 75(1)(a) to (g). It is the obligation of that Court to decide these questions. What follows is that, except perhaps in very exceptional circumstances where a fresh consideration of the questions by the Corporation itself under Section 45A becomes absolutely necessary, the Court



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cannot merely set aside an adjudication under Sec 45A and remit the matter back to the Corporation for a fresh determination. Having regard to the objects of the Legislation and to the plenitude of the special jurisdiction that the ESI Court is endowed with under Section 75, the Court must decide all disputes. If either of the parties does not adduce sufficient evidence on any point, the matter will of course, be regulated by the consequences that flow from a party, who takes the risk of non-persuasion failing to discharge the evidential burden"

15. In the case of Regional Director, ESI Corporation Vs. M/s.Palki Data Forms Pvt., Ltd., in M.F.A No.2777/2001 c/w M.F.A.No.2776/2001 (ESI) dated 14 1 2003 a similar question arose for consideration. The Court in the said case has framed substantial question of law as follows,

"Whether in the facts and circumstances of these cases, the ESI Court, could remit the matter to the Corporation when itself could decide the matter"

The learned Single Judge has held that the when the law envisages the ESI Court to decide the matter by it having original jurisdiction, the ESI Court was not right in remitting the matter to the Corporation. I am, with respect, in complete agreement with the following observation of the learned Single Judge;

"In the above view of the matter, when the law envisages the ESI Court to decide the



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matter by it having original jurisdiction, the ESI Court was not right in remitting the matter to the Corporation to re-determine the contribution, more so, when no record or material whatsoever was produced regarding actual employment or wages of 35 employees referred to in the report submitted by the ESI Inspector"

16. In the light of the above discussion, I hold that on the facts and in the circumstances of the case, the question of law raised in the appeal constitutes a substantial question of law I further hold that since ESI Court is a Court of original jurisdiction, it is not justified in remitting the matter to the Corporation and that the order of remand is contrary to the statutory provision. Therefore, I pass the following order;

The order of the ESI Court in Application No.2/2001 dated 30 3 2001 is hereby set aside

The ESI Court is directed to decide the matter by itself, in accordance with law

Parties to bear their own costs."

5. This Court has provided opportunity to the respondent by issuance of notice. The notice is served. However, the respondent has remained unrepresented even before this Court. Despite granting sufficient opportunity by this Court as well, there is no appearance on behalf of the respondent. Hence, this Court has formulated the substantial



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questions of law for determination vide order dated 28.03.2026.

6. The questions so formulated by this Court are hereby answered in favour of the ESI Corporation by holding that it is not open for the ESI Court to remit the matter to the ESI Authorities, as the ESI Court is a Court of original jurisdiction as contemplated under Section 75 of the ESI Act. Therefore, the first point is answered in favour of the appellants-ESI Corporation to the extent that the ESI Court is not justified in remitting the matter to the ESI Authorities. The second point is also answered in favour of the ESI Corporation by holding that the ESI Court is mandated to decide the matter as contemplated under Section 75 of the ESI Act by itself, once there is an appearance of participation by the Establishment and whether having availed opportunity or not, it is the duty of the ESI Court to take into consideration those materials and decide the matter by itself and is not mandated to remit the matter to the Authorities once again for reconsideration of the dispute. The ESI Court may notify the establishment in case of non-appearance or non-participation by following the principle



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of "*audi alteram partem*" and thereafter, proceed further in the matter for determination of the dispute in accordance to law. Therefore, the impugned order passed by the ESI Court is not sustainable in law.

7. Accordingly, I pass the following:

ORDER

- i) The appeal is ***allowed***.
- ii) The impugned order dated 30.10.2019 passed in ESI Application No.10/2017 by the Employees' State Insurance Court, Mysuru is hereby set aside.
- iii) The matter is remitted to the ESI Court to decide in accordance with law and pass suitable orders.

**Sd/-
(PRADEEP SINGH YERUR)
JUDGE**