



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 23<sup>RD</sup> DAY OF MARCH, 2026**

**BEFORE**

**THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA**

**MISCELLANEOUS FIRST APPEAL NO. 7347 OF 2015 (ESI)**

**BETWEEN:**

1. THE EMPLOYEES STATE  
INSURANCE CORPORATION,  
NO.10, BINNY FIELDS,  
BINNY PET,  
BANGALORE-560 023,  
REP. BY ITS JOINT DIRECTOR.
2. THE JOINT DIRECTOR  
THE EMPLOYEES STATE  
INSURANCE CORPORATION,  
NO.10, BINNY FIELDS,  
BINNY PET,  
BANGALORE-560 023.
3. THE DEPUTY DIRECTOR  
THE EMPLOYEES STATE  
INSURANCE CORPORATION,  
NO.10, BINNY FIELDS,  
BINNY PET,  
BANGALORE-560 023.

Digitally signed by  
MAHALAKSHMI B M  
Location: HIGH  
COURT OF  
KARNATAKA

...APPELLANTS

(BY SRI. PRAVEEN KUMAR S, ADVOCATE FOR  
SRI. YATHISH S., ADVOCATE)

**AND:**

M/S HARSHA WHEEL MOVERS PVT. LTD.,  
NO.11, SADARAMANGALA,  
INDUSTRIAL AREA,  
MAHADEVAPURA POST,  
WHITE FIELD ROAD,



BANGALORE-560 048,  
REP. BY ITS GENERAL MANAGING DIRECTOR,  
MR. ASHOK SHARMA

...RESPONDENT

(V/O DATED 07.01.2019 PAPER PUBLICATION  
IS ACCEPTED IN R/O RESPONDENT)

THIS MFA IS FILED U/S 82(2) OF THE EMPLOYEES STATE INSURANCE ACT, 1948, AGAINST THE ORDER DATED 31.07.2015 PASSED IN E.S.I. APPLICATION NO.30/2010 ON THE FILE OF THE EMPLOYEES STATE INSURANCE COURT, BANGALORE, ALLOWING THE APPLICATION FILED U/S 75 OF THE ESI ACT.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

### **ORAL JUDGMENT**

The question that falls for consideration is "*whether delay in payment of ESI contribution, though subsequently reassessed and paid, would still attract damages under Section 85B of the Employees' State Insurance Act, 1948?*"

2. This miscellaneous first appeal is filed by the Employees State Insurance Corporation ('Corporation' for short), calling in question the order dated 31.07.2015 passed in ESI Application No.30/2010 by the Employees



State Insurance Court, Bengaluru ('ESI Court' for short), whereby the application filed by the respondent-employer came to be allowed and the order dated 11.01.2008 passed under Section 85B of the Employees' State Insurance Act, 1948 ('ESI Act' for short), levying damages of ₹1,19,396/- was set aside.

**Brief facts:**

3. The respondent-employer is covered under the provisions of ESI Act. The contribution payable for the period from July 1992 to March 1995 was not remitted within the prescribed period and came to be paid belatedly during the years 2005-2007.

4. Subsequently, after inspection and verification of the records, the Corporation issued a show-cause notice dated 29.10.2007, proposing levy of damages under Section 85B of the ESI Act for delayed payment of contribution. After considering the reply, the competent authority passed an order dated 11.01.2008 levying



damages of ₹1,19,396/-. Aggrieved by the same, the respondent-employer filed ESI Application No.30/2010, wherein the ESI Court, by the impugned order allowed the application and set aside the order of damages on the ground that the contribution was reassessed and finally determined only at a later point of time.

5. Learned counsel for the appellant-corporation would contend that the respondent-employer is under a statutory obligation to remit contribution within the time prescribed under the ESI Act and Regulation. The contributions relating to the period from 1992 to 1995 have been admittedly paid only in the years 2005-2007 and there is an inordinate delay attracting Section 85B. It is submitted that the ESI Court has erred in holding that there was no delay merely because the contribution was reassessed at a later stage. The reassessment of contribution does not obliterate the delay, nor does it shift the statutory due date. It is submitted that the impugned



order is contrary to the settled principles governing levy of damages under the ESI Act and is liable to be set aside.

