IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY, THE NINTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL MISCELLANEOUS APPEAL NO: 352 OF 2024

Appeal Under Section 82 (2) of the Employees State Insurance Act, 1948, against the order dated the 12.04.2024 passed in FIC No.26 of 2021 on the file of the Employees Insurance Court and the Chairman Industrial Tribunal-I, Hyderabad.

Between:

1. The Employees State Insurance Corporation,, 5-9-23, Hill Fort Road, Adarsh Nagar, Hyderabad - 500064, Represented by its Deputy Director.
2. The Recovery Officer,, Employees State Insurance Corporation, 5-9-23, Hill Fort Road, Adarsh Nagar, Hyderabad - 500064.

...APPELLANTS/RESPONDENTS

AND

M/s. K.N.R. Associates,, No. 3-5-39, 40, 41 and 41/A, Annamaneni Hanumamma Complex, Karimnagar - 505 001. Rep. by its the than Managing Partner, T. Ramesh S/o. Jagannadham, age. 58 years.

...RESPONDENT/PETITIONER

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant interim stay of all further proceedings including the execution of the orders made on the EIC No. 26 of 2021 on 12.04.2024 on the file of the Employees Insurance Court and the Chairman Industrial Tribunal I Hyderabad.

Counsel for the Appellant: SRI WILLIAM BURRA

Counsel for the Respondent: NONE APPEARED

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL MISCELLANEOUS APPEAL No.352 OF 2024

JUDGMENT:*(per Hon'ble Sri Justice **P.SAM KOSHY**)*

The appeal is filed under Section 82(2) of the Employees State Insurance Act, 1948 (for short 'Act of 1948') by the Corporation assailing the order dated 12.04.2024 passed by the Employee's Insurance Court and Chairman, Industrial Tribunal-I at Hyderabad in E.I.C.No.26 of 2021.

2. *Vide* impugned order, the learned Tribunal has set aside the order, dated 04.02.2020 passed under Section 45(a) of the Act of 1948. In addition, the Tribunal has also set aside the order passed under CP-2 dated 18.02.2021 and also set aside the order, dated 15.02.2021 passed under Section 85(B) of the Act of 1948. As a consequence, it was also ordered by the Tribunal that the respondent establishment is not liable to pay any amount to the Corporation and an amount of Rs.38,700/- deposited by the establishment can be withdrawn by the establishment. The Appeal under Section 82(2) of the Act of 1948 to the High Court would only be entertainable in the

event if there is substantial question of law involved. The learned counsel appearing for the Corporation has challenged the impugned order raising the following three as the substantial questions of law:

> "i) Whether the respondent/petitioner is under obligation to produce registers/records in proof of closure of the establishment as per Section 1(6) of the ESI Act, 1948?
>
> ii) Whether the respondent/petitioner was given opportunity sufficiently before passing an order under Section 45-A of the ESI Act, 1948?
>
> iii) Whether the E.I. Court is competent to allow the petition under Section 75(1)(g) of the ESI Act, when the Recovery proceedings were already initiated under Section 45-A of the ESI Act, 1948?"

3. However, on perusal of record, particularly, considering the issues that were framed by the learned Tribunal would be evident from paragraph 8 of the impugned order, it would reveal that the substantial questions of law raised by the learned counsel for the appellant are in fact the issues that were framed by the E.I. Court and evidences were laid to substantiate upon those issues. For ready reference, it would be relevant at this juncture to putforth the findings of the Tribunal which is reflected in paragraphs 14 and 18.

"14. However, on 22.03.2019 the petitioner appeared before authorized officer and submitted a letter enclosing the cancellation of lease deed and the original lease deed of 2012 marked as Ex.R12. It can be seen from original lease deed that the lease of the premises commenced on 16.05.2012. Original lease filed by the petitioner is marked as Ex.P3 and original cancellation lease deed is marked as Ex.P4. The term of the lease is for 9 years but due to loss sustained by the petitioner unit a cancellation of the lease deed was executed on 28.02.2019 itself. In the cancellation of lease deed there is a mention in clause No.3 that the lessee/petitioner had vacated the premises and delivered the possession of the property to the lesser on 01.03.2015 but no document was executed on that day. When the petitioner has submitted so specifically that he had vacated the premises and handed over the possession to the lesser, once again it is in obligation on part of the Corporation to cross-check whether the premises was really handed over to the lesser and whether the petitioner is continuing the business at the given address. Inspite of receipt of such specific documentary evidence, no such attempt was made by the Corporation.

