

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 4916 of 2023**

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THE DEPUTY DIRECTOR I/C, EMPLOYEE STATE INSURANCE
CORPORATION

Versus

AMBALAL SARABHAI ENTERPRISES LIMITED & ANR.

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Appearance:

MS DIMPLE A THAKER(6838) for the Appellant(s) No. 1
for the Defendant(s) No. 1,2

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 03/04/2024

ORAL ORDER

1. Over and above the other grounds raised in the appeal memo, learned advocate appearing for the appellant states that the appellant – Employees State Insurance Company through the In-Charge Deputy Director has challenged the order of the ESI Court, Vadodara since the order fails to take into consideration the provision of Section 85B of the ESI Act and the Regulation 31(c) of the ESI (General) Regulation, 1950. The statutory power of the ESI Corporation to recover damages in case of delay in the contribution is a vested right and the ESI Court has failed to consider the said

provision and had sliced down the amount of the damages payable to 50% which is noted as Rs.58,804/- and thereby, observing that the order dated 31.5.2019 of the present appellant has been mechanically passed and had further observed that the delay in contributing the ESI amount is not deliberate and intentional. Ms. Thaker submitted that the impugned order dated 12.1.2023 of the ESI Court, Vadodara is contrary to the provisions of law and is without application of mind since the ESI Court has not given any reasons for such conclusion to refer to any mitigating circumstances much less any prayer to consider it as under the special provision of SICK Industrial Companies Act, 1985.

2. Considering the submissions made, ADMIT. Following substantial questions of law arise for consideration of this Court:-

(i) Whether the Learned Employee State Insurance Court completely failed to consider the provisions of Employee State Insurance Act, 1948 and Regulations therein more particularly Section 85-B of the ESI

Act and have thereby failed to exercise the jurisdiction vested in it?

(ii) Whether the Learned Employee State Insurance Court completely failed to appreciate Section 85-B which empowers ESI Corporation to reduce & waive the damages for the establishment which is a sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the board for Industrial & Financial reconstruction established under Section 4 of the Sick Industrial Companies (Special Provision) Act, 1985 but the ESI Court failed to appreciate that employer was never registered with BIFR u/s 4 of Sick Industrial Companies (Special Provision) Act, 1985 & thereby ESI Court passed impugned judgment contrary to the provision of law?

(iii) Whether the Learned Employee State Insurance Court exercised the jurisdiction not vested in it by waiving 50% of the amount of damages on its own in complete contravention of the provisions of the Act on the baseless ground that the impugned order

is mechanical and that the delay in unintentional without assigning any reasons as how the impugned order is mechanical in nature and that in what manner the delay does not appear to be unintentional?

(iv) Whether the Learned Employee State Insurance Court completely failed to consider the provisions of Employee State Insurance Act, 1948 and regulations therein more particularly Regulation 31(c) of the ESI (General) Regulations, 1950?

(v) Whether the Learned Employee State Insurance Court completely failed to consider the provisions of Regulation 31 (c) of the ESI (General) Regulations, 1950 which statutorily empowers ESI Corporation to levy damages if an employer fails to pay contribution within the periods specified under Regulation 31 of the ESI (General) Regulations, 1950 which mandatorily requires employer to pay contribution within the last day of calendar month in which the contribution falls due?

(vi) Whether the Learned Employee State Insurance Court completely failed to consider the provisions of Employee State Insurance Act, 1948 and regulations therein more particularly Section 38 & 40 of the ESI Act?

(vii) Whether the Learned Employee State Insurance Court erred in passing impugned judgment on the reasoning that the order dated 31.05.2019 passed by the Appellant Corporation is mechanical & Employer has not delayed the contribution with malafide intention is not proved, whether such findings are absolutely in contradiction to the statutory provision more particularly Section 85-B of the Act & Regulation 31(c) read with Regulation 31 of the ESI (General) Regulations, 1950?

Maulik

(GITA GOPI,J)