

IN THE E.S.I. COURT, AT AURANGABAD

Application (ESI) No.2 of 2014
(CNR No.MHIC20-000138-2014)

HOTEL RAVIRAJ
Dr.Rajendra Prasad Marg,
Adalat Road, Aurangabad.
Through it's Partner

.. **Applicant**

Versus

- 1) Joint Director,
Employees State Insurance Corporation
SRO, Plot No.16, Chikalhana MIDC,
Aurangabad & another

.. **Respondents**

ORDER BELOW EXH.2
(Delivered on 23rd October, 2018)

1) Main application is filed under section 75 of the E.S.I. Act challenging the notice dated 13-5-2014 issued by respondent. By issuing notice the respondent has passed prohibitory order against the applicant. By filing application at Exh.2 the applicant has requested to grant stay to the notice till final disposal of the main application. Further, respondents be directed to release the Bank Account of the applicant maintained in The Shamrao Vithal Co-operative Bank Ltd., Aurangabad.

2) In short the contents in the application are that, the applicant is partnership firm registered under the Partnership Act. The applicant is running the Hotel Raviraj Restaurant and Bar, near Adalat Road, Aurangabad. The ESI, PF Acts are applicable to the applicant unit. On 13-5-2014 the respondent has issued notice for

recovery of contribution amount including interest and damages of Rs.1,86,652/-. Further, as per said notice the respondent has passed prohibitory order for restraining their account in Shamrao Vithal Co-operative Bank Ltd., Aurangabad. As per contention of applicant they have paid amount of Rs.22,656/- for ESI contribution by cheques dated 22-1-2003, 21-2-2003, 21-3-2003 and 19-5-2003. Further, they have also deposited ESI contribution in cash of Rs.25,000/- by challans. The applicant has shown the correspondence to the respondent authority. But, they have not considered and issued notice illegally. As per notice the respondent has asked the applicant to deposit amount of Rs.1,86,652/- i.e. contribution amount, interest and damages. Further, the respondent has given direction to Branch Manager, The Shamrao Vithal Co-operative Bank Ltd. not to obtain account of applicant till further order. As per contention of applicant the order issued by respondent is illegal. Further, due to prohibitory order the applicant is unable to pay the payment to the parties and staff. Therefore, the applicant has made out prima facie case and requested to grant protection till final disposal of the main application.

3) The respondent has filed say and written statement at Exh-16. The respondent has admitted the business of applicant. The respondent has denied all other allegations. Further, the applicant is not regular in making payment of ESIC contribution. Further, as per provisions of Section 75(2)(B) the applicant has not deposited 50% amount. Hence, application is not maintainable.

4) Further, previously the applicant has filed ESI Application Nos.2/1988, 1/1989, 4/1990 and 4/1994 challenging the recovery notices which are dismissed. The applicant has not disclosed said facts. Further, on 13-5-2014 the respondent has issued prohibitory order under section 45-C to 45-I of ESI Act for contribution, interest, damages as mentioned therein. Recovery certificates are issued on 3-6-1993 for ESI contribution amount for the period December-1986 to March-1988. The applicant has made payment in the year 2004. But, they have not made payment of entire amount. Further, due to delayed payment of contribution the respondent is having authority to claim interest, damages. Accordingly the respondent has issued notice dated 13-5-2014. The notice is legal. Further, the applicant has not complied mandatory provisions of deposit 50% amount. Hence, requested to reject the application.

5) From the pleadings of the parties, following Points arose for my consideration and I have recorded findings with reasons thereon as under :-

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the applicant has made out a prima-facie case ?	No
2)	Whether the balance of convenience lies in favour of applicant ?	No
3)	What Order ?	As per final Order.

REASONS

6) **As to Point Nos.1 & 2 :-**

In support of contention both the counsels have argued before me. Alongwith list Exh.4 the applicant has produced copies of letters issued to the respondents. The letters are issued on 22-1-2003, 21-2-2003, 21-3-2003 and 19-5-2003. As per said letters the applicant has deposited contribution amount from December-1988 to March-1989. By cheques the applicant has deposited amount of Rs. 22,656/-. Further, on 6-3-2004, 13-5-2004, 25-5-2004 and 17-8-2004 the applicant has deposited contribution of Rs.25,000/-. But, the applicant has not mentioned the period of ESI contribution. As per provisions of ESI Act if there is delay for payment of ESI contribution then the Corporation is entitled to charge interest and claim damages.

7) From the documents produced by the applicant it is crystal clear that, the applicant has deposited contribution amount after lapse of near about 15 years period. He has deposited contribution for the period December-1988 to March-1989 in the year 2003 and 2004. Therefore, there is delay of near about 15 years. Hence, by issuing notice dated 13-5-2014 the respondent has claimed interest, damages, further interest and contribution amount of Rs.1,86,652/-. Therefore, the respondent has given direction and restrained for operating the account in the bank. According to me the applicant has failed to prove that, the order dated 13-5-2014 is illegal.

Therefore, the applicant has not proved prima facie case. Balance of convenience is not in their favour. Hence, I proceed to pass the following order :-

Order

Application Exh.2 is rejected.

Sd/-

(R.S. Ghatpande)

Judge,

E.S.I. Court, Aurangabad

Date: 23-10-2018

sdk/-

Industrial Court, Aurangabad