HON'BLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.1037 of 2008

Judgment:

This appeal is filed against order dated 17-4-2007 in EIC No.5 of 2004 on the file of Industrial Tribunal-I, Hyderabad.

2. ESI Corporation determined that respondent herein i.e., hospital is liable to pay contribution towards ESI for employees and questioning that determination, respondent herein approached Industrial Tribunal-I, Hyderabad under Section 75(1)(g) of the Employees' State Insurance Act, 1948 (the ESI Act, for short) to declare that provisions of the ESI Act are not applicable to respondent herein. Industrial Tribunal framed two issues viz., whether establishment of respondent herein does not come under provisions of the ESI Act? secondly, whether respondent herein is not liable to pay any amount as demanded by appellant herein through order dated 11-12-2003? and dealt both the issues with reference to the material on record. The main contention on behalf of ESI Corporation before Industrial Tribunal was that in view of judgment of Hon'ble Supreme Court in **Christian Medical College v. Employees State Insurance Corporation**[1], determination made by the Corporation is correct and departments of Electrical Maintenance, Laundry, Machine Generator Maintenance, Sewage Treatment Plant are independent existences and they are not part and parcel of hospital and cannot get exemption to provisions of the ESI Act and therefore, the hospital i.e., respondent herein has to pay amount as determined through order dated 11-12-2003.

3. Learned Presiding Officer of Industrial Tribunal by considering the material on record and also judgment of the Supreme Court held that departments referred to above are part and parcel of hospital and

they cannot be treated separately and therefore directing the hospital to pay amount for these departments is not sustainable, but, however, held that security department is separate and to that extent the hospital has to pay amount under Section 75(2)(B) of the ESI Act and determined that amount at Rs.24,000/-.

4. Aggrieved by order of the Industrial Tribunal, ESI Corporation preferred present appeal.

5. Heard both sides.

6. Advocate for appellants submitted that lower Court failed to appreciate report dated 18-9-2002 according to which during the course of inspection it was noticed that employees engaged in maintenance departments viz., Electrical, Laundry, Machine Generator, Sewage Treatment Plant, Food and Beverages, Environment Department are not covered under the scheme, therefore a letter dated 08-10-2002 was sent to the hospital and as there was no compliance from the hospital, orders were passed under Section 45-A of the ESI Act determining a sum of Rs.92,950/- as contribution for the period from 01-8-2002 to
31-3-2003. It is further submitted that lower Court failed to properly appreciate the definition of 'factory' as held by the Hon'ble Supreme Court in the above referred decision and that the order of the Industrial Tribunal is liable to be set aside.

7. On the other hand, Advocate for respondent-hospital submitted that the Industrial Tribunal has rightly distinguished decision of the Hon'ble Supreme Court and correctly held that departments pointed out by the Corporation are part and parcel of the hospital and they are not separate and therefore there is no need to pay any amount. It is further submitted that departments referred to above are not manufacturing units and in the judgment of Supreme Court in

Christian Medical College (1 *supra*), ECG and Radiation equipment, X-ray equipment, Kidney dialysis, heart and lung machine, operating table equipment are being repaired in the hospital itself and therefore the Supreme Court held that such departments are to fall within the meaning of 'factory' as per Section 2(12) of the ESI Act, but, here in our case, the departments referred to above are only for the purpose of maintenance of the hospital and they cannot be termed as separate and the Industrial Tribunal rightly appreciated the facts and law and that there are no grounds to interfere with the same. It is further submitted that this Court in **VIJAYA DIAGNOSTIC CENTRE v. ESIC**[2] has clearly held that these departments do not come under the definition of 'manufacturing units' or 'factory' and therefore, order of the Court below is right and there are no grounds to interfere with the same.

8. Now, the point that would arise for my consideration in this appeal is:

> Whether the order dated 17-4-2007 in E.I.C.No.5 of 2004 on the file of Industrial Tribunal-I, Hyderabad, is legal, proper and correct?

9. **Point**:- It is the specific case of appellants that in the month of August, 2002 an inspection was conducted during which, it was noticed that there were employees in various maintenance departments. According to Corporation, there are Electrical maintenance department, Laundry department, Machine Generator maintenance, Sewage Treatment Plant, which are having independent existence and separately located in the premises but no contribution was paid under the ESI Act and for that, a demand was made to pay Rs.92,950/-. According to appellants, in view of judgment of the Supreme Court in **Christian Medical College** (1 *supra*), these departments also come under the definition of 'manufacturing process' and therefore, respondent herein is liable to pay contribution. The same judgment was cited before the Industrial

Tribunal and that Presiding Officer of the Industrial Tribunal elaborately discussed the material on record with reference to facts of the judgment of the Hon'ble Supreme in **Christian Medical College** (1 *supra*) and held that the decision has no application.

10. I have perused judgment of the Hon'ble Supreme Court in **Christian Medical College** (1 *supra*) and in that case, it was held that Equipment Maintenance Department of Medical College which maintains and repairs the equipment for its efficient use in the hospital is covered by the term 'factory' under the ESI Act and the provisions of the ESI Act are applicable to the said department. But, in our case, there are no such repairs and all the departments referred to above are only for general maintenance of the hospital and as rightly pointed out by Advocate for respondent, there is no manufacturing process as required under the ESI Act to apply provisions of the ESI Act and these aspects were considered by the Industrial Tribunal and rightly negatived the objection of the appellants.

11. As seen from record, no witness was examined on behalf of appellants to substantiate that some manufacturing process is undertaken in these departments to attract the definition of Section 2(k) of the Factories Act, 1948. Advocate for appellants submitted that wider meaning is given to the definition under Section 2(k) of the Factories Act and therefore, these departments definitely fall under the definition of Section 2(k) of the Factories Act. But, I am unable to agree with the submission of Advocate for appellants as there is no evidence on behalf of the Corporation to say that these departments undertake manufacturing process. Presiding Officer of the Industrial Tribunal has rightly appreciated the material on record and rightly observed that it is difficult for the hospital to run without these facilities and when the hospital itself is excluded from the purview of the ESI Act, these departments would also get the same benefit as they are part and parcel of the hospital and I do not find any wrong in approach

of the Industrial Tribunal in distinguishing these departments from the definitions of ‘factory’ and ‘manufacturing unit’.

12. On a close scrutiny of the material on record, I am of the view that the decision relied on by Advocate for appellants in **Christian Medical College** (1 *supra*) has no application to the facts of the case and the Industrial Tribunal has rightly distinguished the said decision to the facts of the case and that there are no grounds to interfere with the findings recorded by the Industrial Tribunal. For these reasons, the appeal is dismissed as devoid of merits. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed. No costs.

S.RAVI KUMAR, J.

14th June, 2016.
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HON’BLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.1037 of 2008

14th June, 2016.
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[1] (2001 (1) LLJ 18)

[2] 2006-II-LLJ 443