

MHIC120000742023



IN THE INSURANCE COURT AT PUNE
Presided Over by SHRI. K. N. GAUTAM

Application ESI NO. 16 OF 2023

M/s A Lion Services
c/o Jaydeep Shivaji Chaudhari
Hadapsar, Pune 411 028 ... Applicant

VERSUS

Karmachari Rajya Bima Nigam
Bibvewadi, Pune 411 037 ... Opponent

COMMON ORDER BELOW EXH. C-2 & C-3
(Dated : 19.12.2023)

Heard ld. Counsels for the applicant and opponent.
Perused reply of the opponent at Exh. E-4 and Exh. E-5. I have also gone through the case record.

2. It is the contention of the applicant that it engaged in the business of supplying security guards to various companies, hotels and religious establishment. The applicant providing security guards in Pune district as well as outside Pune. The applicant has obtained ESI code in the year 2015. At that time, the applicant shown that 20 employees employed with it but actually number of employees employed were less than 20 and all of them receiving salary more than Rs. 21,000/- per month. Hence, applicant felt no need to pay

ESI contribution from the year 2015 till May 2022. The applicant received notice in Form C-18 dated 1.11.2020 claiming contribution for the period from November 2015 to August 2020. However, the applicant was not given opportunity of personal hearing and illegal order under Section 45A of the ESI Act was passed on 21.12.2020 and thereafter, prohibitory order dated 9.2.2023 was issued. In such circumstances, the applicant constrained to file the application and by way of interim relief prayed that execution and operation of order under Section 45A of the ESI Act dated 21.12.2020 may be stayed till final decision of main application. It is also prayed that waiver may be granted from depositing 50% amount as per Section 75(2B) of the ESI Act.

3. The opponent contended that the applicant was covered under provisions of ESI Act w.e.f. 8.10.2015. However, the applicant failed to pay contribution for the period from 1.11.2015 to 31.8.2020 and hence, show cause notice in Form C-18 (Adhoc) was issued on 10.11.2020. The applicant was given opportunity of personal hearing on 30.11.2020 which was not attended by the applicant and even not submitted any representation. Thereafter, one more opportunity of personal hearing was given on 18.12.2020 vide letter dated 1.12.2020, which was attended by Mr. Shriniwas Uttarkar, the accountant of the applicant, but he failed to produce the record. Hence, speaking order under Section 45A of the ESI Act dated 21.12.2020 for amount of Rs. 7,19,235/- was passed. Lastly, it is contended that the applications may be rejected.

4. In the instant case, the ESI corporation already recovered

Rs. 1,37,000/- on 16.2.2023 and Rs. 5,73,179/- on 13.2.2023 from bank account of the applicant with IDBI Bank after issue of prohibitory order dated 12.1.2023 by ESI corporation which is more than 50% amount claimed by prohibitory order dated 12.1.2023 of Rs. 11,20,550/-. As per Section 75(2-B) the applicant is required to deposit 50% of amount due from him as claimed by the opponent otherwise he is not entitled to raise the matter before this Court.

5. The opponent has not disputed said fact. In view of the fact that more than 50% amount already deposited with the ESI corporation, hence question of waiver does not arise. Hence, I pass the following order :-

ORDER

- 1) The application [Exh. C-2] is allowed.
- 2) The application [Exh. C-3] is rejected.
- 3) The execution and operation of order under Section 45A of the ESI Act dated 21.12.2020 and prohibitory notice in Form C-19 dated 12.1.2023 are hereby stayed till final decision of the main application.
- 4) No order as to costs.

Pune
Date : 19.12.2023
nsp/-

(K.N. Gautam)
Judge, Insurance Court, Pune.