6. Though the employer is served with notice, he has chosen to remain absent.

7. It is noted from the records that the respondent has contended that the contribution has initially determined on an *ad hoc* basis and later reassessed upon production of records and the liability was crystallized only upon reassessment and the payments were made thereafter and therefore, there was no willful delay warranting the levy damages under Section 85B.

8. This Court has carefully considered the submissions and perused the material on record.

9. It is not in dispute that the contribution pertaining to the period July 1992 to March 1995 was remitted only during the years 2005-2007, after a



considerable lapse of time. Section 85B of the ESI Act reads as under:

**"85B.Power to recover damages.–**(1)*Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the regulations:*

*Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard:*

*Provided further that the Corporation may reduce or waive the damages recoverable under this section in relation to an establishment which is a sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in regulations.*

*(2) Any damages recoverable under sub-section (1) may be recovered as an arrear of land revenue or under section 45C to section 45-I."*



10. The statutory scheme under the ESI Act mandates that the contribution shall be paid within the prescribed period and any delay in remittance attracts consequences. The reasoning adopted by the ESI Court proceeds on the premise that, since the contribution was reassessed and finally determined at a later point of time, the delay cannot be attributed for the earlier period. This approach in the considered opinion of this Court is erroneous and contrary to the statutory framework.

11. The liability to pay contribution under the ESI Act arises by operation of law and is not dependent upon the final determination by the authority. The Apex Court in the case of ***Goetze (India) Limited Vs. Employees' State Insurance Corporation***<sup>1</sup> (*Goetze India Ltd.*) has held at paragraph No.9 as under:

*"9. As there was delay in making the payment of the contribution the Corporation had issued notice on 29-6-1990 at the first instance and thereafter the order was passed under Section 45-A*

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<sup>1</sup> (2008) 8 SCC 705



*of the Act on 23-7-1992. The same was challenged before the ESI Court in which an interim stay was granted on 9-10-1992. During the pendency of the matter there was reverification and the quantum payable by the appellant was worked out. The liability to pay interest is statutory. There is no power of waiver. The question of any compromise or settlement does not really arise. Even otherwise the order of the ESI Court referred to and relied upon by the appellant is of no assistance to the appellant. It only noted statement of the appellant that he had deposited the contribution payable. The reference to "no further dues" is obviously relatable to the contribution payable and nothing beyond that."*

*(Emphasis supplied)*

12. The Apex Court in **Goetze India Ltd.** has held that the liability to pay interest is statutory and there is no power of waiver. Similar view was taken by this Court in the case of **The ESI Corporation Vs. M/s Renram Fashions India Pvt. Ltd.**<sup>2</sup> (M/s Renram Fashions), wherein it was held at paragraph Nos.8 and 9 as under:

*"8. Learned ASG in support of his arguments also relied upon judgments of the Apex Court as well as this Court.*

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<sup>2</sup> MFA 3186/2017 & connected matter D.D. 19.11.2024



9. Firstly, learned ASG relied upon judgment of this Court in the case of **The Director, ESI Corporation -vs- M/s Vikram Hospital Pvt. Limited** in MFA No.5144/2017 (ESI) dated 2<sup>nd</sup> June 2023, wherein this Court with regard to damages is concerned relied upon the judgment of the Apex Court in the case of **Horticulture Experiment Station Gonikoppal, Coorg -vs- Regional Provident Fund Organization** reported in (2022) 4 SCC 516, wherein the Apex Court held that failure to deposit contribution - breach of civil obligations/liabilities committed by employer, is sufficient for imposition of penalty or damages and there is no further requirement on authority concerned to examine the existence of element of actus reus/mens rea or to examine issue of justification, for imposing damages and having applied the principle, this Court allowed the appeal and set aside the impugned order therein.”

13. The Co-Ordinate Bench of this Court in the case of **Employees State Insurance Corporation Vs. Karnataka State Open University<sup>3</sup>** (KSOU) has held that the delay in payment of contribution and the damages

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<sup>3</sup> MFA No.3912/2021 D.D. 21.06.2023



claimed in terms of Section 85B of the ESI Act is in *pari materia* with Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act, 1952 for short).

