



C.M.A.No.3235 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.3235 of 2021
and
Civil Miscellaneous Petition No.184403 of 2021

The Employees State Insurance Corporation,
Regional Office Puducherry,
Rep. by its Regional Director, No.178, 100,
Mudaliyarpert, Pondicherry 605 004.

... Appellant /Respondent

Vs.

The Pondicherry Engineering College Hostels Management,
represented by its Assistant Manager Mr. A. Saravanan

... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 82(2) of the Employees State Insurance Corporation Act, against the Order dated 08.03.2021 made in E.S.I.O.P.No.05 of 2017 on the file of the Employees State Insurance (Industrial Tribunal cum Labour Court), Puducherry.

For Appellant : Mr. S. P. Srinivasan

For Respondent : No appearance



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the Employees State Insurance Corporation, challenging the Order passed in E.S.I.O.P. No.05 of 2017, dated 08.03.2021, by the Presiding Officer, Employees State Insurance Court, Puducherry.

2. The parties are referred to hereunder according to their litigative status and ranking before the Employees State Insurance Court.

3. The facts leading to filing of this appeal is as follows:

The respondent herein is an Establishment situated at Pondicherry and it is covered under the Employees State Insurance Act, 1948 [ESI Act in short] required to pay contributions in accordance with Section 40 of the ESI Act. On 04.10.2011, a show Cause Notice in Form C-18 Adhoc was issued to the appellant to pay contributions and they did not pay the contributions required by law. On receipt of the notice, the employer appeared before the appellant-Corporation and reported their inability to pay the contributions. After due enquiry, an Order under Section 45-A of the ESI Act, 1948 was issued for demanding the respondent herein to pay omitted wages for a sum of Rs.2,74,203/- for the period from 10/09 to 07/11. Thereafter, payment



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was made belatedly by the respondent on 18.07.2015. Since belated payments have been made, the appellant initiated proceedings for imposing damages as per Section 85-B of the ESI Act, 1948. For this purpose, notice was issued on 12.05.2015 for the appearance and accordingly, the official from the respondent appeared and pleaded for waiver of damages. Terming that such a request made is not sustainable, the appellant proceeded to impose damages. After due enquiry, considering the extent of delay in remittance of omitted wages, the appellant levied damages of Rs.1,85,786/- for the period from 10/2009 to 07/2011 and Rs.55,096/- for the wage period from April 2009 to September 2009.

4. Aggrieved over the damages levied on the respondent, they approached the ESI Court, by invoking Section 75 (1) (g) of the ESI Act, to set aside the Order passed by the appellant herein, imposing damages. After recording the evidence of both sides, ESI Court, in its Order has held that since there was a delay in remitting the omitted wages the authority has right in imposing damages. However, ESI Court has held that imposing damages of more than 25% of the contribution amount i.e., omitted wages is not proper. Accordingly, it has reworked and made calculations of 25% of the total contributions to be paid and directed to the respondent herein to pay the same.



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5. Aggrieved over the modification of the quantum of damages, the appellant herein has approached this Court on the ground that the ESI Court has failed to note Section 85-B of the ESI Act, which empowers the appellant to impose compensation to the maximum of contribution amount to be paid by the respondent herein. Therefore, it was contended that the ESI Court erred in holding that only 25% contribution amount shall be levied as damages.

6. Despite notice served on the respondent, no one appeared on their behalf.

7. I have considered the submissions made on behalf of the appellant. Regulation 33-C of the ESI State Regulation Act, 1950, empowers the corporation to impose damages, to be recovered from the employer. Section 85-B provides the manner in which the damages to be recovered. For better appreciation, both the provisions i.e., 85(B) of the Employees State Insurance Act and Regulation 33-C of the Employees State Insurance General Regulation Act, 1950 are incorporated herein which reads as follows:



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“85B of the ESI Act. Power to recover damages.?”

(1) Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the regulations: Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard: Provided further that the Corporation may reduce or waive the damages recoverable under this section in relation to an establishment which is a sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in regulations.

