

MHIC120001752022



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

Application ESI NO. 15 OF 2022

Jadhavrao Enterprises
Sinhadgad Rd, Pune 411 041 ... Applicant

VERSUS

The Deputy Director,
Employees State Insurance Corporation
Bibewadi, Pune 411 037 & Ors. ... Opponents

ORDER BELOW EXH. C-2
(Dated : 23.11.2023)

Heard ld. Counsels for the applicant and opponents.
Perused reply of the opponents at Exh. E-6. I have also gone through
the case record.

2. It is the contention of the applicant that it is engaged in
the work of civil construction activity and providing material and
sub-contractual manpower to its clients for construction work. The
applicant is under contract to provide civil construction work to M/s.
Nanded City Development & Construction Company Ltd. and solely
working on the project of said principal employer. It is contended
that the ESI Corporation issued circular dated 31.7.2015 and
extended benefits of ESI scheme to construction site workers w.e.f.

1.8.2015. Therefore, applicant generated ESI code. However, the Builder Association of India challenged said circular before Hon'ble Bombay High Court. As the matter was subjudice, hence the applicant has not paid ESI contribution as its employees were appointed for construction activity. The Hon'ble Bombay High Court upheld the circular dated 31.6.2015, hence Builders Association of India filed Special Leave Petition against said order before Hon'ble Apex Court and the Hon'ble Apex Court vide order dated 6.7.2018 stayed the circular extending ESI benefits to the construction site workers. Thereafter, ESI Corporation issued circular dated 26.9.2018 and clarified that no ESI contribution may be collected from the construction site worker and their employers during the period of stay order by the Hon'ble Supreme Court. Thereafter, the applicant has not remitted ESI contribution. It is contended that no office staff was appointed during the period of contribution and all the workers were appointed through contractor for construction activity. Hence, the applicant was not under obligation to remit the ESI contribution. However, ESI corporation issued notice in Form C-18 and the representative of the applicant appeared for personal hearing on 26.8.2020. He demanded time to submit requisite documents because the office of the applicant was not functioning on account of lock down due to pandemic of Covid 19. However, the ESI corporation passed order under Section 45A of the ESI Act dated 17.9.2020 claiming Rs. 6,88,215/- for the period from August 2015 to December 2019, without considering the material facts on record and thereafter issued prohibitory order dated 8.12.2021 for recovery of Rs. 10,33,113/-. In such circumstances, the applicant constrained to file the application and by way of interim relief prayed that the

execution and operation of recovery notice in Form C-19 dated 22.9.2021, order under Section 45A of the ESI Act dated 17.9.2021 and prohibitory order dated 26.11.2021 may be stayed till decision of final application.

3. The opponents contended that the applicant has not made compliance of provisions of Section 75(2B) of the ESI Act and not deposited 50% of the amount claimed, hence application is liable to be dismissed. It is contended that the applicant failed to pay contribution for the period from April 2015 till December 2019, hence show cause notice in Form C-18 dated 4.2.2020 was issued and an opportunity of personal hearing was afforded to the applicant on 17.3.2020 and thereafter, one more opportunity was given on 26.8.2020, which was attended by the representative of the applicant. However, the applicant failed to produce the requisite record. Hence, next date of personal hearing was fixed on 10.9.2020, but the applicant neither attended the personal hearing nor submitted any representation. Hence, speaking order under Section 45A of the ESI Act dated 17.2.2020 was passed. Lastly, it is claimed that the application of the applicant may be rejected.

4. In the instant case, the applicant has deposited amount of Rs. 3,44,108/- in favour of the ESI corporation as per letter dated 25.2.2022 and subsequently, deposited Rs. 1,72,449/- vide Demand Draft dated 18.10.2023 in court, and thereby deposited total Rs. 5,16,557/- which is 50% of the amount claimed vide prohibitory order dated 8.12.2021. 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. Hence, I pass the following order :-

ORDER

- 1) The application [Exh. C-2] is allowed.
- 2) The execution and operation of recovery notice in Form C-19 dated 22.9.2021, order under Section 45A of the ESI Act dated 17.9.2021 and prohibitory order dated 26.11.2021 are hereby stayed till final decision of the main application.
- 3) No order as to costs.

Pune
Date : 23.11.2023
nsp/-

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