

MHIC090003892021

Exh.O-



BEFORE THE ESI COURT AT KOLHAPUR

APPLICATION (ESI) NO. 03/2021

Shree Hanuman Services

V/s

ESI Corporation, Pune & Ors.

: COMMON ORDER BELOW EXH. 2 & Exh. 8 :

(Dictated in Open Court on 08.08.2023)

1. The applicant is a proprietorship concern. It is in the business of taking contracts from industries located in and around MIDC near Kolhapur city. The said industries came under the coverage of ESI w.e.f. 01.08.2016. Earlier only Kolhapur city and Ichalkaranji city was covered under the Act. By Notification dtd. 26.07.2016, whole Kolhapur district has come under the coverage. The applicant has come under coverage w.e.f. 01.08.2016 and is

given Code no. 33000531160001099. It is contended that newly covered area was not in a position to give benefit to the covered employees. Therefore, as per Gazette publication through notification dtd. 06.10.2016, the ESI Corporation reduced contribution for first 24 months @4% from earlier 6.5%.

2. The applicant has obtained contract work from industries located in newly covered area and has deployed employees therein. Thus, the applicant is amenable to the revised rate of contribution. The applicant deducted contribution at revised rate for the period December 2016 to September 2018. The applicant was shocked to receive notice C-19 of 11.02.2021 showing default of Rs.4,14,769/- and interest of Rs.1,61,149/- totaling to Rs.5,75,918/- for the period December 2016 to September 2018 (hereinafter referred as concerned period). It was informed by the respondents that as the address of applicant is Kolhapur city, it is liable to remit contribution @6.5%. The respondents have adopted hyper technical approach to deal with the matter. There was no response to the representation of the applicant. Again it is contended that the applicant worked in non implemented area and has timely paid contribution. It is contended that applicant is a contractor and by virtue of Sec. 40 to

41 of the ESI Act, contractor's liability is that of the principal employer. Before issuing notice C-19, the respondents have not given any opportunity to the applicant. Thus, it is urged to stay recovery during the pendency of the application.

3. The application is opposed by the respondents through say filed vide Exh. 22 & 23. It is contended that as per Sec. 75(2)(B) of the ESI Act, it is necessary to deposit 50% of the claimed amount at the time of filing of the proceeding. The said provision needs to be strictly followed. It is contended that the applicant has not made proper compliance and did not pay contribution correctly. The unit of the applicant falls in the old implemented area at Kolhapur. Therefore, it is required to pay contribution as per Rule 51 of ESI Central Rules 1950. In absence of any supporting documents and records furnished, provisions of Rule 51-B i.e. reduced rate of contribution, cannot be made applicable. The address provided by applicant is Shivaji Peth, Kolhapur. It is contended that after issuance of show cause notice C-18(ad-hoc) dtd. 31.12.2019, the applicant neither informed nor furnished any supporting document or record to corroborate his contentions. The claim raised vide Exh.C-18 Actual for the concerned period was followed by C-19 dtd.

11.02.2021. It was subsequently followed by notice of demand in Form CP-2 dtd. 11.05.2021. The said notices are just, legal and are in consonance with provisions of Sec. 45-C to 45-I of ESI Act. There is no error or infirmity. Thus, it is urged to reject the application for interim relief. It is also urged to direct the applicant to deposit 50% of the claimed contribution.

4. On the basis of rival contentions, the following points arise for consideration and findings are given below for reasons to follow:

	POINTS	FINDINGS
1.	Whether the applicant is entitled for interim relief ?	Partly yes.
2.	Whether the applicant demonstrated strong prima facie case?	Partly yes.
3.	Whether the applicant has shown balance of convenience?	Partly yes.
4.	Whether the applicant demonstrated irreparable loss?	Partly yes.
5.	What order?	As per order.

: REASONS :

As to Point Nos.1 to 4 :-

5. The Ld. Counsel for the applicant argued in consonance with the pleadings in the application for interim relief. It is argued that the applicant is a contractor providing employees for work to the industries located in newly implemented area. Under such

circumstances, the respondents could not have raised any demand towards contribution as per rates applicable to the old implemented area. It is therefore argued that applicant has satisfied the parameters of interim relief in its favour. It is also contended that the applicant has already remitted 25% of the claimed contribution with this Court and therefore, Exh.2 and Exh. 8 are liable to be allowed.

6. The Ld. Counsel for the respondent argued that from the notices issued to the applicant, it is apparent that, it is located at Shivaji Peth, Kolhapur which is an old implemented area. Therefore, it was necessary for the applicant to remit contribution @6.5%. It is argued that the applicant cannot take advantage of the reduced rate of contribution, as it has not informed the respondent corporation in this regard. Thus, no case is made out for grant of any relief.

7. Heard Ld. Counsels and perused the papers. It is seen that the office address of the applicant is located in the old implemented area. The applicant has relied upon an unregistered contract dtd. 01.04.2016 entered between the Indo-count Industries Ltd. And the applicant for the period 01.04.2016 to 31.03.2017. It is also mentioned that the agreement shall remain effective in the said

period unless the agreement is terminated sooner or renewed. As per the said agreement, the applicant is required to engage minimum 14 employees per day. It is seen that the said Indo-count Industries is located at Five Star MIDC, Kagal, Kolhapur. There is no document to show that the applicant informed the respondent about the said agreement in writing. The respondent has filed documents with list Exh.27. It is seen that at the time of registration, the applicant has mentioned his address as Shivaji Peth, Kolhapur. The nature of business is mentioned as commercial establishment. It is not mentioned that the said proprietorship is a manpower consultant or agency to supply contract workers to any industry. At present, the matter is at the stage of interim relief and the litigating parties shall be required to adduce evidence in support of their respective contentions. The applicant has deposited 25% of the contribution at the time of filing of the application. This Court finds that the interest of the respondent can be safeguarded by directing the applicant to deposit further 15% of the claimed contribution and expediting the application. Under such circumstances, the applicant is entitled for interim relief and is able to demonstrate strong prima

facie case, balance of convenience and irreparable loss partly in its favour. Therefore, the point nos. 1 to 4 are answered accordingly.

As to Point No. 5:

8. In the premise of above facts and circumstances, the applications Exh.2 and Exh. 8 are liable to be partly allowed. Hence the following order is passed.

ORDER

1. The applications Exh. 2 & Exh. 8 are partly allowed.
2. The applicant is directed to deposit further 15% of the claimed amount of Rs.5,75,968/- as claimed by the ESI Corporation u/s. 45-A as per notice of demand dtd. 11.05.2021 within a period of 15 days from today.
3. Upon such deposit, further recovery proceeding shall remain stayed during the pendency of application.
4. The application is expedited and shall be decided within six months from the date of this order.
5. The application to proceed further

Kolhapur
08.08.2023
RSS/-

(S.S. Khandekar)
Judge, ESI Court, Kolhapur