



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

<u>WRIT PETITION NO.3072/2023</u>	
<u>PETITIONER</u>	M/s M.S. Industrial Services, Plot No.11, Ram Nagar, Ambazari Layout, Near Hillfort Public School, Nagpur – 10 Through its Proprietor, Mahendra Singh Bhardwaj, Aged 59 years.
<u>...VERSUS...</u>	
<u>RESPONDENT</u>	Assistant Director, Employees State Insurance Corporation, Office at Panchadeep Bhavan, Ganesh Peth, Nagpur.
Mr. Shantanu Ghatе, Advocate for petitioner Mr. Gunjan Kothari, Advocate for respondent	

CORAM : BHARAT P. DESHPANDE, J.

DATE : 07/03/2024

ORAL JUDGMENT

1. Heard. Rule. Rule made returnable forthwith. Heard learned counsel for the parties with consent for final disposal.
2. The issue involved in the present petition is to the rejection of application for waiver to pre-deposit of 50% of the amount for raising the dispute under Section 75 (2-B) of the Employees' State Insurance Act, 1948.
3. Mr. Ghatе, learned counsel for the petitioner would submit that the order was passed by the Corporation directing the

petitioner to deposit contribution of more than Rs.40,00,000/-. He would submit that since the petitioner is a partnership firm, which was closed down due to health problems of one of the partners, intimation was given to the Employees' State Insurance Corporation [ESIC] vide letter dated 23/01/2023. He would further submit that the petitioner has placed on record the Challans showing that the contributions of the said firm were paid till closure, however, such aspect has not been considered by the learned Industrial Court while refusing to grant waiver.

4. Learned counsel for the respondent would submit that first of all there is no document to show that the said partnership firm was closed and that contribution which has been paid is not the contribution coming forward from the said firm.

5. Mr. Ghate, learned counsel for the petitioner would submit that there are two establishments having the same name, out of which, one is the proprietary concern, whereas another is a partnership firm, wherein the son and father are partners. He would submit that the contributions were deposited, regularly through the account of the proprietary concern due to inadvertence and this has been clarified by the petitioner in their affidavit.

6. For the order, which I propose to pass in the present proceedings, it is not necessary to discuss the relevant details as the impugned order would clearly go to show that the contentions raised by the petitioner along with the documents including the Chalans are not properly appreciated. Similarly, the learned Industrial Court, without issuing notice to the Corporation, has passed such order.

7. Mr. Ghate, learned counsel for the petitioner would submit that the relevant documents placed along with the dispute raised before the Industrial Court would clearly go to show that the petitioner is not liable to pay the amount as claimed in the demand notice. He would further submit that there is no need to clarify about the Chalans, which were paid through the proprietary concern.

8. The impugned order dated 10/04/2023 is considered to be the non-speaking order, as it did not disclose-discuss in detail the documents placed by the petitioner. Similarly, no notice was issued to the Corporation and the said order was passed without considering the material placed on record. Accordingly and in the interest of justice, the impugned order needs to be quashed and set aside and the matter needs to be remanded to the learned Industrial Court for deciding such application afresh. Needless to mention that an

opportunity be given to the petitioner as well as to the Corporation either to file say or to argue the matter orally. The Industrial Court shall decide such application for waiver within a period of one month from the date of copy of order placed before it.

9. Accordingly, the writ petition is partly allowed. The impugned order is quashed and set aside. The matter is remanded to the learned Industrial Court for deciding afresh the application under Section 75 (2-B) of the Employees' State Insurance Act, 1948 afresh and by giving opportunity to both sides. Such application shall be decided within a period of one month. The interim protection granted by this Court shall continue till disposal of such application.

10. Rule is made absolute in the aforesaid terms. No order as to costs. The parties to act upon authenticated copy of this order.

(BHARAT P. DESHPANDE, J.)