



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 2669 OF 2020 (ESI)

BETWEEN:

1. THE DEPUTY DIRECTOR
ESI, CORPORATION,
SUB REGIONAL OFFICE,
BAGNALORE NORTH (PEENYA)
HARINI TOWERS, 3RD MAIN, 3RD CROSS,
INDUSTRIAL SUBURB, YESHWANTHPURA,
BENGALURU - 560 022.
2. THE DIRECTOR AND APPELLATE AUTHOIRTY
ESI CORPORATION,
BAGNALORE NORTH (PEENYA)
HARINI TOWERS, 3RD MAIN,
3RD CROSS, INDUSTRIAL SUBURB,
YESHWANTHPURA,
BENGALURU - 560 022.

...APPELLANTS

(BY SRI. SHASHIKANTHA C., ADVOCATE A/W
SRI. B. PRAMOD, ADVOCATE)

AND:

1. M/S. AQUA SEAL TECH
NO.5401, PRESTIGE MONTE CARLO,
DODDABALLAPUR ROAD,
PUTTANAHALLI, YELAHANKA,
BENGALURU - 560 064

Digitally signed
by
GAVRIBIDANUR
SUBRAMANYA
GUPTA
SREENATH
Location: HIGH
COURT OF
KARNATAKA



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

REP BY ITS PROPRIETOR
MR. MOHAMMED HANIF SHAIKH

...RESPONDENT

(BY SRI. ESWARA RAMA NAIK, ADVOCATE FOR C/R)

THIS MFA IS FILED U/S 82(2) OF EMPLOYEE STATE INSURANCE ACT AGAINST THE ORDER DATED 04.01.2020 PASSED IN ESI NO.15/2019 ON THE FILE OF THE EMPLOYEE STATE INSURANCE COURT, BENGALURU, PARTLY ALLOWING THE APPLICATION FILED UNDER SECTION 75 OF THE ESI ACT.

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

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is preferred by the appellant, which is the ESI Corporation, against the respondent - Industry, which is registered as a covered establishment. The Corporation has questioned the impugned order dated 04.01.2020 passed by the Employee State Insurance Court, Bangalore, for short (ESI Court), whereby the ESI Court has allowed the application of the respondent - covered establishment and has set aside the order of the authorities and



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

consequently, remanded the matter back to ESI authorities for fresh consideration to calculate the contribution, if any, payable on an actual basis after verifying the records/documents of the applicant.

CONTENTIONS OF THE ESI - CORPORATION

2. It is the vehement contention of learned counsel Sri Shashikantha.C appearing for the corporation that the impugned order passed by the ESI Court is illegal, perverse and arbitrary and the same is unsustainable. It is further contended that the ESI Court failed to appreciate that before the authorities under Section 45A, the respondent failed to submit records in respect of covered employees in spite of granting time, which fact is recorded in paragraph No.6 of the order, and this cannot be found fault with at any stretch of imagination.

3. It is also contended by learned counsel for the appellant that there are sufficient materials placed on record before the authorities, and the same has not been



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

properly appreciated by the ESI Court. Learned counsel for the appellant further contends that as per Section 75 of the ESI Act, it creates a special exclusive forum for the determination of disputes and claims specified therein. It is vehemently contended by learned counsel for the appellant that there is no power vested with the ESI Court to remit the matter back to the ESI authorities for the reason that the jurisdiction vested with the ESI Court is not an appellate jurisdiction or for that matter in the nature of an appeal against the determination under Section 45 - A and Section 45 - AA of the ESI Act.

4. It is further contended by the learned counsel for the appellant that the ESI Court has failed to appreciate that in case of delay in payment of contribution the respondent was liable to pay the interest as per the ESI Act and erred in setting aside the interest levied on the non-payment of contribution. It is also contended that the respondent in the present case did not remit the entire amount in pursuance of the order passed under Section



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

45- A of the ESI Act. Therefore, the respondent was liable to pay the short remittance, interest and cost, which were mentioned in the order under Section 45-G of the Act.

5. Learned counsel for the appellant has relied upon the judgment of the co-ordinate Bench of this Court in MFA No.3970/2001, where he contends that the co-ordinate Bench of this Court has held that the powers are not vested with the ESI court to remit the matter to the Corporation when the ESI court itself would have to decide the matter based on the materials available or, for that matter, by summoning or securing any further records or any such materials that are placed by the parties. On these grounds, he seeks to allow the appeal and set aside the order passed by the ESI Court and remit the matter back to the ESI Court for fresh adjudication. Therefore, he contends that there is a substantial question of law for consideration before this Court, as urged in the appeal memo.



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

CONTENTIONS OF RESPONDENT - ESTABLISHMENT

6. Per contra, learned counsel for the respondent vehemently contends that there is no illegality or perversity in the order passed by the ESI Court remitting the matter back to the authorities, he sustains the impugned order. But he would not have any objection if the matter is remitted to the ESI Court for consideration provided, he is given suitable opportunities to place materials and if all materials are considered by the ESI Court, which is a Court of the original first instance, he would be satisfied.