18. In the light of the discussion made above, it is clear that when the petitioner did not pay the contributions right from 12.08.2012 the Corporation should have taken steps immediately. In the month of October, 2018 the recovery proceedings have been initiated by the Corporation. There is no justified cause shown by the Corporation to sleep over for a long period of 6 years in initiating the proceedings. There is confusion in the proceedings taken up by the Corporation in one way the Corporation demanded interest and even after payment of interest, the damages proceedings have been

> taken up recovery of damages. While keeping those proceedings pending again, the recovery proceedings have been taken up by issuing C-19 and CP-2. Moreso, before passing the 45-A order the petitioner has submitted various documents to establish that the business was closed w.e.f. 01.03.2015 itself and he did not run the business. When such is the case, the claim made by the Corporation for recovery of the amount for the period from 01.03.2015 to 30.06.2018 is not justified. Added to that, the Corporation is supposed to consider the documents submitted by the petitioner while passing the 45-A order but when we look at the 45-A orders it can be seen that the said order is so bald and without reference of the documents submitted by the petitioner. Therefore, the 45-A order and consequential CP-2 deserves to be set aside."

4. From the plain reading of the aforesaid two contentions, it would reveal that the findings given by the Tribunal are in fact finding of facts based upon whatever documents that the establishment has produced before the Tribunal. Further, it also gives an indication that the establishment had produced Ex.P4 which is a document relating to the cancellation of lease deed dated 28.02.2019. There was also clear indication that upon the lease deed having been cancelled, the establishment had vacated the premises and delivered the possession of the property back to the owners with effect from 01.03.2015

onwards. Further, Ex.P7 is another document which would further go to show that the establishment had given an information to the Deputy Commissioner of Labour, Karimnagar, indicating the aspect of closure of the establishment.

5. In the light of the aforesaid documents along with the other documents which the establishment had produced, which were marked as Exs.P1 to P9, there does not seem to be any evidence laid by the appellant Corporation in rebuttal to the evidence and documents produced by the establishment. The Inspectors of the appellant-Corporation also have not cared to visit the establishment to ascertain whether the establishment is operational or not. If we read the provisions of Section 45 of the Act of 1948 which deals with the powers and duties which are vested upon the "Inspectors" now renamed as "Social Security Officers", they have been given ample powers to inspect the establishments and the records maintained by the establishment. If only, the Inspectors would have exercised the powers which they have been conferred with under Section 45 of the Act of 1948, it would have been easily ascertained whether the contention of the establishment that it is non-

operational from 01.03.2015 onwards to be correct or not. In the absence of which the finding of the fact arrived at by the Tribunal cannot be said to be either perverse or contrary to the evidence on record. As has been mentioned earlier, the Appeal to the High Court under Section 82(2) of the Act of 1948 can be entertained only in the event of there being a substantial question of law. In the absence of any evidence in rebuttal to the documentary proof produced by the establishment, the contentions which the learned counsel for the Corporation raises would squarely fall within the purview of a finding of fact rather than substantial question of law.

6. The Appeal of Corporation thus being devoid of substantial question of law, the same fails and is hereby dismissed accordingly. No costs.

Consequently, miscellaneous applications pending, if any, shall stand closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,
1. The Employees Insurance Court and the Chairman Industrial Tribunal-I, Hyderabad.
2. One CC to Sri William Burra, Advocate [OPUC]
3. Two CD Copies

Plp/gh

HIGH COURT

DATED:09/07/2024

JUDGMENT

CMA.No.352 of 2024

DISMISSING THE APPEAL
WITHOUT COSTS.

5 Copies
21/10/24