

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.19581 OF 2016

ORDER:

Heard Mr.Koka Satyanarayana Rao, learned counsel for petitioner and Mr.B.G.Ravinder Reddy, learned standing counsel for 1st and 2nd respondents.

Guntur Municipal Corporation/petitioner challenges order No No.AP/SRO/VJA/MEC/62000096170001019 dated 20.05.2016 of the 2nd respondent passed under Section 85B of the Employees State Insurance Act, 1948 (for short, 'the Act') as illegal and does not conform to the requirements of Section 85B of the Act.

The 2nd respondent through order impugned in the writ petition levied and demanded a sum of Rs.31,62,988/- as damages for the delayed payment of contribution for the period October 2010 to December, 2014. The petitioner challenges the levy and demand of damages firstly on the ground that there is no *mens rea* and secondly due to factors viz., agitation by the workers of Municipal Corporation, there is delay in contribution. Further, as held by the Apex Court in EMPLOYEES STATE INSURANCE COMPANY V. HMT LIMITED¹, the *mens rea* is not found against the petitioner, but still damages are levied.

Mr.B.G.Ravinder Reddy objects to the maintainability of writ petition as no ground is made out for appeal under Section 75 of the Act is available. The respondents have not filed counter affidavit or produced the record.

¹ (2008) 3 SCC 355

The operative portion of the order impugned in the writ petition reads thus:

“Upon perusal of records, it is observed that the employer has made a default in making payment of contribution within the stipulated time and manner prescribed in the Employees’ State Insurance (General) Regulations 1950, framed under the Act for the aforesaid period. Employer did not raise any dispute on the number of days of delay in payment of contribution or the quantum of damages communicated to him. As delay in remitting contributions impacts administering the Scheme by way of incurring recurring expenditure in running Hospitals and for making Cash Benefit payments to Insured Persons, such of the employers who delay in remittances need to pay damages.

Since there is considerable delay in payment of contributions as mentioned in the said D-18 notice dated 30.03.2016, the employer was bound to pay the damages as per the ESI Act. As such he was advised to clear the dues at the earliest.

In view of the above, the claim of Corporation for damages as per the percentages indicated in the calculation sheet enclosed, which comes to Rs.31,62,988/- is hereby upheld as a valid and rightful claim by way of penalty for late remittances”.

Prima facie, this Court is of the view that the 2nd respondent is exercising the power to levy and recover damages from the petitioner. As required by Section 85B of the Act and as held by the Apex Court in HMT’s case, discussion or consideration of *mens rea* for imposing damages ought to have been undertaken by 2nd respondent. The case on hand relates to damages and the order levying damages must discharge the burden cast on respondents for levying damages, by appreciating the fact situation of the case on hand.

To meet the ends of justice and keeping the scope and object of the Act, I am satisfied the order impugned in the writ petition, for the reasons stated above, is set aside. The matter is remitted to 2nd respondent for disposal afresh in accordance with law.

Keeping in view the long pendency of issue of applicability of employees state insurance to sanitary workers/health workers, self-help groups in petitioner Corporation, this Court issues the following further directions:

- 
- (a) the petitioner is directed to appear before the 1st respondent on 02.02.2018;
 - (b) the petitioner, if so advised, is given opportunity to file additional reply or enclose certified copies of records within three weeks from today; and
 - (c) the 2nd respondent is directed to complete the hearing on 02.02.2018 and pass orders as expeditiously as possible, preferably within four weeks from 02.02.2018.

There shall be no order as to costs.

The writ petition is ordered as indicated above. There shall be no order as to costs.

Miscellaneous petitions, if any, pending stand closed.

S.V.BHATT,J

04th January 2018

Note:
C.C.forthwith.
B/o.

LRKM

