17.03.2022

EXPARTE ORDER ON I.A.I & II

IA No.I filed by the Applicant under Sec.78 Act to stay the operation of the Orders passed by the Respondents viz.,

(1) Order u/s 45-A of ESI Act dated 29.12.2016

(2) Order u/s 45-A of ESI Act dated 28.06.2021

(3) Garnishee order dated 09.12.2021 u/s 45-G of ESI Act

(4) Warrant of arrest dated 17.02.2022 as per annexure A to D till disposal of the above case

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.

Applicant submitted that in order to supply non clinical manpower to the government hospitals has obtained ESI code number for 10 employees from the respondent. The applicant has paid ESI contribution upto 5/2014. Subsequently from 6/2014 the applicant could not get any work and as such the applicant establishment is closed from 01.06.2014. Hence, the applicant has not paid ESI contributions from the said date. The respondent has issued show cause notice dated 26.07.2016 for payment of contributions for the period from 01.06.2014 to 31.05.2016 after lapse of 4 years and called for personal hearing, but the applicant has not appeared before the ESI Corporation, as the establishment written statement closed, as such the notice was not served on the applicant. The respondent passed an order u/s 45-A of ESI Act dated 29.12.2016 claiming Rs.77,220/- for the period from 01.06.2014 to 31.05.2016. The respondent passed an order u/s 45-A of ESI Act claiming contribution of Rs.2,15,870/-. The garnishee order u/s 45-G of the ESI Act dated 09.12.2021 for Rs.4,47,548/- as per annexure-C. The respondent No.2 issued show cause notice of warrant of arrest should not be issued to the applicant claiming Rs.3,93,717/-. The respondent calculated the amount on the assumed wages. The respondent has not given opportunity to establish that the establishment is not liable to pay any contribution. If the Order passed by the respondents are not stayed and amount to be deposited not waived off, the Applicant will suffer great hardship and loss. Hence, prayed that IA No.I & 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 of the ESI Act. As interim relief, the Applicant has sought for stay of impugned Order passed by the Respondent, to waive off the amount to be deposited under Section 75(2-B) of the ESI Act. The Applicant has contended that as the establishment is closed from 01.06.2014. and the applicant is not liable to pay the said contribution.

Whether applicant is liable to pay the contribution or not can be considered only after trial. At this stage, If Orders 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. Taking into consideration above said facts, it is just and necessary to grant relief to the Applicant as follows;

ORDER

Orders passed by the Respondent viz.,

((1) Order u/s 45-A of ESI Act dated 29.12.2016

(2) Order u/s 45-A of ESI Act dated 28.06.2021

(3) Garnishee order dated 09.12.2021 u/s 45-G of ESI Act

(4) Warrant of arrest dated 17.02.2022 as per annexure A to D till disposal of the above case are stayed subject to condition;

The Applicant has to deposit Rs.75,000/- in respect of demand made for Rs.3,93,717/- 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 Respondents through RAPD if Applicant deposits the amount as per the Order.

Call on 16.05.2022

JUDGE,
ESI Court, Mysuru.