

HON'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.18948, 18990, 18991, 19047, 19048, 19049,
19050, 19170, 19197, 19146 & 19012 OF 2014

COMMON ORDER:

Heard Mr.Koka Satyanarayana Rao, learned counsel for petitioners and Mr.B.G.Ravinder Reddy, learned standing counsel for respondents.

The Greater Hyderabad Municipal Corporation/petitioner challenges levy and demand of damages under Section 85B of the Employees State Insurance Act, 1948 (for short, 'the Act') and the consequential order under Section 45G dated 02.07.2014.

The learned counsel appearing for the parties submitted that reference to averments in W.P.No.18948 of 2014 would be sufficient for disposing of the batch of writ petitions.

Certificate No.AP/INSMEC/52520322190071019 dated 16.01.2014 was issued, recovering the amount, for according to respondents, the petitioner failed to pay the arrears/damages payable on account of delayed contribution of Employees State Insurance. The 3rd respondent issued order under Section 45G of the Act. The petitioner now challenges the order under Section 45G to transfer the amount demanded through the notice to the credit of 3rd respondent. The counsel appearing for the parties have made submissions on merits of the matter and also maintainability of statutory appeal under Section 75 of the Act. In the case on hand, the petitioner questions recovery order passed by

3rd respondent and also the levy of damages/interest on petitioner for the alleged delayed payment.

Mr.B.G.Ravinder Reddy relying on the decision of this Court in ASHOK LEYLAND LIMITED AND OTHERS v. DEPUTY TAHSILDAR/SPECIAL REVENUE INSPECTOR (ESI), RECOVERY CELL & OTHERS¹ contends that this Court ought not to entertain consequential order under Section 45G and also determine the obligation to contribute under Act, for the petitioner has an effective remedy under Section 75 of the Act. Section 75 of the Act reads as follows:

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 purposes of this Act, or

(c) the rate of contribution payable by a 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 section 55A on a review of any payment of dependants benefits, or]

(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 provision of sub-section (2A)] shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

¹ 2002(1) ALT262

(2) [Subject to the provisions of sub-section (2A), 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;
- (d) claim against a principal employer under section 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.

[(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of section 54A in which case the Employees' Insurance Court may itself determine all the issues arising before it.]

[(2B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation:

PROVIDED that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.]

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by [a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court]

The Division Bench of this Court in Ashok Leyland Limited case held as follows:

“The question as to whether an employer can maintain an action before the ESI Court questioning the liability under the ESI Act, fell for consideration before, the Apex Court in Employees’ State Insurance Corporation v.

F.Fibre Bangalore (Private) Limited, 1997 SCC (L&S) 190, and in para 5 it was held:

“The Full Bench of the High Court has held the in a case where the order under Section 45-A becomes final, there is no need for the Corporation to seek adjudication before the Insurance Court. In all other cases, the Corporation is required to go to the Insurance Court, have it adjudicated and then make a demand. We are of the view that the Full Bench of the High Court is clearly in error to reach that conclusion.

Though Section 75 of the Act does not envisage as to who has to approach the Insurance Court, by necessary implication when the employer denies the liability or applicability of the provisions of the Act or the quantum of the contribution to be deposited by the employer, it is for him to approach the Insurance Court and seek adjudication. It is not for the Corporation in each case whenever there is a dispute, to go to the Insurance Court and have the dispute adjudicated. Otherwise, the Act would become unworkable and defeat the object and purpose of the Act.

Having regard to the aforementioned authoritative pronouncement of the Apex Court, we are of the opinion that all questions, including the question of applicability of the ESI Act to the petitioners, can be raised before the Employees Insurance Court. Therefore, the petitioners should avail the remedies available to them.

The above aspect of the matter was also considered by a Division Bench of Patna High Court in Shriram Bearings Limited v. ESI Corporation, 1977 Lab.IC 1482 and N.P.Singh, J., as he then was, speaking for the Bench categorically held that even the Courts and Tribunals, constituted under the ESI Act, have inherent power to issue appropriate relief by way of injunction to the party before it and it can enforce the orders.

For the above reasons afore-mentioned, we dispose of these writ petitions with the following observations/directions:

The petitioners may approach the ESI Court, constituted under Section 74 of the ESI Act, by filing

appropriate applications, and in the event such applications are filed by the petitioners, the same shall be disposed of in accordance with law.

Having regard to the fact that law in this regard was uncertain, we hope and trust that the respondents for a reasonable period i.e., for a period 60 days, shall not take any coercive steps for recovery of the purported dues from the petitioners. No order as to costs”.

This Court, after considering the contentions canvassed both on merits and preliminary objection is of the view that the remedy of appeal is effective and efficacious where the petitioner as well as the respondents have opportunity to canvass their respective cases. Hence, instead of examining the merits, this Court is of the view that the scheme of the Act is furthered by relegating the petitioner to work out the remedy by way of appeal, both against determination and interest/damages levied by respondents.

In the fact situation of the present batch of writ petitions, this Court is of the view that the petitioner ought to be allowed to file appeal under Section 75 of the Act against the orders impugned in the writ petitions as well as the determination, if any, under Section 45G of the Act.

Hence, the writ petitions are disposed as follows:

- (a) the petitioner is given liberty to file appeals against determination of ESI contribution, interest, damages etc., before the Employees' Insurance Court within four weeks from today by enclosing a copy of this order;
- (b) the appeals if are filed within the time granted by this Court, the Employees' Insurance Court considers, if the appeals are otherwise in order, to hear the appeals on

merits and positively dispose of the appeals within 8 (eight) weeks from the date of filing the appeals; and

- (c) the interim order granted by this Court is directed to be continued for a period of three months from today.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending stand closed.

S.V.BHATT,J

04th January 2018

Note:

CC in forthwith.

B/o.

Lrkm

