

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA
CIVIL MISCELLANEOUS APPEAL No.1259 OF 2005**

JUDGMENT: (Per Hon'ble Dr.SA,J)

This Civil Miscellaneous Appeal, under Section 82 of the Employees State Insurance Act, 1948 (for short 'E.S.I. Act'), is filed by the appellant/respondent No.1 aggrieved by the order, dated 08.04.2005 passed in E.I. Case No.77 of 2002 by the Employees Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad, whereby the subject E.I. Case filed by the respondent No.1/petitioner under Section 75(1)(g) of the ESI Act, was allowed.

2. Heard the learned counsel for the appellant/respondent No.1 and perused the record.

3. In spite of service of notice, there is no representation on behalf of the respondent No.1. Respondent No.2 is not a necessary party vide cause title.

4. As seen from the impugned order, dated 08.04.2005, the Court below held that respondent No.1-Andhra Pradesh Vikalangula Co-operative Corporation need not pay any contribution to the appellant-Employees State Insurance

Corporation. It is borne by the record that a request was made to the Government under Section 90 of the Act to exempt respondent No.1-corporation from making contribution to the appellant-ESI corporation. So far, there is no record to establish that exemption is granted in respect of respondent No.1-corporation in terms of Section 90 of the Act. To grant an exemption, there shall be a specific order by the Government in terms of Section 90 of the Act, which is patently absent in this case.

5. As per Section 1(4) of the ESI Act, all factories including factories belonging to the Government are required to contribute to the appellant-ESI corporation. As the impugned order, dated 08.04.2005 was passed without taking into consideration the outcome of request made under Section 90 of the Act, it is unsustainable.

6. Accordingly, the appeal is allowed and the impugned order, dated 08.04.2005 passed in E.I. Case No.77 of 2002 by the Employees Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad, is set aside and the E.I. Case No.77 of 2002 is restored to its file. The Court below is directed to

examine the subject matter of the appeal afresh and dispose of the same in accordance with law.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

NAGESH BHEEMAPAKA, J

Date: 26.10.2022
ssp