

MHIC090002022020

Exh. O-



**BEFORE THE JUDGE, EMPLOYEES INSURANCE COURT
AT KOLHAPUR.**

Appl.(ESI)No. 09/2020

M/s. S. S. Mirje & Co.

.. Applicant.

V/s

Employees State Insurance Corp., Pune & Anr.

.. Opponents.

CORAM : S. S. Khandekar, Member.
(J.O. Code :- MH-02957)

IN THE MATTER OF INTERIM RELIEF IN ESI APPLICATION

APPEARANCES :

Shri D. S. Desai, Ld. Counsel for Applicant.

Smt. S. V. Thorat, Ld. Counsel for Opponents.

: ORDER BELOW EXH. 2 :

(DICTATED & PRONOUNCED IN OPEN COURT ON 22.11.2022)

1. The applicant is a partnership firm engaged in the business of sales and service of commercial vehicles such as trucks, buses, its repairs as well as spare parts and activities incidental thereto and authorised dealer of Eicher trucks and buses. Its'

registered address is at Udyam Chambers, Rajaram Road, Kolhapur and workshop is at Mouje Vathar turf Vadgaon, Tal. Hatkanangale, Dist. Kolhapur.

2. It is contended that initially the workshop was functioning at the address of registered office but in the year 2012, entry of commercial vehicles in Kolhapur City was restricted during day time by Traffic Police and Municipal Authorities. And therefore, the said workshop was shifted to the present address as above. In the year 2016, manufacturer of Eicher company instructed the applicant to shift their entire commercial office and related staff to said Mouje Vathar turf Vadgaon address which incidentally falls outside the coverage area of ESI at the relevant point of time. Thus, entire office set up and staff was shifted to the workshop address.

The applicant is registered with ESI since 1980. It is allotted code number for statutory compliance. Every employer/establishment is required to fill in only the number of days, amount of wages etc. on the portal and the quantum of contribution is calculated automatically and challan is generated to the exclusion of the role of employer.

3. At earlier point of time, only the area falling within the Municipal Corporation of Kolhapur was covered under the ESI Act. However nowadays it is extended vide Government Notification dtd. 26.07.2016, to the entire district of Kolhapur w.e.f. 01.08.2016. Thus, earlier workshop was not covered in ESI but from 01.08.2016 the same is covered. The applicant is law abiding establishment and has remitted entire amount of monthly contribution and has never defaulted. Before August 2016, the ESI contribution was 6.5% (employer's contribution 4.75% + employees contribution 1.75%). However, vide Government Notification dtd. 06.10.2016 in newly implemented area the rate of contribution was reduced to 4% (employer's contribution 3% + employee's contribution 1%) for the period 24 months effective from August 2016. The applicant was not aware about the benefit of reduced rate and continued to remit contribution at earlier rate i.e. 6.5% till April 2017. Thereafter, the applicant has remitted contribution at reduced rate up to July 2018 except for the month of September 2017. Thus, the applicant has remitted excess amount of Rs.76,221/- for the period August 2016 to April 2017.

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4. It is further contended that the applicant received notice C-18 dtd. 24.09.2019 towards alleged short payment of Rs.2,33,600/-. The applicant replied through letter dtd. 07.11.2019. Thereafter, notice C-19 dtd. 20.01.2020 came to be issued claiming Rs.2,89,582/- (Rs.2,33,600 + interest Rs.55,982/-). The applicant replied through letter dtd. 06.02.2020. The contribution for July 2019 is already remitted through challan. Thereafter, letter dtd. 08.02.2020 came to be issued directing the applicant to submit salary registers of employees. The contents of the same are vague, baseless and without any substance. Thereafter, CP-2 demanding amount of Rs.2,89,632/- was issued. Reply was submitted on 29.10.2020.

5. It is contended that the respondents have claimed short contribution u/s. 45A. The respondents have not considered the reply given by the applicant. The orders passed by respondents are unlawful and unjustified.

By way of grounds of application the applicant reiterated the contentions raised herein above. It is therefore urged to grant interim relief and thereby stay the impugned prohibitory order dtd.

20.10.2020 pending final hearing and disposal of main application.

