



W.P.No.20099 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :27.07.2023

Orders Pronounced on :31.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.20099 of 2012

and

M.P.No.1 of 2012

G.D.Ranka

... Petitioner

...Vs...

**The Joint Director,
ESI Corporation,
143, Sterling Road,
Chennai – 34.**

... Respondent

Prayer:– Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the respondent in his proceeding in TN/Ins-IV/51000765080000108/D-18/1327/12-11 dated 02.07.12 and quash the same is being illegal, invalid and against the law.

For Petitioner : Mr.D.Vijayakumar

For Respondents : Mr.C.V.Ramachandramurthy



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ORDER

This writ petition has been filed to quash the order passed under Section 85-B of E.S.I Act by the respondent. The petitioner Unit is covered under the E.S.I.Act.

2. The short facts leading to the filing of the above case are as under:-

(i) The petitioner was a defaulter for the period from 07/1999 to 12/2000 in respect of its Units at Amijikarai and Ekkaduthangal. Hence C-18 (Adhoc) / 45-A order was issued to the petitioner for payment of contribution. Since there was no response recovery proceedings were initiated and the Respondent Recovery Officer issued recovery notices and on receipt of various recovery proceedings including CP-16 dated 01.07.2004, the petitioner came forward to pay contribution in actual for the period involved.

(ii) The petitioner filed a case in the Court in W.P.M.P.No.25724 of 2004 in W.P.No.21301 of 2004 against the CP-16 notice dated 01.07.2004. The respondent in their counter affidavit had admitted the payments made by the petitioner on various dates before March 2003



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and the interest amount of Rs.1,60,643/- alone was the balance due.

The Court allowed the writ petition by its order dated 10.02.2010 with a liberty to the respondent to initiate appropriate proceedings in respect of any other amount payable by the petitioner in accordance with law.

(iii) Since the petitioner was a defaulter, action was taken to recover the dues on receipt of recovery notice in 2002. The petitioner came forward to pay the contribution in actual and paid the same by March 2003, which was also admitted by the respondent in their counter to the petition filed by the petitioner against the attachment notice (CP-16) issued by the Recovery Officer.

3. After observing the formalities, the respondent passed an order under 85-B of E.S.I Act on 02.07.2012 and hence the writ petition.

4. The learned counsel appearing for the petitioner would contend that the Unit was closed as early as on 01.04.2001 and is not a operation and it has already underwent liquidation and earlier writ petition was allowed in favour of the petitioner.

5. Heard the learned Standing Counsel appearing for the E.S.I Corporation.



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6. (a) The preliminary objection has been raised by the E.S.I counsel that as against the impugned order passed under Section 85-B of the E.S.I Act. There is alternate remedy in the form of approaching the Employees' Insurance Court as per Section 75 of E.S.I Act and further stated that it is only delay in payment of contribution for the period 5/92 to 12/10 and hence made a submissions in support of the order.

(b) It is settled preposition of law that the default or delay in payment of contribution under E.S.I Act is a sine qua non for the imposition of Damages under Section 85-B of E.S.I Act.

7. The Hon'ble Supreme Court, vide judgment dated 23.02.2022 in Civil Appeal No.2136 of 2012 batch (Horticulture Experiment Station Gonikoppal, Coorg Vs. The Regional Provident Fund Organization), has held that 'mens rea' or 'actus' reus' is not an essential element for imposing penalty / damages for breach of civil obligations / liabilities. The Hon'ble Supreme Court, with reference to Section 14B of Employees' Provident Fund & Miscellaneous Provisions Act, 1952, which is in pari materia to Section 85-B of ESI Act, had declared that "any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Section 14B of



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the Act 1952 and mens rea or actus reus is not an essential element for imposing penalty / damages for breach of civil obligations / liabilities".

8. The issue of actus reus or mens rea does not arise in matters of breach of civil obligation / liability.

9. It is not in dispute that the petitioner Unit does not fall under the second proviso to Section 85-B of ESI Act for consideration of waiver or reduction in damages as per the proviso to Regulation 31-C of ESI (General) Regulations, 1950. Hence the petitioner had made delayed payment of contributions for the period from 05/1998 to 12/2000 with a delay ranging from 2 days to 1529 days. The petitioner was given sufficient opportunity of being heard before the passing of the Section 85-B order. Hence, the petitioner is liable to pay damages as per the 85-B order dated 02.07.2012.

10. The earlier writ petition filed by the petitioner wherein the impugned notice of recovery under C-19 is quashed. However liberty appears to have been given to the E.S.I Corporation for initiating proceedings for the dues other than the impugned one. The delay is caused due to the pendency of the writ petition which is disposed of



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after six years assumes significance and thus, I find that it is levy of penalty for delayed payment of the contribution amount by the employers.

11. The object of the legislation in enacting section 85-B is clearly to punish the recalcitrant employers. There is no limitation laid down for damages on the belated payment made. Though the company is alleged to be closed or currently not in existence, the petitioner is bound to pay the damages on the belated payment of contribution. The payment made by the petitioner is accepted and the claim of damages is in order and it is accordance with Section 85-B of the E.S.I Act, read with Regulation 31-C of ESI (General) Regulations 1950. It is pertinent to state that it is held in Rallis India Ltd Vs.ESI Corporation that the word 'Damages' occurring in this section has not been used in the sense ordinarily understood in the law of contract or tort.

12. The alleged grounds of closure and financial problem cannot be a valid ground for a delayed payment of statutory duties. On the factual background, I find that the damages claimed is for the belated payment made by the petitioner for the period from May 1998 to December 2000 in respect of Aminjikarai Unit and from January 2002 to December 2000 in respect of Ekatuthangal Unit with delay ranging from 2 days to 1529 days.



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13. As observed earlier, when the claim of damages is in order and the same is in accordance with Section 85-B of the E.S.I Act, the levy of penalty stands justified and hence, I find that the petitioner being running a manufacturing unit is well aware of the penal provisions under the E.S.I Act for delayed payment of contribution under Section 395 and 85-B of the Act and therefore, I find that the impugned order is sustainable in law.

14. Accordingly, this Writ Petition is dismissed. The interim order granted previously stands vacated. There shall be no order as to costs. consequently, connected M.P is closed.

31.07.2023

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Index:Yes/No

Neutral Citation : Yes/No

To

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RMT.TEEKAA RAMAN,J.,

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order in
W.P.No.20099 of 2012 and
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