

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 passed u/s 45-A of ESI Act dated 23.11.2020 as per Annexure-A

(2) Garnishee order dated 11.01.2022 u/s 45-G of ESI Act as per annexure B claiming Rs.10,28,948/- 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 has stated that Applicant's establishment is educational institution and running classes from 1st standard to PUC and nominal fees is being collected by the said institution. The respondent issued notice calling upon the applicant to produce documents, due to pandemic situation the management could not produce the documents, but it had reply to the said notice. The applicant had requested the respondent stating that there was exemption under ESI Act for educational institution and the same was challenged before the Hon'ble High Court of Karnataka. In spite of that, the respondent passed an order u/s 45-A of ESI as per Annexure A claiming contribution from 01.09.2016 to 31.07.2020 for Rs.7,36,164/-. The respondent has issued garnishee order as per Annexure B. Since pandemic Covid-19 and repeated lock down the institution was not functioning fairly since a longtime. The applicant will be put to severe and great hardship if the prayer is not considered by the corporation. The applicant has not engaged 24 employees. The respondent has calculated the contribution on the assumed wages. The order passed as per Annexure A and B are unsustainable in law and on facts. The respondent has utterly failed to appreciate the financial position of the institution during covid-19 and passed order in a harried manner. The respondent has not given opportunity to put forth its case. 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. Applicant has contended that there was exemption under ESI Act for educational institution and the same was challenged before the Hon'ble High Court of Karnataka. Inspite of that, the respondent passed an order u/s 45-A of ESI as per Annexure A claiming contribution from 01.09.2016 to 31.07.2020 for Rs.7,36,164/-. The respondent has issued garnishee order as per Annexure B. Since pandemic Covid-19 and repeated lock down the institution was not functioning fairly since a longtime. The applicant will be put to severe and great hardship if the prayer is not considered by the corporation. The applicant has not engaged 24 employees. The respondent has calculated the contribution on the assumed wages. The order passed as per Annexure A and B are unsustainable in law and on facts.

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 passed u/s 45-A of ESI Act dated 23.11.2020 as per Annexure-A
- (2) Garnishee order dated 11.01.2022 u/s 45-G of ESI Act as per annexure -B , issued by the respondents 1 and 2 to the applicant are stayed subject to condition;

The Applicant has to deposit Rs.2,50,000/- in respect of demand made for Rs.10,28,,948/- within 15 days from the date of this order with the Respondent Corporation.

Issue Notice on Application, IA No.I to II and copy of stay order to the Respondents through RAPD if Applicant deposits the amount as per the Order.

Call on 31.03.2022

**JUDGE,
ESI Court, Mysuru.**