14. The Apex Court in ***Horticulture Experiment Station Gonikoppal, Coorg Vs. Regional Provident Fund Organization***<sup>4</sup> (*Horticulture Experiment*) has held that in cases of failure to deposit contributions and imposition of damages for delayed payment, there is no requirement for the authority concerned to examine the existence of element of *mens rea* or *actus reus*. However, the authority is required to examine the issue of justification for imposing damages and has held at paragraph Nos.11, 12, 13, 14, 15 and 16 as under:

*"11. Undisputedly, the establishment of the appellant(s) was covered under the provisions of the 1952 Act, but still failed to comply with the same and for such non-compliance of the mandate of the 1952 Act, initially the proceedings were initiated under Section 7-A and after adjudication was made*

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<sup>4</sup> (2022) 4 SCC 516



*in reference to contribution of the EPF which the appellant was under an obligation to pay and for the contravention of the provisions of the 1952 Act, the appellant(s) indeed committed a breach of civil obligations/liabilities and after compliance of the procedure prescribed under the 1952 Act and for the delayed payment of EPF contribution for the period January 1975 to October 1988, after affording due opportunity of hearing as contemplated, order was passed by the competent authority directing the appellant(s) to pay damages as assessed in accordance with Section 14-B of the 1952 Act.*

*12. A two-Judge Bench of this Court in Shriram Mutual Fund case, while examining the scope and ambit of Section 15-D of the SEBI (Mutual Funds) Regulations, 1996 regarding imposition of penalty for certain defaults in case of mutual funds, examined the question as to whether mens rea is an essential element for imposing penalty for breach of civil obligations and taking note of the binding precedent of this Court held that mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.*

*13. Relevant paras 33 and 35 of the judgment are reproduced as under: (Shriram Mutual Fund case, SCC pp. 372-76)*



*"33. This Court in a catena of decisions has held that mens rea is not an essential element for imposing penalty for breach of civil obligations:*

*(a) Director of Enforcement v. M.C.T.M. Corpn. (P) Ltd. : (SCC pp. 478 & 480-81, paras 8 & 12-13)*

*'8. It is thus the breach of a "civil obligation" which attracts "penalty" under Section 23(1)(a) of the FERA, 1947 and a finding that the delinquent has contravened the provisions of Section 10 of the FERA, 1947 that would immediately attract the levy of "penalty" under Section 23, irrespective of the fact whether the contravention was made by the defaulter with any "guilty intention" or not. Therefore, unlike in a criminal case, where it is essential for the "prosecution" to establish that the "accused" had the necessary guilty intention or in other words the requisite "mens rea" to commit the alleged offence with which he is charged before recording his conviction, the obligation on the part of the Directorate of Enforcement, in cases of contravention of the provisions of Section 10 of the FERA, would be discharged where it is shown that the "blameworthy conduct" of the delinquent had*



*been established by wilful contravention by him of the provisions of Section 10 of the FERA, 1947. It is the delinquency of the defaulter itself which establishes his "blameworthy" conduct, attracting the provisions of Section 23(1)(a) of the FERA, 1947 without any further proof of the existence of "mens rea". Even after an adjudication by the authorities and levy of penalty under Section 23(1)(a) of the FERA, 1947, the defaulter can still be tried and punished for the commission of an offence under the penal law,...*

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*12. In Corpus Juris Secundum, Vol. 85, at p. 580, para 1023, it is stated thus:*

*"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."*

*13. We are in agreement with the aforesaid view and in our opinion, what applies to "tax delinquency" equally holds good for the "blameworthy" conduct for contravention of the provisions of the FERA, 1947. We, therefore, hold that mens rea (as is understood in criminal*



*law) is not an essential ingredient for holding a delinquent liable to pay penalty under Section 23(1)(a) of the FERA, 1947 for contravention of the provisions of Section 10 of the FERA, 1947 and that penalty is attracted under Section 23(1)(a) as soon as contravention of the statutory obligation contemplated by Section 10(1)(a) is established. The High Court apparently fell in error in treating the "blameworthy conduct" under the Act as equivalent to the commission of a "criminal offence", overlooking the position that the "blameworthy conduct" in the adjudicatory proceedings is established by proof only of the breach of a civil obligation under the Act, for which the defaulter is obliged to make amends by payment of the penalty imposed under Section 23(1)(a) of the Act irrespective of the fact whether he committed the breach with or without any guilty intention.'*

*(b) J.K. Industries Ltd. v. Chief Inspector of Factories and Boilers: (SCC p. 692, para 42)*

