ORDERS ON I.A.I & II

IA No.I filed by the Applicant under Sec.78 of ESI Act to stay the operation of the Orders passed by the respondent u/s 45-A of ESI Act, dated 27.06.2023 for Rs.1,52.403/- for the period from 01.06.2018 to 31.12.2018 as per Annexure - A till disposal of the main Petition.

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

The applicant is running school under the name and style of Muslim Educational Society. The applicant is an un-aided education society. The Social Security Officer of the respondent corporation visited the applicant institution and insisted for coverage of the school under ESI Act. The applicant institution tried to convince the concerned officer that they are members of KUSMA and KUSUMA has questioned the applicability of ESI act for educational institutions and applicant is waiting for the outcome. But, the respondent proceeded and covered the institution under ESI act. The respondent without giving proper opportunity passed an order u/s 45-A of ESI Act. As per annexure-A on 27.06.2023. The respondent has claimed the contributions on unscientific and on assumed wages. The respondent has taken the number of employees as 29, even though the applicant has not engaged 29 employees and the respondent has taken the assumed wages at the rate of Rs.11,550/- per employee for the period from 01.06.2018 to 31.12.2018, without any basis. The order passed by the respondent is not proper. 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. Hence, prayed that IA No.I and II 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. The applicant has contended that it has not engaged 29 employees and the respondent has calculated the contribution for 29 employees on assumed wages of Rs.11,550/- and said calculation in wrong. Whether applicant is liable to pay contribution or not can be decided only after trial. At this stage, if Order passed by the Respondent is not stayed, the purpose of filing the above case will be defeated. No hardship will be caused to the Respondent 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. IA No.1 is allowed and Order passed by the respondent u/s 45-A of ESI Act, dated 27.06.2023 for Rs.1,52,403/- for the period from 01.06.2018 to 31.12.2018 as per Annexure – A is stayed till disposal of the case subject to condition;

The Applicant has to deposit Rs.30,000/- in respect of demand made for Rs.1,52,403/-, within 15 days from the date of this order with the Respondent Corporation.

Issue Notice on Application, IA No.I & II and copy of stay order to the Respondent through RAPD.

Call on 31.10.2023.

JUDGE,
ESI Court, Mysuru.