

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.232/1999

Regional Director,ESI Corpn., .. Appellant (s)  
Kerala

Vs.

Metropolitan Engineering Co. Ltd., Kerala.. Respondent(s)

DATE :16.11.2000 : This/These matter (s) was/were  
called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU  
HON'BLE MR. JUSTICE S.N. VARIAVA

For Appellant (s) : Mr. Vijay K. Mehta, Adv.

For Respondent (s) : Ms. S. Karthika, Adv.  
Ms. Baby Krishnan, Adv.  
Mr. N.R. Shonker, Adv.

UPON hearing counsel the Court made the following

O R D E R

.....L.....I.....J  
.SP2

Appeal is dismissed in terms of the signed order.  
No costs.

.SP1

(Meenu Sethi) (Meena Trikha)  
Court Master Court Master

Signed order is placed on the file

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 232 OF 1999@@  
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Regional Director, ESI .. Appellant  
Corpn. Kerala

Vs.

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In this appeal the question raised for our consideration is whether the Employees Insurance Court and the High Court were justified in upsetting the order imposing damages for not making the ESI contributions in time, or not.

The respondent took the stand that on account of financial constraints and the fact that it had gone sick, it was not in a position to make the timely payments to the benefit of the insured persons.

The damages imposed were for the period from May, 1978 to January, 1981. The E.S.I. Court considered this aspect of the matter and took the view that the fact that the respondent was sick was not in dispute and the respondent was in terrible financial state for several years, and in those circumstances when there was no dishonest or contumacious conduct on the part of the respondent or acted in conscious disregard of its obligation or acted either deliberately or in defiance of law,

-2-

held that following the decision of the High Court in Regional Director E.S.I. Corpn. Vs. Sakthi Tiles -1988(2) KLT 280 the damages should be deleted and when the matter was carried in a writ petition to the High Court, the order made by the E.I. Court, stood affirmed.

Learned counsel for the appellant submitted that the Regional Director had taken into consideration the explanation offered by the respondent in the matter of delayed contributions such as the unit being sick, labour un-rest which resulted in a lock-out and its closure ultimately and, thereafter, computed the damages payable and each one of the reasons given by the respondent stood rejected. However, the E.I. Court looked into each of these aspects and ultimately held that the reasons given by the respondent are good and sufficient and fell within the scope of the decision in Regional Director, E.S.I. Corpn. Vs. Sakthi Tiles -1988(2) KLT 280 and, thereafter, gave the relief. We think, as did the High Court, the ESI Court gave cogent reasons to make the order in detail.

Shri Mehta, learned counsel, however, submitted that the E.S.I. Court had not taken note of the fact that the employees part of the contribution had also not been remitted

-3-

and, therefore, to that extent damages should have been imposed against the respondent. On this aspect the E.S.I. Court has noticed that the respondent has not deducted any amount from the wages of the employees for running the business though as per records contributions shown to have been deducted and it was only in the nature of book adjustment. In the face of this finding on fact we do not think there is any substance in the contention advanced on behalf of the appellant. The appeal is dismissed. No costs.

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( S. RAJENDRA BABU )@@  
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.....J@@  
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( S.N. VARIAVA )@@  
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New Delhi,@@  
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November 16, 2000.