

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 6561 of 2011**

1. M/s Krishna Wood Products Pvt. Ltd., Through -Director Umesh Kumar Limbani S/o Kanti Bhai Limbani, Aged about 36 years, R/o Timber Market Bhanpuri, Raipur Chhattisgarh ---- **Petitioner**

Versus

1. Employee State Insurance Corporation, Regional Office, Through-Joint Director, 18, South Avenue, Choubey Colony, Raipur Chhattisgarh.
2. Employee State Insurance Corporation, Regional Office, Through – Recovery Officer, 18, South Avenue, Choubey Colony, Raipur Chhattisgarh.
3. State Bank of India, E.S.I. Branch, Through Bank Manager, Byron Bazar, Raipur Chhattisgarh.
4. State Bank of India, Through – Bank Manager, Bhanpuri, Raipur Chhattisgarh.
5. M/s Maha Laxmi Panels, Indira Timber Market, Bhanpur, Raipur Chhattisgarh. ---- **Respondents**

For Petitioner	:	Shri Akshay Uppal under instruction of Shri Sunil Otwani, Advocate.
For Respondent No. 1	:	Shri Pradeep Saksena, Advocate.
For Res. No. 3 & 4	:	Shri Abhishek Sinha, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****25/02/2021**

1. The challenge in the present writ petition is to the order passed by the Employee State Insurance Court Raipur dated 27.07.2011.
2. Vide the said impugned order, the Learned Labour Court on a proceeding initiated under Section 75 of the E.S.I Act 1948 and considering an application for the interim relief, partly allowed the application to the extent of directing the petitioner to deposit 50% of

amount assessed by the ESI Corporation. It is this order which is under challenge in the present writ petition.

3. Learned counsel for the petitioner submits that the very initiation of the assessment proceedings by the ESI Corporation was bad for the reason that the authorities have assessed of a period beyond five years which otherwise was impermissible under law. It was also contended by the petitioner that the during the intervening period, there has also been certain development on the ownership of the petitioner-establishment and also these facts have not been properly appreciated by the Learned Labour Court.
4. What needs consideration at this juncture is that the present is a writ petition assailing an order passed by the ESI Court in a case under Section 75 filed before the ESI Court where the petitioner has moved an application for interim relief in which the Court below has granted stay of the assessment made by the Corporation subject to the petitioner depositing 50% of the amount assessed and quantified.
5. The writ petition in exercise of its power under Article 226 would test the veracity of the impugned order only to the extent whether there is any perversity and illegality committed by the Court below in the course of passing the order. The court can also test as to whether there is an apparent jurisdictional issue or lack of competence on the part of the Court below while entertaining the matter. These are not the grounds which have been raised by the petitioner while assailing the impugned order.

6. The High Court in exercise of its writ jurisdiction can not substitute itself as an Appellate Authority over an order passed by the ESI Court / Learned Labour Court. Another reason this court may not interfere with the order is for the reason that it is only an order passed on an interim application. This Court does not exercise the Appellate jurisdiction but only scrutinizes the impugned order under the power of judicial review where the scope of interference under the writ petition is too minimal that is only to the extent as mentioned earlier.
7. Another fact which needs consideration is that the impugned order is only an interim order which stood decided by the ESI Court, the main proceedings before the Labour Court was still proceeding further. Moreover, there was no interim protection granted by this Court to the petitioner at the first instance when the writ petition was filed way back in the year 2011. In all probability, the proceedings before the Labour Court itself must have either been concluded by now or must have reached at the fag end of its conclusion.

Under the circumstances also it would be difficult for this Court to interfere with the impugned order.

8. There is yet another fact which has been brought to the notice to the Court by the counsel appearing for the respondents to submit that inspite of the fact that the petitioner has succeeded in getting an interim protection to the extent of depositing 50% of the amount assessed /quantified and the fact there was no interim order by this Court, yet the petitioner has till date not deposited the said amount also.

9. For all the aforesaid reasons, this Court does not find any strong case made out by the petitioner calling for an interference with the impugned order, the writ petition thus sans merits hence deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Jyotijha