

INTERIM ORDERS ON I.A.I to III

The applicant-establishment has filed the main application seeking for the following reliefs:

1) Quash the demand show cause notice dated 13.10.2022 U/s.45-C to 45-I of the ESI Act for recovery of Rs.3,41,912/-;

2) Declare that the applicant hotel is not coming under the ESI Act;

3) Quash the Garnishee Order passed U/s.45-G of ESI Act dated 28.08.2023 and to grant such other reliefs under the circumstances of the case in the interest of justice and equity.

2. Along with the main application, the applicant has filed IA.No.I seeking for stay of the Garnishee Order passed U/s.45-G of ESI Act dated 28.08.2023 bearing No.SRO.MYS.CP/79000365290001101; I.A.No.II to defreeze the account bearing No.0693285000006 of the applicant in Canara Bank, S.R.Patna Branch and IA.No.III to waive off any contribution to be paid as per the demand made by the respondents.

3. The case of the applicant is that she was the owner of Parampare Veg Restaurant situated at B.M.Road, Near checkpoint, S.R.Patna and the same was managed by her husband, who died on 21.12.2013. Thereafter, for about a year, she managed the said hotel and later in the year 2018, she wound up the hotel due to shortage of people. In the year 2022, she received a show cause notice from the respondent, calling upon her to pay ESI contribution. Immediately, the applicant submitted her reply to the notice and stated that she had closed the hotel in the month of June 2018 itself.

However, the respondent without considering the same has without any notice, to the applicant froze the bank account of the applicant vide No.0693285000006, maintained at Canara Bank, Srirangapatna Branch, by passing order under Section 45G of the Act.

4. The learned counsel for the applicant has further contended that if the survey report is perused, it is apparent that the signature on the inspection report has been affixed by one B.M.Nithyananda, Proprietor of Parampare Veg Restaurant and not by the applicant herein. This aspect clearly indicates that the applicant was not running the restaurant at the time of inspection by the respondent. Moreover, the respondent has arbitrarily passed the order U/s.45-A of the ESI Act on 29.06.2022, without giving sufficient opportunity to the applicant. The counsel for the applicant further contended that the applicant is a widow and is not in a position to pay the amount as demanded by the respondent-Corporation and therefore, prayed for stay of the operation of the impugned order.

5. A perusal of the documents produced by the applicant along with her application reveals that an inspection of Parampare Veg Restaurant, situated at B.M.Road, near S.R.Patna was conducted by the respondent on 06.08.2019. at that time, it was found that the said restaurant employed 13 employees. However, the inspection report reveals that the same is signed by the proprietor of the Parampare Veg Restaurant by name Nithyananda B.M. The said aspect at this stage prima facie supports the contention of the applicant that she had wound up her restaurant as claimed by her. Furthermore, the applicant has also produced nil GST statement for the year 2019 and also order of cancellation of

GST. Such being the case, the case of the applicant requires due consideration and only after adducing of evidence by both the parties can it be determined as to whether the demand of contribution of Rs.2,30,270/-, by the respondent vide Section 45A order dated 29.06.2022 and the subsequent order passed under Section 45G dated 28.08.2023, was in accordance with law. Hence, in view of the aforesaid discussion, this Tribunal is of the opinion that it would be appropriate to pass interim order/orders as prayed for in IA-I to III as the matter requires detailed consideration. Hence, with the above observations, I proceed to pass the following-

ORDER

IA No.1 to III are hereby allowed.

The impugned Order passed by the Respondent U/s.45-G of the ESI Act dated 28.08.2023, bearing No.SRO.MYS.CP/79000365290001101 is hereby stayed till further orders and consequently, the account of the applicant maintained by her in No.0693285000006, maintained at Canara Bank, Srirangapatna Branch stands defreezed. The deposit of contribution as demanded under the impugned order is hereby waived off.

Issue notice on main application, I.A.No.I to III to the Respondent along with the Stay Order through R.P.A.D.

For appearance of the Respondent, Call on:
02.09.2025.

sd/-
JUDGE,
ESI Court, Mysuru.