

MHIC120000822023



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

Application ESI NO. 17 OF 2023

M/s Mayur Maruti Mangalwedekar
Kalewadi, Pune 411 037

... Applicant

VERSUS

Employees State Insurance Corporation
Bibwewadi, Pune 411 037

& Ors. ... Opponents

COMMON ORDER BELOW EXH. C-2 & C-3
(Dated : 07.12.2023)

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

2. It is the contention of the applicant that it is a proprietary firm engaged in the business of undertaking, civil work on contract basis of PCMC Municipal Corporation. In December 2017, Health Department of PCMC asked the applicant to get it registered under ESI Act otherwise no work will be allotted. Therefore, applicant applied in the month of December 2017, and ESI code was issued to it. The applicant made compliance under ESI Act initially for one month i.e. for December 2017 and thereafter did not made compliance as it has never employed more than 20 workers. It is

contended that in the month of September 2022 the bank account of the applicant was freezed and on enquiry, the applicant came to know that it was freezed by ESI Corporation as its amount as per prohibitory order was not paid. Thereafter, the applicant paid Rs. 70,823/- through cheque in favour of ESI corporation on 19.1.2023. The applicant contended that ESI corporation vide order under Section 45A of the ESI Act dated 3.2.2022 imposed liability of Rs. 4,21,575/- for the period January 2018 and March 2018 to December 2020, which is not legal. It is contended that due to various reasons, the applicant unable to attend personal hearing and could not find necessary documents at relevant time. The applicant contended that all the orders passed by the ESI Corporation are in haste and without application of mind. In such circumstances, the applicant constrained to file the application. The applicant paid by way of interim relief that order under Section 45A of the ESI Act dated 3.2.2022 and prohibitory order in Form C-19 dated 25.7.2022 may be stayed till final disposal of main application and its bank account may be released. It is also prayed that waiver may be granted from depositing 50% amount as per Section 75(2B) of the ESI Act.

3. The opponents contended that the order under Section 45A dated 3.2.2022 for the period January 2018 and March 2018 to December 2020 for amount of Rs. 4,21,575/- and thereafter recovery certificate in Form C-19 dated 25.7.2022 for amount of Rs. 5,70,142/- were issued as no contribution paid by the applicant which was due against it. It is contended that it is obligatory on the part of the applicant to inform ESI corporation about change of

address which is not done. It is contended that the applicant in registration form shown nature of business as commercial establishment and number of employees as 20. On the basis of information and particulars furnished by the applicant, ESI code was allotted to it. It is contended that notice in Form C-18 (Adhoc) dated 12.4.2021 was issued to the applicant and opportunity of personal hearing was given on 11.5.2021. However, the applicant neither attended nor submitted any representation. Hence, another chance of personal hearing was afforded to the applicant on 20.12.2021, but again of no avail. Thereafter, press note was issued in local newspapers and one more opportunity of personal hearing was given on 27.1.2022, but not attended by the applicant. Hence, order under Section 45A of the ESI Act was passed followed by recovery certificate in Form C-19. Lastly, it is contended that the applications may be rejected.

4. The applicant has deposited amount of Rs. 70,723/- vide Cheque dated 19.1.2023 with ESI Corporation and thereafter deposited DD of Rs. 1,40,064/- in Court on 21.2.2023. Thus, the 50% of the amount claimed is deposited and compliance of provisions of Section 75(2B) of the ESI Act is made. 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 3.2.2022 and prohibitory notice in Form C-19 dated 25.7.2022 are hereby stayed till final decision of the main application.
- 4) The ESI corporation is directed to release the bank account of the applicant with the Bank of Baroda, PCMC Branch, Pimpri Chinchwad Pune.
- 5) No order as to costs.

Pune
Date : 07.12.2023
nsp/-

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