*'42. The offences under the Act are not a part of general penal law but arise from the breach of a duty provided in a special beneficial social defence legislation, which creates absolute or strict liability without*



*proof of any mens rea. The offences are strict statutory offences for which establishment of mens rea is not an essential ingredient. The omission or commission of the statutory breach is itself the offence. Similar type of offences based on the principle of strict liability, which means liability without fault or mens rea, exist in many statutes relating to economic crimes as well as in laws concerning the industry, food adulteration, prevention of pollution, etc. in India and abroad. "Absolute offences" are not criminal offences in any real sense but acts which are prohibited in the interest of welfare of the public and the prohibition is backed by sanction of penalty.'*

*(c) STO v. Ajit Mills Ltd. : (SCC p. 110, para 19)*

*'19. ... Even here we may reject the notion that a penalty or a punishment cannot be cast in the form of an absolute or no-fault liability but must be preceded by mens rea. The classical view that "no mens rea, no crime" has long ago been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishments even where the offences have been defined to exclude*



*mens rea. Therefore, the contention that Section 37(1) fastens a heavy liability regardless of fault has no force in depriving the forfeiture of the character of penalty.'*

*(d) Gujarat Travancore Agency v. CIT :  
(SCC p. 55, para 4)*

*'4. ... It is sufficient for us to refer to Section 271(1)(a), which provides that a penalty may be imposed if the Income Tax Officer is satisfied that any person has without reasonable cause failed to furnish the return of total income, and to Section 276-C which provides that if a person wilfully fails to furnish in due time the return of income required under Section 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what is intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of Section 276-C, which speaks of wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. In most*



*cases of criminal liability, the intention of the legislature is that the penalty should serve as a deterrent. The creation of an offence by statute proceeds on the assumption that society suffers injury by the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence. In the case of a proceeding under Section 271(1)(a), however, it seems that the intention of the legislature is to emphasise the fact of loss of revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection the terms in which the penalty falls to be measured is significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in Section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision.'*

*(e) Swedish Match AB v. SEBI : (SCC p. 671, para 113)*

*'113. ... The provisions of Section 15-H of the Act mandate that a penalty of Rupees*



*twenty-five crores may be imposed. The Board does not have any discretion in the matter and, thus, the adjudication proceeding is a mere formality. Imposition of penalty upon the appellant would, thus, be a forgone conclusion. Only in the criminal proceedings initiated against the appellants, existence of mens rea on the part of the appellants will come up for consideration.'*

*(f) SEBI v. Cabot International Capital Corpn. : (SCC OnLine Bom paras 38, 43 & 45)*

*'38. Thus, the following extracted principles are summarised:*

*(A) Mens rea is an essential or sine qua non for criminal offence.*

*(B) A straitjacket formula of mens rea cannot be blindly followed in each and every case. The scheme of a particular statute may be diluted in a given case.*

*(C) If, from the scheme, object and words used in the statute, it appears that the proceedings for imposition of the penalty are adjudicatory in nature, in contradistinction to criminal or quasi-criminal proceedings, the determination is of the breach of the civil obligation by the offender. The word "penalty" by itself will not be determinative to*



*conclude the nature of proceedings being criminal or quasi-criminal. The relevant considerations being the nature of the functions being discharged by the authority and the determination of the liability of the contravener and the delinquency.*

*(D) Mens rea is not essential element for imposing penalty for breach of civil obligations or liabilities.*

*(E) There can be two distinct liabilities, civil and criminal, under the same Act.*

\* \* \*

*43. The SEBI Act and the Regulations, are intended to regulate the securities market and the related aspects, the imposition of penalty, in the given facts and circumstances of the case, cannot be tested on the ground of "no mens rea, no penalty". For breaches of provisions of the SEBI Act and Regulations, according to us, which are civil in nature, mens rea is not essential. On particular facts and circumstances of the case, proper exercise of judicial discretion is a must, but not on foundation that mens rea is essential to impose penalty in each and every breach of provisions of the SEBI Act.*

\* \* \*

*45. However, we are not in agreement with the appellate authority in respect of the*



*reasoning given in regard to the necessity of mens rea being essential for imposing the penalty. According to us, mens rea is not essential for imposing civil penalties under the SEBI Act and Regulations.'*