6. The application is contested by the opponents by filing say vide Exh.23. They have raised preliminary objection that there is non compliance of Sec. 75(2)(B). It is submitted that it is necessary to deposit 50% of the amount claimed by corporation before preferring the present proceeding. There is short remittance by the applicant. It is further contended that the applicant paid short contribution for the period May 2017 to August 2017, October 2017 to July 2018 and July 2019. Therefore, claim was made in Form C-18 (actual) dtd. 24.09.2019 for Rs.2,33,600/-. The applicant submitted letter dtd. 07.11.2019 that his employees are working in newly implemented area and therefore he has paid the contribution @4%. This fact of change of address was never intimated by the applicant prior to this communication. The workshop of the applicant was already located at Mouje Vathar since beginning as per the certificate of value added tax. It is seen that Mouje Vathar is a distinct place of business and therefore applicant ought to have obtained a sub code number. But applicant failed to do so.

7. The opponents further contended that the applicant was

issued letter dtd. 01.01.2020 to produce salary registers in respect of the employees working on old and new address failing which recovery action would be taken. The applicant failed to produce such record. As there was no response, recovery certificate in Form C-19 dtd. 20.08.2020 was issued. It shows that ample opportunity was given to applicant to produce the record. Thereafter also, the applicant failed to pay the dues and therefore, recovery certificate, CP-2 prohibitory order etc. came to be issued.

8. The opponents contended that applicant was liable to pay contribution @6.5% and therefore, short contribution claimed by the opponent is justified. It is therefore urged that no case is made out for grant of any relief.

9. On the basis of rival contentions, the following points arise for my consideration and the same are answered for the reasons to follow:-

POINTS

FINDINGS

1. Whether the complainant demonstrated strong prima facie case?

.. Yes.

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2. Whether the complainant has shown balance of convenience? .. Yes.
3. Whether the complainant demonstrated irreparable loss? .. Yes.
4. What order and relief ? As per order.

REASONS

AS TO POINT NO. 1 to 3:

10. The Ld. Counsel for the applicant argued that admittedly earlier the applicant was having his registered office at Kolhapur but the same is shifted to Mouje Vathar in the year 2016. Earlier the ESI Act was implemented only for the Kolhapur city limits but later on that has been implemented in entire Kolhapur district. Thus, the applicant was required to pay contribution @4% for the relevant period from August 2016 to July 2018. In spite of that the applicant has made excess payment to the respondent corporation. It is further argued that the applicant has not made any short contribution and under such circumstances, the respondent issued various orders and recovery certificates without granting any opportunity to the applicant. Hence, it is a fit case for grant of

interim relief.

11. The Ld. Counsel for opponents argued that C-18 was issued on actual basis. The applicant has not informed about his change of address till October 2017 through letter dtd. 03.08.2017. Under such circumstances, it was necessary for the applicant to obtain a sub code for the office/workshop at Mouje Vathar. The applicant was also granted opportunity to produce his wage registers showing the employees working at the registered office and its' workshop but in spite of sufficient opportunity, the applicant failed to show such certificate and therefore, the application for interim relief is liable to be rejected.

12. Heard the Ld. Counsels and perused the papers. In the present matter it is the claim of the applicant that he has paid excess contribution of Rs.76,221/- to the respondent corporation @6.5%. It is also not disputed that the applicant has deposited a sum of Rs.50,000/- with this Court as directed by my Ld. Predecessor vide order dtd. 21.11.2020. Under such circumstances, the litigating parties shall be required to prove their contentions through cogent evidence. As the interest of both the parties is sufficiently protected,

therefore, no prejudice shall be caused to the respondent in case the interim relief granted to the applicant is extended to the disposal of the present application. Therefore, the applicant is able to demonstrate strong prima facie case, balance of convenience and irreparable loss for grant of interim relief. Hence the point no. 1 to 3 are answered accordingly.

AS TO POINT NO. 4 :-

13. In the premise of above facts and circumstances, the application Exh.U-2 is liable to be allowed. Hence, the following order is passed :

: O R D E R :

1. The application Exh. 2 is allowed.
2. The ad-interim order granted vide order dtd. 21.11.2020 is extended till final disposal of the Appl.(ESI)No. 09/2020.
3. In the facts of the case, the hearing of the matter is expedited.

Kolhapur.

(S. S. Khandekar)

Judge,

Employees' Insurance Court, Kolhapur.

Date : 22.11.2022.

RSS/-