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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.229 OF 2019

Konkan Mitra Mandal Medical Trust

...Petitioner

vs

The Dy. Director, Employees State Insurance
Corp. And Ors.

...Respondents

....

Mr. A.V. Joshi, for the Petitioner.

Mr. H.V. Mehta, for Respondent Nos. 1 to 3.

.....

CORAM : S.C. GUPTE, J.

DATED: 13 JANUARY, 2020

P.C. :

. This writ petition challenges an order passed by the Employees State Insurance Court at Pune. Rule is issued and taken up for hearing forthwith by consent of Counsel.

2. The impugned order was passed on an application for stay filed by the Petitioner herein in respect of an order passed by the Employees State Insurance Corporation under Section 45-A of the Employees State Insurance Act, 1948 ('ESI Act'). The original order passed by the ESI Corporation under Section 45-A was the subject matter of challenge in the main application before ESI Court, being Application (ESI) No.12 of 2017. The order of the ESI Court impugned herein was passed on an application for interim stay of the impugned order of the ESI Corporation pending Application (ESI) No.12 of 2017.

The main controversy in the petition herein concerns coverage of the Petitioner blood bank under the Employees State Insurance Act, 1948. Particularly, it involves consideration of the status of the Petitioner blood bank as a 'factory' within the meaning of Section 2(12) of the ESI Act read with Section 2(k) of the Factories Act, 1948. The order of the ESI Corporation, originally impugned before the ESI Court, passed under Section 45-A of that Act, was simply on the basis that the Petitioner blood bank was already covered under the ESI Act. The existing coverage under ESI Act was on the basis that one Sahyadri Hospital Ltd. (Corporate office) was covered under the ESI Act, its employer code being 33000450680001099. (This code is wrongly mentioned in the petition as the employer code of the Petitioner.) On the other hand, the Petitioner's correct code number, namely, 33000450690001404, referred to in the order of the ESI Corporation under Section 45-A of the ESI Act, was a code originally allotted to the Petitioner. The order allotting that code to the Petitioner was challenged by the Petitioner before the ESI Court. That application was allowed by the ESI Court and the matter was remanded to the ESI Corporation for deciding the issue of coverage of the Petitioner blood bank after giving an opportunity of personal hearing to the Petitioner herein. The ESI Corporation was, accordingly, bound to consider the matter of coverage under ESI Act on merits and not on the basis that the Petitioner was already covered under the ESI Act. The matter, thus, deserves to go back to the ESI Court for a fresh hearing in accordance with law.

3. Rule is, accordingly, made absolute and the petition is allowed by quashing and setting aside the impugned order of the ESI

Court on Exhibit “C-2” in Application (ESI) No.12 of 2017, passed on 11 December 2018, and remanding Exhibit “C-2” to remanded to the ESI Court at Pune for a fresh hearing in accordance with law. It is made clear that whilst considering this application on remand, the ESI Court shall prima facie consider the issue of coverage of the Petitioner blood bank under the Employees State Insurance Act, 1948. Such consideration will have to be without reference to the original order of coverage by which employer code no. 33000450690001404 was allotted to the Petitioner blood bank.

(S.C. GUPTE, J.)

Smita
Gonsalves

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