\* \* \*

*35. In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15-D(b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow."*



*(emphasis in original and supplied)*

*14. The three-Judge Bench of this Court in Union of India v. Dharamendra Textile Processors, while examining the scope and ambit of Section 271(1)(c) of the Income Tax Act, 1961 held that as far as the penalty inflicted under the provisions is a civil liability is concerned, mens rea or actus reus is not an essential element for imposing civil penalties and overruled the two-Judge Bench judgment in Dilip N. Shroff v. CIT and approved the view expressed by a two-Judge Bench of this Court in Shriram Mutual Fund case and held in paras 18 and 20 as under : (Dharamendra Textile Processors case, SCC p. 394)*

*"18. The Explanations appended to Section 271(1)(c) of the IT Act entirely indicates the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing return. The judgment in Dilip N. Shroff case has not considered the effect and relevance of Section 276-C of the IT Act. Object behind enactment of Section 271(1)(c) read with Explanations indicate that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability as*



*is the case in the matter of prosecution under Section 276-C of the IT Act.*

\* \* \*

*20. Above being the position, the plea that Rules 96-ZQ and 96-ZO have a concept of discretion inbuilt cannot be sustained. Dilip N. Shroff case was not correctly decided but SEBI case has analysed the legal position in the correct perspectives. The reference is answered. The matter shall now be placed before the Division Bench to deal with the matter in the light of what has been stated above, only so far as the cases where challenge to vires of Rule 967-Q(5) are concerned. In all other cases the orders of the High Court or the Tribunal, as the case may be, are quashed and the matter remitted to it for disposal in the light of present judgments. Appeals except Civil Appeals Nos.3397 & 3398-99 of 2003, 4096 of 2004, 3388 & 5277 of 2006, 4316, 4317, 675 and 1420 of 2007 and appeal relating to SLP (C) No. 21751 of 2007 are allowed and the excepted appeals shall now be placed before the Division Bench for disposal."*

*15. Taking note of the exposition of law on the subject, it is well-settled that mens rea or actus reus is not an essential element for imposing*



*penalty or damages for breach of civil obligations and liabilities.*

*16. The judgment on which the learned counsel for the appellant(s) has placed reliance i.e. ESI Corpn., the Division Bench in ignorance of the settled judicial binding precedent of which a detailed reference has been made, while examining the scope and ambit of Section 85-B of the Employees State Insurance Corporation Act, 1948 which is in pari materia with Section 14-B of the 1952 Act placing reliance on the judgment of Division Bench of this Court in Dilip N. Shroff held that for the breach of civil obligations/liabilities, existence of mens rea or actus reus to be a necessary ingredient for levy of damages and/or the quantum thereof."*

15. The liability under ESI Act arises by operation of law and is not dependent upon the final determination by the authorities. The employer is under a continuous obligation to correctly assess and remit contribution based on wages. A subsequent assessment may alter the quantum, but it does not efface the original liability or the delay in payment.



16. If the reasoning of the ESI Court is accepted, it would enable an employer to defer payment of contribution indefinitely and later escape liability of damages on the ground of reassessment, which would defeat the very object of the Act, which is a beneficial social welfare legislation ensuring timely contribution.

17. In the present case, the delay is not only admitted, but is substantial and remains unexplained. The respondent has neither demonstrated any sufficient cause that would justify such prolonged delay. As held by the Apex Court in the case of ***Horticulture Experiment***, *mens rea* or *actus reus* is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities. Therefore, the corporation was well within its powers in invoking Section 85B and levying damages. The ESI Court has failed to appreciate this aspect and has committed a manifest error in setting aside the order of damages. Accordingly, the point framed for consideration is answered in favour of the appellant-corporation and



against the respondent-employer and this Court pass the following:

**ORDER**

- i. The miscellaneous first appeal is hereby ***allowed***.
- ii. The order dated 31.07.2015 passed in ESI Application 30/2010 by the ESI Court at Bengaluru is hereby ***set aside***.
- iii. It is held that the respondent-employer is liable for damages under Section 85B of the Employee State Insurance Act, 1948 for the delayed payment of contribution pertaining to the period from July 1992 to March, 1995.

**Sd/-**

**JUSTICE K.S. HEMALEKHA**