



WEB COPY

W.A.No.2448 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.2448 of 2024
and C.M.P.No.17405 of 2024

M/s.MMTC Ltd.,
Rep. by Deputy General Manager,
(Personnel), No.7, Esplanade,
Chennai – 600 104

...Appellant

Vs.

1.Employees State Insurance Corporation,
Rep. by its Director,
2nd Floor, Padmanabha Buildings,
No.14-20-37, Gandhi Nagar,
Vijayawada – 520 003.

2.The Recovery Officer,
Sub Regional Office, ESI Corporation,
2nd Floor, Padmanabha Buildings,
No.14-20-37, Gandhi Nagar,
Vijayawada – 520 003.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the order passed by this Court in W.P.No.5612 of 2011, dated 19.01.2024.

For Appellant : Mr.Santhana Raman

For Respondents : Ms.S.Jayakumari
Standing Counsel



W.A.No.2448 of 2024

JUDGMENT

(Judgment of the Court was made by M.S.RAMESH, J.)

WEB COPY

Heard Mr.Santhana Raman, learned counsel for the appellant and Ms.S.Jayakumari, learned Standing Counsel, for the respondents.

2. The Employees State Insurance Corporation (ESIC), Vijayawada had passed an order under Section 85-B of the Employees' State Insurance Act (hereinafter referred to as 'ESI Act'), directing M/s.MICA Trading Corporation India Ltd., (MITCO), which was subsequently amalgamated with M/s.MMTC Ltd., a factory under the ESI Act, claiming damages for delayed payment of contributions of Rs.1,16,254/- for the period from October 1989 to April 1995 and Rs.5,445/- for the period from May 1995 to December 1996. The said order came to be challenged before a learned Single Judge of this Court in W.P.No.5612 of 2011, predominantly on the ground that the appellant-Company would be eligible for waiver under Regulation 31-C(a) of the ESI (General) Regulations, since the earlier sick company was amalgamated with the appellant-Company. The learned Single Judge, through the order dated 19.01.2024, had dismissed the Writ Petition on the ground that when an alternate remedy is available under Section 75 of the ESI Act to approach



W.A.No.2448 of 2024

the ESI Court at Vijayawada, the present Writ Petition before the Madras High Court is not maintainable. The order of dismissal is assailed in the present intra-court appeal.

3. The learned counsel appearing for the appellant submitted that since the learned Single Judge, though had already found that the writ petitioner is eligible for waiver under Regulation 31-C of the ESI Regulations, ought not to have dismissed the Writ Petition on the ground of lack of jurisdiction, after a long passage of time.

4. Per contra, the learned Standing Counsel for the respondents-Corporation submitted that the demand for damages was made by ESIC at Vijayawada, where the Company was operating and if the appellant is aggrieved, they ought to have filed an appeal against the same before the ESI Court at Vijayawada and the Writ Petition before the Madras High Court was not maintainable.

5. The learned Single Judge had taken note of the fact that though the appellant had originally claimed exemption from operations of the ESI Act, such a claim does not deserve consideration, since the appellant



W.A.No.2448 of 2024

had already made the payment towards the ESI contributions and that the order assailed before the Writ Court was only with regard to damages for the delayed payment of contributions.

6. By placing reliance on the decisions of the Hon'ble Supreme Court in the cases of *Calcutta Gujarati Education Society and Another Vs. Regional Provident Fund Commissioner and Others* reported in (2020) 19 SCC 380, *Alchemist Ltd. And Another Vs. State Bank of Sikkim and Others* reported in (2007) 11 SCC 335, *Kusum Ingots & Alloys Ltd. Vs. Union of India and Another* reported in (2004) 6 SCC 254, *State of Rajasthan and Others Vs. M/s.Swaika Properties and Another* reported in (1985) 3 SCC 217 and *South Indian Bank Ltd. And Others Vs. Naveen Mathew Philip and Another* reported in 2023 SCC OnLine SC 435, the learned Single Judge had held that when Section 75(1)(g) of the ESI Act provides for an alternate remedy to the appellant to challenge the order passed under Section 85-B of the ESI Act, the Writ Petition is not maintainable. Even otherwise, it was held that the Writ Petition filed before the Madras High Court and not before the Andhra Pradesh High Court also lacks jurisdiction.



W.A.No.2448 of 2024

7. Admittedly, the erstwhile MITCO has its registered office at Gudur, Andhra Pradesh and the Company was operating from the State of Andhra Pradesh. The ESIC, Vijayawada, had claimed contributions, as well as damages for the delayed payment of contributions. When the entire cause of action of payment originated from Vijayawada, the appellant cannot maintain a Writ Petition before the Madras High Court. In other words, the appropriate recourse, even assuming that the appellant-Company intends to invoke Article 226 of the Constitution of India without availing the alternate remedy, would be before the High Court at Andhra Pradesh only.

8. Even otherwise, the ground raised by the appellant to straight away challenge the order of demand for delayed payment of ESI contributions is that the sick company was entitled for exemptions from the purview of the ESI Act, but however had chosen to pay the contributions. Such a ground will not fall under any of the exceptions to straight away invoke Article 226 of the Constitution of India, without exhausting the statutory appeal remedy under Section 75(1)(g), which would be before the ESI Court at Vijayawada. Merely because there is a lapse of several years, it will not cure the illegality of approaching this



W.A.No.2448 of 2024

Court, which lacks jurisdiction, more particularly, when the learned Single Judge had already granted liberty to the appellant to challenge the impugned order of payment before the ESI Court at Vijayawada, by excluding the time spent in adjudication of the present Writ Petition, for the purpose of calculation of limitation. We do not find any infirmity in such a finding.

9. In the light of the above observations, the Writ Appeal stands dismissed with liberty to the appellant to challenge the impugned order in the Writ Petition under Section 75 of the ESI Act before the ESI Court at Vijayawada. In case they choose to challenge the said order, the time spent for adjudication, from the filing of the Writ Petition till the date of receipt of the final order in the present W.A.No.2448 of 2024, shall be excluded for the purpose of calculation of the limitation period. No costs. Consequently, connected miscellaneous petition is closed.

[M.S.R., J] [C.K., J]
13.08.2024

Index:Yes
Neutral Citation:Yes
Speaking order
hvk



W.A.No.2448 of 2024

WEB COPY

To

1.The Director,
Employees State Insurance Corporation,
2nd Floor, Padmanabha Buildings,
No.14-20-37, Gandhi Nagar,
Vijayawada – 520 003.

2.The Recovery Officer,
Sub Regional Office,
ESI Corporation,
2nd Floor, Padmanabha Buildings,
No.14-20-37, Gandhi Nagar,
Vijayawada – 520 003.



WEB COPY



W.A.No.2448 of 2024

M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

hvk

W.A.No.2448 of 2024

13.08.2024