7. Learned counsel for the respondent has relied upon following judgments in support of his case.

- Judgment of the *Co-ordinate Bench* of this Court in the case of *Employees State Insurance Corporation, Sub Regional Office, Mysore V/s National Childrens Higher Primary School, Ashoknagar*.



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

- Judgment of the *Co-ordinate Bench* of this Court in the case of the *Deputy Director V/s M/s Republic Saw Mill*
- Judgment passed by the *Hon'ble Apex Court* in the case of *E.S.I.C V/s C.C.Santhakumar reported in 2007 (1) SCC 584.*

8. I have heard learned counsel for the appellant and learned counsel for the respondent.

9. The substantial questions of law that arises for consideration in this appeal is:

- 1) *Whether the ESI Court being the Court of original jurisdiction under Section 75 of ESI Act is justified in remitting the matter to the original authorities?*
- 2) *Whether in the facts and circumstances of the present case, the ESI Court itself could have decided the matter?*
- 3) *Whether the impugned order is sustainable and tenable in view of the*



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

provisions under Section 75 of the Act and the ESI Court being the Court of first instance and in view of the judgment in MFA No.3970/2001 and the other judgments relied on by the respondent?

10. The answer to the above first substantial questions of law is in the negative, as there is no jurisdiction vested with the ESI Court to remit the matter back to the original authorities for adjudication, secondly as the ESI Court is of the first instance it would have to deal with the matter in accordance with law as contemplated under the Act for the following reasons mentioned below. Thirdly the impugned order is unsustainable in law and deserves to be set aside.

11. It is not in dispute that the covered establishment had preferred an application before the ESI Court challenging the orders passed under Section 45A of the Act. Upon consideration of the said application preferred by the respondent - covered establishment, the



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

ESI Court allowed the application in part and passed an order setting aside the order under Section 45A of the ESI Act and consequently remanded the matter back to the ESI authorities for fresh consideration.

12. It would be relevant to extract the provisions of Section 75 of the ESI Act.

" Matters to be decided by employees' Insurance Court :-

*1). If any question or dispute arises as to
a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or*

b) the rate of wages or average daily wages of an employee for the purpose of this Act, or

c) the rate of contribution payable by the principal employer in respect of any employee, or

d) the person who is or was the principal employer in respect of any employee, or

e) the right of any person to any benefit and as to the amount and duration thereof, or

(ee) any direction issued by the Corporation under Sec 55-A on a review of any payment of dependants' benefits, or,)

f) Omitted



CNR: KAHC010158382020

g) Any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, (or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act),

,such question or dispute (subject to the provisions of sub-section (2-A)) shall be decided by the Employee's Insurance Court in accordance with the provisions of this Act.'

2) (Subject to the provisions of sub-section (2-A), the following claims) shall be decided by the Employees' Insurance Court, namely,-

a) claim for the recovery of contributions from the principal employer,

b) claim by a principal employer to recover contributions from any immediate employer,

c) omitted

d) claim against a principal employer under Sec 68;

e) claim under Section '70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto, and

f) Any claim for the recovery of any benefit admissible under this Act."



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

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



CNR: KAHC010158382020

Section Sec 78 of the Act, the ESI Court 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 that



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

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 jurisdiction under Sec 75 is a superior



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

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 cannot merely set aside an adjudication under Sec 45A and remit the matter back to the



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

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 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



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

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."

14. In the present facts and circumstances of the case also, it is as similar in nature as to the one narrated herein above and the judgments relied by the learned counsel for the respondent passed by the Co-ordinate Bench of this Court in the case of ***Employees State Insurance Corporation, Sub Regional Office, Mysore V/s National Childrens Higher Primary School,***



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

Ashoknagar so also in the case of **Deputy Director V/s M/s Republic Saw Mill** and also in the judgment relied by the learned counsel of the Hon'ble Apex Court in the case of **E.S.I.C V/s C.C.Santhakumar reported in 2007 (1) SCC 584.**

15. The fact is that the matter was remitted back to the ESI Court for fresh consideration. All these aspects clearly go to show that the matter cannot be remitted back to the ESI authorities but will have to be decided by the ESI Court itself. Under the circumstances, the substantial questions of law are answered in favour of the appellant. Accordingly, I pass the following order.

ORDER

1) The appeal is **allowed.**

2) The impugned order dated 04.01.2200 passed on E.S.I application No.15/19 by the ESI Court, Bengaluru, is hereby set aside.



CNR: KAHC010158382020

NC: 2026:KHC:40079
MFA No. 2669 of 2020

- 3) The matter is remanded back to the ESI Court to decide the application afresh.
- 4) All contentions of the parties are kept open.
- 5) It is made clear that this Court has not expressed any opinion on the merits of the matter.
- 6) The parties shall appear before the ESI Court without awaiting any further notice either from this Court or the ESI Court on 03.09.2026.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

RCK
List No.: 1 Sl No.: 14