THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

CIVIL MISCELLANEOUS APPEAL No.364 OF 2007

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

This Civil Miscellaneous Appeal, under Section 82 of the Employees State Insurance Act, 1948 (for short, "ESI Act"), is filed by the appellant/petitioner, aggrieved by the order and decree, dated 12.04.2007, passed in E.I.C.No.20 of 2004 by the Chairman, Industrial Tribunal-I, Hyderabad, whereby the subject E.I.C. filed by the appellant/petitioner under Section 75(1)(g) of the ESI Act, was dismissed.

2. Heard the learned counsel for both sides and perused the record.

3. Learned counsel for the appellant/petitioner would contend that the impugned order dated 12.04.2007 is not a reasoned order. There are calculation errors. The damages imposed is exorbitant and against the governing regulations. Further, the learned Chairman, Industrial Tribunal did not advert to the decisions relied on by the learned counsel for the appellant/petitioner before the Court below. Though the decisions relied on by the learned counsel for the

appellant/petitioner are applicable to the facts of the case on hand, the Court below failed to consider the same. There is manifest error in the impugned order and ultimately prayed to set aside the same.

4. On the other hand, learned counsel for the respondent would contend that the appellant had fallen due in relation to payment of ESI contributions. Though the payments were made with a delay, it was more than four years. Therefore, as per the governing regulations, he has to pay 100% penalty over the amounts due and the rate of interest calculated over the amounts due is 15%. It is in consonance with the provisions under the ESI Act as well as the governing regulations. There is no manifest error in the impugned order and ultimately prayed to dismiss the appeal.

5. In view of the above submissions, the point that arises for determination in this appeal is:

> “Whether the impugned order and decree, dated 12.04.2007 passed in E.I.C.No.20 of 2004 by the Chairman, Industrial Tribunal-I, Hyderabad, are liable to be set aside?”

POINT:

6. As seen from the material placed on record, the appellant had fallen due in relation to ESI contributions. The dues were not paid for a period of four years and above. Subsequently, all the arrears were cleared. In view of the same, the authority concerned, has assessed the damages payable as well as the interest thereon. Respondent No.2/Recovery Officer, ESI Corporation had calculated the amounts payable towards damages as well as interest. It was pleased to impose damages in terms of the mandate given under Regulation 31-A of ESI General Regulations, 1950, where the authority has to impose 100% damages as the default was more than four years. So, as seen from the material placed on record, there is no infirmity in relation to the calculation of damages as well as imposing interest as indicated in the impugned order. The learned Chairman, Industrial Tribunal, held that the decisions relied on by the learned counsel for the appellant are not applicable to the facts of the case on hand. Here, the core question is whether the authority concerned rightly calculated damages and interest in respect of the amounts due towards ESI contribution. As seen from the material placed on record,

there is no infirmity or miscalculations. In view of these circumstances, all the contentions raised on behalf of the appellant do not merit consideration. The appeal is devoid of merit and is liable to be dismissed.

7. Accordingly, the appeal is dismissed, confirming the order and decree, dated 12.04.2007, passed in E.I.C.No.20 of 2004 by the Chairman, Industrial Tribunal-I, Hyderabad.

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

____
Dr. SHAMEEM AKTHER, J

____
NAGESH BHEEMAPAKA, J

Date: 08.12.2022
ssp