

IN THE HIGH COURT OF ORISSA AT CUTTACK

MA No.794 of 2001

Employees State Insurance Corporation, Bhubaneswar ***Appellant***

Mr. A.P. Ray, Advocate

-versus-

M/s.Sarat Kumr Sahoo and another ***Respondents***

Ms. Isha Ray, Advocate for Respondent No.2

**CORAM:
JUSTICE B. P. ROUTRAY**

**ORDER
13.09.2022**

Order No.

07.

1. Heard Mr. A.P. Ray, learned counsel for the Appellant and Ms. Isha Ray, learned counsel for the Respondent No.2. None appears on call for the Respondent No.1.

2. Present appeal by the ESI Corporation is directed against the judgment dated 24.07.2001 of learned Additional District Judge-cum-E.S.I. Court, Rourkela in E.S.I. Dispute No.17 of 1997.

3. Respondent No.1 being the Plaintiff-Petitioner filed the dispute under Section 75 of the ESI Act challenging the demand dated 29.11.1992 and 28.10.1992 by the Corporation under Exts.3 & 4 respectively.

4. The learned trial court upon adjudication framed five issues which are as follows:

“(I) Whether orders passed by ESIC(OP-1) on 28.10.92 and 23.11.92 determining and enhancing the contribution under Section 45-A of the Act is valid in view of the

compliance of requirement under Section 44 and 45 of the ESI Act by the Petitioner ?

(II) Whether it is mandatory to maintain books of account by the Petitioner as claimed by OP-1 for the purpose of determination of contribution ?

(III) Whether the Petitioner is liable to pay the contribution as demanded by ESIC (OP-1) during the period from 4/89 to 3/91, 4/91 to 3/92, 4/90 to 5/92 or not ?

(IV) Whether the case is maintainable either in facts or under the law and there is cause-of-action ?

(V) Whether the Petitioner is entitled for any relief or reliefs ?”

5. While answering Issue Nos.1, 2 & 3, the district court held that the assessment of ESI Corporation by adding labour components is not only just and proper but illegal and improper also. It is for the reason that the labour component is not the amount actually paid as wages to the labourers. The court accordingly quantified the payable amount and ordered the Plaintiff-Petitioner to pay the required sum of Rs.14,734/- towards contribution within three months from the date of order against the demand of Rs.34,948/- raised by the Corporation under Ext.4.

6. As it reveals from the impugned judgment, the entire case of the Plaintiff (present Respondent No.1) depends on the fact of addition of labour components for computation of ESI contribution.

7. Admittedly, Respondent No. 1 was the contractor engaged by Respondent No.2 to execute the construction and maintenance work assigned to him.

8. The district court held that the contribution for the purpose is to be determined on the actual payment made to the employee and the labour component which was not paid through the plaintiff should be kept out of the purview. The ESI contribution should be calculated upon the actual payment made to the employee. Accordingly, no flaw is seen in the approach of the learned Additional District Judge-cum-ESI Court, Rourkela in directing for payment of the reduced amount towards contribution.

9. In the result, the appeal is dismissed.

(*B.P. Routray*)
Judge