(2) Any damages recoverable under sub-section (1) may be recovered as an arrears of land revenue 4 or under section 45C to section 45-I”.

“31C. Damages or contributions or any other amount due, but not paid in time

An employer who fails to pay contributions within the periods specified under regulation 31, or any other amount payable under the Act, shall be liable to pay damages as under:

<i>Period of delay</i>	<i>Rate of damages in % per annum of the amount due.</i>
<i>(i) Up to 2 months</i>	<i>5%</i>
<i>(ii) 2 months and above but less than 4 months</i>	<i>10%</i>
<i>(iii) 4 months and above</i>	<i>15%</i>



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<i>Period of delay</i>	<i>Rate of damages in % per annum of the amount due.</i>
<i>but less than 6 months</i>	
<i>(iv) 6 months and above</i>	<i>25%</i>

PROVIDED that the Corporation, in relation to a factory or establishment which is declared as sick industrial company and in respect of which a rehabilitation scheme has been sanctioned by the Board for Industrial and Financial Reconstruction, may-

(a) in case of a change of management including transfer of undertaking (s) to worker (s) co-operative or in case of merger or amalgamation of sick industrial company with a healthy company, completely waive the damages levied or leviabale;

(b) in other cases, depending on its merits, waive up to 50 per cent damages levied or leviabale;

(c) in exceptional hard cases, waive either totally or partially the damages levied or leviabale.]

8. The ESI Court having accepted the case of the appellant herein that there is a delay in remitting contribution amount and that the respondent has to pay the damages for the delay period, held that maximum damages levied by the appellant herein can be only to the extent of 25%. The rates mentioned in Rule 31 (C) of the ESI General Regulations, 1950 shows that the maximum damages of 25% to be imposed, if the delay is more than 6 months and percentage is calculated by per annum.



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9. In this case, the number of days delay in paying the contribution has been listed in the Calculation Sheet for Damages, Code No:55-00-042461-000-1102 for C-18(d)/2839, dt: 05.04.10 & 45-A/2839 dt: 20.06.13 issued by ESI Corporation, Regional Office, Pondicherry – 605 004, which is extracted hereunder:

ESI Corporation, Regional Office, Pondicherry - 605 004.
Calculation Sheet for Damage Code No: 55-00-042461-000-1102
For C-18(Ad)/2839, dt: 05.04.10 & 45-A/2839 Dt 20.06.13

Sl. No	Wage Period	Due Date	Date of Payment	Delay in days	Amount of Contribution Paid	Percentage of Damage	Damage
1	Apr 09	21/05/09	18/07/13	1519	9,295.00	25	9670.62
2	May 09	21/05/09	18/07/13	1488	9,295.00	25	9473.26
3	Jun 09	21/07/09	18/07/13	1458	9,295.00	25	9262.27
4	Jul 09	21/08/09	18/07/13	1427	9,295.00	25	9084.91
5	Aug 09	21/09/09	18/07/13	1396	9,295.00	25	8887.55
6	Sep 09	21/10/09	18/07/13	1366	9,295.00	25	8696.55
TOTAL					55770.00		55095.16

Total Damage to be paid is Rs. 55096/-
(Rupees Fifty five thousand and ninety six only)

(R. GUNASEKARAN)
REGIONAL DIRECTOR

10. The Calculation Sheet for Damage, Code No:55-00-042461-000-1102 for C-18(d)/3653, dt: 04.10.11 & 45-A/2839 dt: 20.06.13 issued by ESI Corporation, Regional Office, Pondicherry – 605 004 which is extracted hereunder:



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ESI Corporation, Regional Office, Pondicherry - 605 004,
Calculation Sheet for Damage Code No: 55-00-042461-000-1102
For C-18(Ad)/3653, dt: 04.10.11 & 45-A/2839 Dt 20.06.13

