

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 19.03.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

C.M.A.No.1991 of 2020  
and  
C.M.P.No.14660 of 2020

The Deputy Director,  
Employees State Insurance Corporation,  
No.143, Sterling Road,  
Nungambakkam, Chennai - 600 034. ... Appellant

Vs.

1.M/s.ICM Computer Consultants,  
No.8, Kalakshetra Avenue,  
Thiruvannamiyur, Chennai - 600 041.

2.V.Narayanan ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 82(2) of the Employees State Insurance Act, 1948, against the order passed in E.I.O.P.No.90 of 2008, dated 07.09.2020, on the file of the Employees Insurance Court (Principal Labour Court), Chennai.

For Appellant : Mr.S.P.Srinivasan  
For Respondents : Mr.R.S.Varadarajan  
for M/s.Ram and Rajan and Associates

J U D G M E N T

The judgment and decree dated 07.09.2020 passed in E.I.O.P.No.90 of 2008 is under challenge in the present Civil Miscellaneous Appeal.

2.The Employees State Insurance Corporation is the appellant and the substantial questions of law raised in this appeal read as under :

- i. "Whether the Hon'ble EI Court is justified in setting aside the order passed under Section 85B of the ESI Act read with Regulation 31C dated 13.10.2005 marked as Exhibit P26/R29 and ordered refund of contribution over and above of Rs.10% (Rs.1,48,772-Rs.15,750.30) with 6% interest?

ii. Whether the Hon'ble EI Court is justified in holding that there is non application of mind in levying damages and set aside the same, which is contrary to Regulation 31C of the ESI General Regulations and also Ex.P22 dated 29.06.2005?

iii. Whether the Hon'ble Court is right in holding refund of ESI Contribution with interest, when admittedly it has held that there is non cooperation and non payment of ESI contribution in time by the respondent at Para 8 of the impugned order?

iv. Whether the Hon'ble EI Court is justified in holding that, the determination under Section 85B of ESI Act exceeds 25% of the Principal amount, while the Regulation 31C empowers Appellant ESI Corporation to impose 25% damages per annum multiplied by the number of days delay when it exceeds more than one year?

v. Whether the Hon'ble EI Court erred by not considering Regulation 31C in proper perspective, by holding that damages cannot exceed 25% of the Principal amount of Rs.1,57,503/- de hors the number of years/days delay?"

3. The learned counsel appearing on behalf of the appellant mainly contended that damages was calculated as per Regulation 31-C of the Employees' State Insurance (General) Regulations, 1950. Regulation 31-C stipulates damages on contributions or any other amount due, but not paid in time. The provision contemplates as follows :

"31-C. Damages on contributions or any other amount due, but not paid in time. - If an employer fails to pay contribution within the periods specified under Regulations 31, or any other amount payable under the Act, the Corporation may recover damages, not exceeding the rates mentioned below, by way of penalty :"

Accordingly, Tabular Column is provided with reference to the period as well as the damages to be levied.

4. Relying on the said provision, the learned counsel appearing on behalf of the appellant reiterated that the authorities competent assessed the damages with reference to the non-payment of contribution within the period specified, and accordingly, issued the order. The ESI Court has failed to consider the provisions in its real spirit, and therefore, the order is liable to be set aside.

5.The learned counsel appearing on behalf of the respondent disputed the said contentions by stating that, even presuming that under the Regulation 31-C, damages can be levied, in the present case, the appellant Insurance Corporation levied interest which is not contemplated under the Regulations itself. However, the recovery of entire amount from the Bank account by the ESI Corporation is not in consonance with the provisions, and therefore, the judgment of the ESI Court is in consonance with the principles of law. Once the damages are erroneously assessed and the recovery is made directly from the Bank account of the respondent employer, the ESI Court has rightly directed the appellate authorities to refund the damages along with interest on damages.

6.This Court is of the considered opinion that Regulation 31-C of the Employees' State Insurance (General) Regulations, 1950, is unambiguous. In the event of failure on the part of the employer to pay contribution within the period specified under Regulation 31-C, then the authorities competent are empowered to impose damages. In the present case, admittedly, damages are imposed. However, the findings of the ESI Court also reveals that there was delay in payment of contribution. Thus, this Court do not find any infirmity in respect of damages imposed under Regulation 31-C of the Employees' State Insurance (General) Regulations, 1950. However, the ESI Court has directed the appellant Corporation to refund the balance amount over and above 25% of the contribution with interest @ 6% p.a. from the date of recovery to the date of payment to the respondent, as the levy of damages is modified.

7.This Court is of the considered opinion that the action of the ESI authorities under Regulation 31-C of the Employees' State Insurance (General) Regulations, 1950, is on good faith. Statutory authorities exercising the powers under the Statute in good faith cannot be faulted with, and in the present case, the authorities have imposed damages by invoking the provisions of the Regulations. However, the ESI Court has exceeded in its jurisdiction by directing the appellant Corporation to refund the amount with interest @ 6% p.a.

8.This being the factum, this Court is inclined to waive the interest portion alone. Accordingly, the findings of the ESI Court that the recovery of damages is set aside and the assessment of damages is reduced to 10% of the total contribution of Rs.15,57,503/- which works out to a sum of Rs.15,750.30 stands confirmed, and further, the refund of balance amount over and above 25% of the contribution is also confirmed. But the interest to be paid @ 6% p.a. by the appellant Corporation is set aside.

9. In view of the above, the Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,  
Employees State Insurance Court  
(Principal Labour Court),  
Chennai.

+1cc to Mr.S.P.Srinivasan, Advocate SR.NO..18350

AKM/28.04.21/4P- 3C/

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