

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO. 1157 OF 2019

Employees State Insurance Corporation, Sub Regional Office, Nagpur
vs.

The President, Madhuban Urban Credit Co-operative, Nagpur & Ors.

Office Notes, Office Memorandum of Coram,
orders
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's

Smt. B. P. Maldhure, counsel for appellant.

CORAM : Manish Pitale J

DATED : 30.09.2019

By this appeal, the Employees State Insurance Corporation (ESIC) has challenged Judgment and order dated 29.11.2018 passed by the Employees State Insurance Court at Nagpur, whereby an application filed by the respondents under Section 75 of the Employees State Insurance Act, 1948 was partly allowed and orders dated 28.02.2011 and 25.02.2011 passed under Section 45A of the ESI Act were set aside and the matter was remanded back to the authority for fresh enquiry in accordance with law.

2. Notice was issued in this appeal on 14.06.2019. The appellant has contended that substantial question of law arises in this appeal to the effect that there was no necessity for the Court below to have remanded back the matter to the original

authority, in the facts and circumstances in the present case.

3. Subject matter of challenge before the Court below were the aforesaid orders passed by the original authority whereby the respondents were directed to deposit an amount of Rs.85,800/- and Rs.3,17,412/- along with interest upto 17.02.2011 by exercise of power under Section 45A of the aforesaid Act. The orders passed by the original authority were based on the fact that despite notices issued to the respondents, and they being called upon to produce documents, there was non co-operation on their part, as a result of which, the authority took into consideration wages of the employees at Rs.5500/- per month and on that basis demand was raised on the respondent.

4. One of the grounds raised on behalf of the respondent was that, the respondent Society had started counter for collection of MSEB bills and that the MSEB was itself deducting 5½% of amount of commission on the electricity bills and that the amount so collected was being paid under the provisions of the said Act. It was contended that in case of such employees, they were to be treated as employees of the MSEB and that if the orders passed by the authority were to be implemented, there would be payment under the provisions of the said Act twice over, insofar as the said employees were concerned.

5. This aspect appears to have impressed the Court below while holding that the matter could be remanded to the original authority for fresh enquiry. The Court below observed that the original authority would not be influenced by the observations made in the impugned judgment and order and that the amount of Rs.42,900/- deposited by the respondent in the Court below would be adjusted after passing of orders by the original authority upon remand of the matter.

6. It is vehemently contended on behalf of the appellant that remand of the matter in the present case amounts to granting premium to the respondent for their utter non-cooperation with the authority when the proceedings under Section 45A of the Act were limited. It was submitted that when no documents were produced the demand was raised against the respondent. The appellant was justified in proceeding on the basis of assumed wages and thereupon calculating the amount of contribution payable by the respondent. It was further submitted on behalf of the appellant, on the aspect that respondent society had started counter for collection of electricity bills, that sufficient opportunity was granted to the respondent in the context of 22 employees found on record. It was further submitted that in the backdrop of the non-cooperation on the part of the respondent, the orders passed by the original authority ought to have been confirmed by

the Court below by dismissing the application. On the other hand, it was emphasized on the part of the respondent that the order of remand did not prejudice any of the parties. It was submitted that the fresh enquiry would facilitate in ascertaining the contentions raised on behalf of the respondent that some of their employees were indeed involved in the counter opened by the MSEB for collecting electricity bills and the fact that MSEB was making payment towards requirement under the said Act as regard such employees.

7. It was also contended that the approach adopted by the authority in proceeding for assumed wages was not sustainable, because payment sheets were already collected by the Inspector of the ESIC authority during the proceedings under Section 45A of the aforesaid Act.

8. Heard learned counsel for the rival parties.

9. This Court is of the opinion that although it appears that the respondent did not place on record detailed documents as regards wages being paid to the employees when proceedings under Section 45A of the aforesaid Act were initiated, it could not be said that the order of remand passed by the Court below would amount to giving premium to utter non-cooperation on the part of the respondent.

10. This Court is refraining from making any comment on the approach adopted by the appellant or the respondent, since there is no error found in the order of remand passed by the Court below. So far as the employees who are involved in the counter opened by the MSEB for collecting bills is concerned, there is substance in the contention raised on behalf of the respondent that there would be payment twice over under the provisions of the said Act insofar as such employees were concerned. These aspects and the other contentions raised on behalf of the respondents demonstrate that fresh enquiry would satisfy the contentions raised on behalf of the rival parties and that no prejudice is suffered by either party by maintaining order of remand.

11. In view of above, this Court is of the opinion that no substantial question arises, warranting interference in the impugned judgment and order.

12. Accordingly, the appeal is dismissed.

13. The Court below has already noted that the original authority shall proceed with fresh enquiry without being influenced by the observations made in the impugned order. Apart from this, the Court below had specifically directed that the enquiry should be completed within six months from the date of the impugned order i.e. 29.11.2018. In view of the same,

the original authority is directed that the fresh enquiry shall be completed, in any case, within a period of three months from today. The respondents shall cooperate with the enquiry and provide all the material available with them for proper inquiry in to the matter, so that just and fair order would be passed by the original authority.

14. Accordingly, the parties are directed to appear before the original authority on 07th October 2019.

15. Steno copy of this order be supplied to the parties.

JUDGE

KOLHE