Sl. No.	Wage Period	Due Date	Date of Payment	Delay in days	Amount of Contribution Paid	Percentage of Damage	Damage
1	Oct 09	21/11/09	18/07/13	1335	9,295.00	25	8499.20 ✓
2	Nov 09	21/12/09	18/07/13	1305	9,295.00	25	8308.20
3	Dec 09	21/01/10	18/07/13	1274	9,295.00	25	8110.84
4	Jan 10	21/02/10	18/07/13	1243	9,295.00	25	7913.48
5	Feb 10	21/03/10	18/07/13	1215	9,295.00	25	7735.22
6	Mar 10	21/04/10	18/07/13	1184	9,295.00	25	7537.86
7	Apr 10	21/05/10	18/07/13	1154	9,295.00 ¹	25	7346.87
8	May 10	21/06/10	18/07/13	1123	13,942.00	25	10723.88
9	Jun 10	21/07/10	18/07/13	1093	13,942.00	25	10437.40
10	Jul 10	21/08/10	18/07/13	1062	13,942.00	25	10141.37
11	Aug 10	21/09/10	18/07/13	1031	13,942.00	25	9845.34
12	Sep 10	21/10/10	18/07/13	1001	13,942.00	25	9558.86
13	Oct 10	21/11/10	18/07/13	970	13,942.00	25	9262.84
14	Nov 10	21/12/10	18/07/13	940	13,942.00	25	8976.36
15	Dec 10	21/01/11	18/07/13	909	13,943.00	25	8680.95
16	Jan 11	21/02/11	18/07/13	878	13,943.00	25	8384.90
17	Feb 11	21/03/11	18/07/13	850	13,943.00	25	8117.50
18	Mar 11	21/04/11	18/07/13	819	13,943.00	25	7821.45
19	Apr 11	21/05/11	18/07/13	789	13,943.00	25	7534.95
20	May 11	21/06/11	18/07/13	758	13,943.00	25	7238.90
21	Jun 11	21/07/11	18/07/13	728	13,943.00	25	6952.40
22	Jul 11	21/08/11	18/07/13	697	13,943.00	25	6656.35
TOTAL					274203.00		185785.13

Total Damage to be paid is **Rs. 185786/-**
(Rupees One lakh eighty five thousand seven hundred and eighty six only)


(R. GUNASEKARAN)
REGIONAL DIRECTOR

11. The calculation sheet of damages shows that admittedly the number of delay starts from 1519 days for the wage period of April 2009 comes down till 697 days for the Month of July 2011. The period of delay is more than two years for the Month of July 2011 likewise it goes up to four years delay for the month of April 2015, accordingly, the calculations have



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been made. This Court is of the view that as per the statement of calculations made by the appellant herein the respondent is liable to pay the damages.

The E.S.I Court has not properly interpreted the Regulation 33-C of the EST Regulation, 1950. The purposeful constrution of the above provision shows that damages payable for the delay of more than 6 months is 25%. It does not mean that, once maximum damages leviabale for the delay payment of contribution is 25% is levied in that year, No further delay shall be taken into account. This regulation provides Two column and they are (1) period of delay (2) Rate of damages in % per annum of the amount due. This provision makes it clear that damages to be fixed on annual basis with breakup provided. The E.S.I Court has calculated the Damage 25% of the delay compensation without adverting to the fact that the percentage prescribed is for annual basis.

12. The ESI Court has already observed that while granting interim stay in the Original Proceedings, the amount was already deposited and directed it to be adjusted for the damages against them. This Court is of the view that as far as damages not paid, if any, the appellant is entitled to proceed further for recovering the damages.



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13. In the result, this Civil Miscellaneous Appeal filed by the Employees State Insurance Corporation is allowed. The Order passed by the Employees State Insurance Court in E.S.I.O.P. No. 05 of 2017, dated 08.03.2021, by the Presiding Officer, Employees State Insurance Court, Puducherry is hereby set aside. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

13.12.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The Industrial Tribunal cum Labour Judge,
Employees State Insurance Court,,
Puducherry.

2.The Section Officer,
VR Section,
High Court, Madras.



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K.RAJASEKAR,J.

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