Diksha Rane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9418 OF 2022

M/S. SHAURYA PROTECTION AND DETECTION PVT. LTD. ..PETITIONER

VS.

EMPLOYEES STATE INSURANCE CORPORATION AND ANR. ..RESPONDENTS

Mr. P. M. Bhagat for the petitioner.
Mr. S. S. Pathak for the respondents-ESIC.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 11, 2022.

P.C. :

1. Heard learned counsel.

2. The petitioner is a private limited company registered under Indian Companies Act, 1956 engaging in the business of providing security, property care, management, etc. The petitioner is covered under the provisions of the Employees' State Insurance Act, 1948 (hereafter 'the Act' for short) and ESI Code number is allotted by the Employees State Insurance Corporation (hereafter 'the Corporation' for short).

3. It is the contention of learned counsel that the petitioner is a sub-contractor of M/s. Afcons Infrastructure Ltd. (hereafter 'Afcons' for short). In turn, Afcons has dealings with Reliance Refinery at Jamnagar. The security personnel provided by the petitioner at the relevant time was for Jamnagar site. The Corporation passed an order under Section 45-A of the said Act on January 20, 2020 and ordered that contributions of Rs.23,07,591/- for the period from December 2015 to February 2018 as determined was made payable by the petitioner as one of the principal employer. The petitioner filed an E.S.I. Application under Section 75 read with Section 77 of the said Act read with Rule 13 of the Maharashtra Employee's Insurance Courts Rules, 1959 aggrieved by the order under Section 45-A of the said Act. Along with the said application, Misc. Application (ESI-Ex) No. 41 of 2021 was filed by the petitioner for grant of total waiver/exemption from depositing 50% of the claimed amount in compliance of Section 75(2-B) of the said Act or to reduce the amount. The said application for waiver/exemption was entertained by the Judge, Employees' Insurance Court, Mumbai (hereafter 'ESI Court' for short) by the impugned order dated April 20, 2022 only to the extent of granting 10% exemption. The petitioner was directed to deposit a sum of Rs.13,48,020.80. The petitioner is aggrieved with this order which is under challenge in this writ petition, as it is contended that the ESI Court should have allowed the application in its entirety.

4. Learned counsel for the petitioner submitted that in the facts of the present case, the petitioner was entitled to a complete exemption from depositing 50% amount. In his submission, the Corporation while passing the order under Section 45-A has proceeded ex-parte. He submits that no notice whatsoever was given to the petitioner and the order passed under Section 45-A is in breach of the principles of natural justice. In his submission, it is the specific case of the petitioner that the area where the security personnel are deployed falls under non-implemented area and as such they are not required to pay ESIC on the salaries/wages paid to security persons deputed on their site. It is further contended that the petitioner cannot be regarded as a principal employer as the principal employer in the present case is Reliance Refinery or at the highest Afcons. It is next contended that depositing such a large amount would make it financially difficult for the petitioner to carry on with the activities of the company as substantial capital would be blocked.

5. Learned counsel for the Corporation argued in support of the impugned order.

6. Heard learned counsel for the parties.

7. Section 75 (2-B) of the said Act reads thus: -

> "**Section 75(2-B)** No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees Insurance Court unless he has deposited with the Court fifty per cent. of the amount due from him as claimed by the

> Corporation:
>
> Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.”

From reading of the said provision it is clear that for the reasons to be recorded in writing, the ESI Court may waive and reduce the amount to be deposited under sub-section (2-B) of Section 75 of the said Act. All the points that have been argued and urged by learned counsel for the petitioner pertains to the merits of the matter. The ESI Court observed that “the grounds raised by the applicant are at all not sufficient to use discretion vested under Section 75(2-B) for granting complete exemption from depositing the amount as required under Section 75(2-B).” However, considering the facts and circumstances of the case, the ESI Court felt that as the matter was conducted against the petitioner ex-parte, therefore, the amount of deposit was reduced by 10%. I do not find an error in the approach adopted by the ESI Court holding that the grounds raised by the petitioner are not sufficient to exercise the discretion vested under Section 75 (2-B) for granting complete exemption from depositing the amount. The exercise of discretion cannot be said to erroneous. Moreover, ESI Court took into consideration the fact that an ex-parte order was passed by the Corporation under Section 45-A of the said Act and therefore some portion of the deposit was waived. According to me, this is not a case for interference in exercise of writ jurisdiction.

8. The contentions raised by learned counsel for the petitioner are on the merits of the matter which will be gone into by the ESI Court when the substantive challenge to the order passed under Section 45-A of the said Act is heard. However, it is not possible for me to test the merits of the contentions and give a finding on merits while deciding the aspect of waiver/exemption under Section 75 (2-B) of the said Act.

9. Considering that the contention is raised that the order passed under Section 45-A of the said Act was an ex-parte order, in the facts of the present case, the ESI Court is requested to expedite the hearing of the application made by the petitioner.

10. The time granted by the ESI Court to deposit the amount is extended by a further period of six (6) weeks from today.

11. Needless to mention that on depositing the amount, the account of the company shall be immediately de-freezed by the Corporation.

12. The writ petition is disposed of.

No costs.

(M.S.KARNIK, J.)