

THE HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No. 2427 of 2011

ORDER :

Petitioners challenge letter No.CE/O&M/RTPP/DGM(HR)/ W.O/ESI/F.16/D.No.6A/11 dated 20.01.2011 issued by respondent No.2 as illegal, violative of principles of natural justice and unconstitutional. The impugned letter reads as follows:

“Sub:- APGENCO-RTPP-ESI Enforcement-Payment of

remittances for the period from 1-3-2009 to 31-3-2010 – Requested – Regarding.

Ref:-1)

Lr.No.CE/O&M/RTPP/SE/A&MM/DGM(HR)/

W.O/ESI/F.NO.16/D.No.134/10, dt.18-11-2010.

2) Order No.AP/MEC/52-00-031185-000-0905 dated

31-12-2010, order under Section 45-A of the ESI

Act, 1948 by the Deputy Director of RESIC/ Hyderabad.

It is to recall your attention to reference 1st cited, wherein you were requested to remit ESI dues immediately and submit the paid challans for the period from 1-3-2009 to 31-3-2010 to this office. It was also informed that in the case of non compliance the ESI dues will be recovered from your bills.

In response to the above some of the contractors have submitted copies of paid challans as detailed in the Annexure enclosed herewith.

The RESIC office vide reference 2nd cited have determined the total ESI dues at Rs.24,21,634-00 on adhoc basis as detailed therein, a copy of which is enclosed, which is self explanatory.

In view of the above, it is requested to remit ESI dues and submit paid challans immediately but not later than 7-2-2011, failing which we will be constrained to recover the same from your bills, which please note.”

Respondent Nos.1 and 2 filed W.V.M.P.No.2039 of 2015 to vacate the interim order dated 08.02.2011 in W.P.M.P.No.3017 of 2011.

Learned counsel appearing for the parties, having regard to the stand taken in the counter affidavit filed by respondent Nos.1 and 2, pray for disposing of the writ petition in terms thereof. The relevant portions, on which specific emphasis is laid by the petitioners, read as follows:

“In reply to Para No.2, it is submitted that ESI Act, 1948 is implemented in the revenue villages of Kalamalla, Muddanur, and surrounding villages of Yerraguntla and Myddanur Mandals with effect

from 01-03-2009 vide order No.52-N/15/12/2002/27-02-2009. Therefore the petitioners are under statutory obligations to remit ESIC contributions from 01-03-2009. The contributions so remitted comprises of employee contribution @ 1.75% and employer contribution @ 4.75% is reimbursable to the contractors on production of paid ESI challans. Therefore there is nothing arbitrary, illegal and contrary to any law, as alleged by the petitioners.

In reply to Para Nos.15 & 16, I respectfully submit that the ESIC Hyderabad have again passed an order under Section 45(A) of the ESIC Act, 1948 for remitting Rs.24,21,634-00 towards ESIC dues for the period 01-03-2009 to 31-03-2010 vide order No.AP/MEC/52-00-031185-000-0905 dated 31-12-2010. It is submitted that respondent No.2 have preferred an appeal under section 45(AA) of the ESIC Act, 1948 vide letter No.CE/O&M/RTTP/DGM(HR)/W.O/ESI/F.16/D.No.4/11 dated 9-02-2011, requesting the respondent No.3 to take in to consideration the payments already made to the tune of Rs.13,07,400-00. The appeal is yet to be decided by the ESIC Act. It is submitted that once the ESIC Act is implemented it is immaterial whether ESI registration number is allotted or not and the petitioners are statutorily obligated to remit ESIC contributions in respect of their workmen and claim reimbursement for the same from respondent No.2. The 2nd respondent obtained the code for its regular employees. The contractors are required to get individual code under the Act.”

From the above, it is clear that respondent Nos.1 and 2 as principal employer are agreeing to reimburse employer's share of ESI to the petitioners on production of payment of ESI by the petitioners/contractors. Admittedly, the order passed by the authorities under the Employees' State Insurance Act, 1948 (for short 'the ESI Act') was under challenge before the Tribunal. The petitioners are, therefore, given liberty to participate in the pending proceedings before the Tribunal under the ESI Act against the quantum of contribution determined by the authorities etc., and subject to the outcome of such adjudication, pay employer's contribution and produce proof thereof before respondent Nos.1 and 2 for reimbursement. Thereafter, respondent Nos.1 and 2 are directed to reimburse to the petitioners as agreed in the counter affidavit.

With the above observations, the Writ Petition is disposed of. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

**JUSTICE S.V.
BHATT**

10th March, 2016
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