

Order Below Ex. 2 in E.S.I. Application No.25 of 2020

1 The applicant company has filed the ESI Application No.25/2020 under Section 75 of the ESI Act, 1948 whereby he has challenged the order passed by the competent authority of the opponent-corporation under Section 45A as well as under Section 45AA of the ESI Act, 1948. Along with the said application, the applicant has also submitted the stay application vide Ex.2 wherein it is inter-alia stated that, he is having contract to run canteen in the civil hospital and the civil hospital sanctioned the tender with a condition to fulfill the provisions of ESI Act. Therefore, though there were less than 10 employees working in the canteen, he applied the ESI Act. It is also stated that, at present only 5 to 6 employees are working in the canteen. The ESI Corporation has allotted the code number to the company, and he is depositing the contribution with the ESI Corporation regularly. It is also stated that, when the Inspector of the opponent-corporation visited the unit, at that time only 5 employees were working, while 3 employees were his relatives. It is also stated that, at the time of inspection, he was not present over there, and without recording statement of any employee, the proceeding was conducted by the said Inspector. It is further stated that, at the time of filing an Appeal before the ESI Corporation, he has already deposited Rs.21,000/- with

the opponent-corporation. It is further stated that, when the SSO of the opponent-corporation took visit of the unit, at that time though he was absent, attendance sheets, salary sheets, ledgers, balance sheets etc. were produced before the Social Security Officer. Thereafter reason was also given by the said officer in the visit note also. It was stated by the Social Security Officer that, the unit was paying the contribution amount to ESI regularly. It is also stated that, thereafter C-18 for the contribution amount of Rs.82,583/- was issued, and personal hearing was provided and applicant himself remained present in the said personal hearing and also produced documentary evidence thereof. But without taking into consideration such oral representation as well as documentary evidence, the Competent Authority of the Corporation has ordered to pay Rs.82,583/- by order passed under Section 45A of the ESI Act. It is further stated that if, opponent starts recovery proceeding in that case, the meaning of filing this Exhibit-2 application would be frustrated. Therefore, it is requested to restrain the opponent from recovery of any amount of interest or damages or contribution amount with regard to order passed by the opponent under Section 45A as well as under Section 45AA of the ESI Act.

2 Notice was issued to the opponent-corporation and it has remained present through learned Advocate Mr. A. J.

Bhatt, but till date reply is not submitted by the Corporation in the matter.

3 Thereafter, this Court has heard the argument advanced by the learned Advocate Mr. S. K. Kazi appearing on behalf of the applicant, who has argued according to the contents of the application and he has requested to allow the stay application and pass appropriate order in the matter.

4 So far as the opponent-corporation is concerned, learned Advocate Mr. A. J. Bhatt appearing on behalf of the Corporation has argued that the Competent Authority of the Corporation has passed order under Section 45A of the ESI Act by providing opportunity of being heard to the applicant and he has passed reasoned order in the matter by taking into consideration all the relevant papers produced before him. It is further argued that, the said order was also confirmed by the Appellate Authority while passing order under Section 45AA of the ESI Act. It is further argued that, Court may grant stay application by directing the applicant to deposit at least 50% amount of the contribution amount decided by the Corporation.

5 Now, upon going through the papers, it appears that the applicant has not raised any objection so far as the

applicability of the ESI Act to the company is concerned. It appears that the applicant has challenged the order passed by the opponent-corporation under Section 45A of the ESI Act as well as order passed under Section 45AA of the said Act. It is pertinent to state that, the applicant has not produced a copy of order passed under Section 45A to the Corporation, but he has produced on record a copy of the order dated 02.09.2020 passed by the Competent Authority of the opponent-corporation. Upon going through the said order, it appears that the Competent Authority came to the conclusion that no supporting documents available to justify the non coverable salary of Rs.2,29,000/-. But it further appears that documentary evidence like ITR, bank statements, EPFO challan as well as salary register were produced before the said authority but nothing appears as to how the aforesaid documentary evidence are not helpful to the applicant. Therefore, order of implementation of Section 45A as well as Section 45AA are required to be stayed. In this connection, it is pertinent to state that the applicant has already deposited 25% of the contribution amount. In this connection, this Court would like to refer a provision contained in Section 75(2B) of the ESI Act, and as per the said provision, Court may for reasons to be recorded in writing waive or reduce the amount to be deposited under the said section i.e. 50% of the contribution amount. In this connection, it is humble

opinion of this Court that the present applicant is a small contractor, who is running canteen in the civil hospital and looking to his financial condition as well as the fact that the applicant has already deposited 25% of the contribution amount as ordered by the Corporation under Section 45A of the ESI Act, the same appears to be sufficient one for granting of stay in the matter, as such this Court pass following order in the matter:-

O R D E R

- 1 The present application at Ex. 2 is hereby allowed and the opponent-corporation is restrained to take any action of recovery of contribution amount as well as interest and damages amount from the applicant with regard to the order passed by the opponent-corporation under Section 45A as well as order passed under Section 45AA of the ESI Act.
- 2 No order as to costs.

The order pronounced to-day i.e. on 1st March, 2025 in open Court.

(R.G.Devdhara)

JUDGE

Employees State Insurance
Court, Ahmedabad
GJ00442