

EXPARTE ORDERS ON I.A Nos.I to III

IA No.I filed by the Applicant under Sec.78 of ESI Act to stay the operation of the order passed U/s.45-G of ESI Act bearing No.SRO.MYS.CP.73000349650001302 dated 03.01.2024, claiming interest of Rs.3,78,600/- and cost of Rs.500/-, in total Rs.3,79,100/- for the period from 05/2016 to 10/2020.

IA No.II filed by the Applicant under Section 75(2)(B) of ESI Act to waive off the amount to be deposited under ESI Act till disposal of the main Petition.

IA.No.III filed the applicant Under Section 75 of the ESI Act R/w. Section 151 of CPC to direct 1st and 2nd respondents to issue instructions to the 3rd respondent to defreeze the account which has been frozen by the respondent No.2.

The Applicant has stated that applicant is a educational institution and all of a sudden the social security officer visited the applicant-institution and insisted for coverage of the school under ESI Act. The school authorities tried to convince the respondent that they are the members of KUSUMA and questioned the applicability of ESI for educational institutions before the Hon'ble High Court of Karnataka. But, respondent corporation issued show cause notice dated 04.12.2020 proposing the applicant institution to pay ESI contribution of Rs.6,84,090/- for the period from May 2016 to October 2020. The Headmistress of the applicant appeared before the respondent with all documents and finally the respondent passed an order u/s 45-A of ESI Act assessing the contribution amount at Rs.10,74,896/- for the period from May 2016 to October 2020. The applicant filed Appeal against the said order u/s 45-AA of ESI Act and the Appellate Authority passed order

and determined the contribution amount at Rs.7,89,664/-. The applicant has complied the said order in full. Unfortunately the respondent issued notice u/s 85-B of the ESI Act claiming damages as Rs.7,01,751/- for the period from May 2016 to October 2020 as damages. The applicant has filed appeal before this court vide Ref.No.116/2022 challenging the damages claimed by the respondent. Further the respondents 1 & 2 have passed one more order dated 03.01.2024 under Section 45-G of ESI Act calling upon the respondent No.3-Bank to prohibit or stop all the transactions. No opportunity was given to the applicant before passing the said order. The respondent No.2 has issued Garnishee order U/s.45-G of ESI Act calling upon the bank to transfer the amount available in the account to the respondent account. The applicant came to know about the Garnishee order passed by the respondent when they approached their banker to draw money for payment of wages to their employees, the account has been freezed due to the order passed by the respondent No.2. The applicant is facing serious problems as they are not in a position to operate their bank account since it is frozen. The respondent has failed to appreciate the fact that the applicant has challenged the applicability of the Act before the Hon'ble High Court of Karnataka through KUSUMA. There is no delay in remitting the contribution amount. The applicant has remitted the amount within the prescribed time of passing the orders U/s.45-AA of ESI Act. The order passed by the respondents 1 & 2 is illegal and liable to be set aside. If the Order passed by the Respondent is not stayed, the Applicant will suffer great hardship and loss and also prayed the amount to be deposited may be waived and also prayed that applicant's account may be defreezed. Hence, prayed that IA No.I to III may be allowed.

Heard.

Perused the Records. The Applicant has filed the above case to set aside the Order passed by the Respondent under Section 75(1) (g) of ESI Act. As interim relief, the Applicant has sought for stay of impugned Order passed by the Respondent and to waive the amount to be deposited under Section 75(2-B) of the ESI Act and to defreeze the applicant account. It is the say of the applicant that it has paid the contribution as per assessment made by the respondent and there is no delay in complying the order passed by the appellate authority and the Garnishee order passed by the respondent is illegal.

From the Garnishee order, it goes to show that the respondents 1 & 2 are claiming interest and cost in total Rs.3,79,100/- for the period from 05/2016 to 10/2020. The applicant has contended that it has complied the orders passed by the ESI Corporation. Whether the applicant is liable to pay the interest or not can be adjudicated only after trial. If Order passed by the Respondents 1 & 2 is not stayed, the purpose of filing the above case will be defeated. No hardship will be caused to the Respondents if the Order passed by the Respondent is stayed. Hence, it is just and necessary to grant relief to the Applicant as follows;

ORDER

I.A.No.II filed U/s 75 (2-B) is partly allowed until further orders.

IA No.I filed U/s.75 of ESI Act is allowed and Order passed by the respondent viz., bearing No. No. SRO.MYS.CP.73000349650001302 dated 03.01.2024 claiming Rs.3,79,100/- is stayed until further orders subject to condition;

The Applicant has to deposit Rs.50,000/- (Rupees Fifty thousand only) in respect of

demand made by the respondents 1 & 2 within 15 days from the date of this order with the respondent – ESI Corporation.

I.A.No.III filed U/s 75 is partly allowed and respondent No.1 & 2 are directed to issue directions to the respondent No.3-Bank to defreeze the applicant's account which is frozen by the respondent No.2 until further orders.

Issue Notice on Application, IA No.I to III and copy of stay order to the respondents through RPAD.

Call on 26.03.2024.

sd/-

**JUDGE,
ESI Court, Mysuru.**