

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.10343 OF 2011

TATA CONSULTANCY SERVICES LTD.

APPELLANT(S)

VERSUS

**DEPUTY DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION**

RESPONDENT(S)

ORDER

1. The present appeal is directed against an order dated 04.08.2010, passed by the High Court of Judicature at Andhra Pradesh, at Hyderabad in an appeal¹ preferred by the respondent – Employees State Insurance Corporation under Section 82 of the Employees' State Insurance Act, 1948² challenging the order dated 31st December, 2001, passed by the Employees Insurance Court and Chairman, Industrial Tribunal – I, Hyderabad³ in a petition⁴ filed by the appellant.

2. As per the records, the relevant facts of the case are as follows :

(i) The predecessor-in-interest of the appellant, namely, CMC Limited, a Public Sector Undertaking was served with notices dated 07.12.1998 and 25.02.1999 calling upon it to furnish information in respect of arrears contribution for the period 1977 and 1988. When the said letters did not elicit any response, *vide* notice dated 07.12.1998 issued by the respondent, the predecessor-in-interest of the appellant was informed that the ESIC proposed to determine and recover the amount of contribution payable in respect of the employees at its factory/establishment under Section 45-A of the ESIC Act for the period

¹ CMA No.852 of 2002

² hereinafter referred to as "ESIC Act"

³ For short "the Tribunal"

⁴ E.I.C. No.34 of 1999

between 1978 and 1998 being a sum of ₹2,80,209/- (Rupees Two Lakhs Eighty Thousand Two Hundred Nine only). A notice to show cause was issued to CMC Limited to explain as to why the assessment as proposed in the notice be not finalised. It was also stated that in the event, a response is not received, an order will be passed under Section 45-A of the ESIC Act, determining the amount of contribution due under the ESIC Act to be recovered in accordance with law along with interest @ 15% p.a., payable on the arrears of contribution for each day of default or delay in payment of dues.

(ii) No reply in response to the show cause notices was furnished by CMC Limited. As a result, the respondent – ESIC passed an order on 25th February, 1999, under Section 45-A of the ESIC Act, demanding contribution arrears of ₹2,80,209/- (Rupees Two Lakhs Eighty Thousand Two Hundred Nine only) alongwith interest of ₹4,722/- (Rupees Four Thousand Seven Hundred Twenty Two only) for the period between 1978 and 1988. After the aforesaid order came to be passed, CMC Limited submitted a reply on 16th March, 1999, stating *inter alia* that nothing was due or payable to its employees under the ESIC Act. It was further stated that the contribution of the labourers/workers of the contractors were to be made by the contractors hired by the appellant and that the workers in question were not on the pay-rolls of the Company, and were working in the field of information technology solution. Along with the reply, a list of contractors with a break up of the period of their engagement and their ESI Code Nos. was provided.

(iii) The respondent having already passed an order on 25th February, 1999, which was prior to the date when the reply was sent to the notices issued under Section 45-A of the

ESIC Act, CMC Ltd. filed a petition under Section 75 of the ESIC Act⁵ before the Employees Insurance Court at Hyderabad claiming *inter alia* that it was not liable to pay any amount as assessed by the respondent and further, that the demand raised by the respondents was also time barred and not legally payable. Simultaneously, CMC Ltd. deposited 25% of the demanded amount (a sum of ₹71,208/-) before the ESI Court-Industrial Tribunal, as part payment to enable it to file the petition under Section 75 of the ESIC Act. *Vide* judgement dated 31st December, 2001, the Industrial Tribunal allowed the petition filed by the CMC Ltd. and set aside the order dated 25th February, 1999 passed by the Deputy Director of the ESIC.

(iv) Aggrieved by the aforesaid order, the respondent filed a Civil Miscellaneous Appeal⁶ before the High Court, that has been allowed while setting aside the order passed by the ESI Court, Hyderabad.

3. In the impugned judgment, the High Court has observed that the order passed under Section 45-A of the ESIC Act was preceded by notices but the CMC Ltd. did not respond thereto and it was for the said reason that a detailed order could not be passed by the Authority. It has also been observed that it was open for CMC Ltd. to demonstrate before the Tribunal, as to how the demand raised on it was illegal or improper and even raise a plea of seeking a set off in respect of the amounts already contributed/paid by it or any other agency, which could then have been taken into account by the Tribunal, but no such information was furnished. Moreover, CMC Ltd. did not bring any such facts to the notice of the High Court either. As a result, the order passed by the Tribunal was set aside. At the same time, the High Court observed that it was left

⁵ ESI Case No.34 of 1999

⁶ CMA No.852 of 2002

open to CMC Ltd. to place its contentions before the respondent – authority as to the extent of the contribution, if any, made by it or its contractors, who had purportedly supplied the labour, which could be taken into account before steps are taken to recover the amounts.

4. Learned counsel for the appellant submits that aggrieved by the impugned order, a petition for Special Leave to Appeal was preferred by CMC Limited, which was subsequently converted into a Civil Appeal. During the pendency of the Civil Appeal, CMC Limited merged with Tata Consultancy Services Limited in the year 2015. In view of the aforesaid development, an application was moved to bring Tata Consultancy Services Ltd. on record as the appellant, which was allowed by this Court *vide* order dated 21st February, 2024. On merits, learned counsel submits that the High Court failed to appreciate that the predecessor-in-interest of the appellant was a Government of India enterprise and was not covered under Section 2(m) of the Factories Act read with Section 2(14AA) of the ESIC Act, which defines the expression “manufacturing process”; that the appellant company as it then was, was exempted from application of the provisions of the ESIC Act; that the demand raised by the respondent is in respect of the ESI Contribution of casual employees and security men working under an independent contractor and, therefore, the appellant cannot be held to be a regular employer of the said employees and be saddled with the liability of making contributions under the ESIC Act.

5. The aforesaid submissions are, however, disputed by learned counsel for the respondent. It is submitted that the predecessor-in-interest of the appellant was an establishment of the Central Government and using power in the manufacturing process as defined under Section 2(14AA) of the ESIC Act. An Inspector of the respondent had conducted a preliminary inspection and submitted a report on 21st December, 1979, which was confirmed by the appellant in Form-

01 dated 14th April, 1980, in respect of the wages disbursed by the appellant w.e.f. 1st September, 1977, which attracted the provisions of Section 2(12) of the ESIC Act. As such, it is asserted that the appellant is covered under the definition of a 'factory'. This information was duly conveyed to CMC Limited *vide* letter dated 30th May, 1980 and the Company was advised to comply with the provisions of the ESIC Act. However, compliances were not made and instead, exemption was sought from the application of the ESIC Act. Further, the factory of the appellant was not exempted till 31st March, 1988 and the exemption granted was also in respect of regular employees for the period of one year, i.e., between 01st April, 1988 to 31st March, 1989 and subsequently upto 30th September, 2000. The appellant was conscious of its legal obligations as a principal employer, yet it limited the contributions for the period between 01st September, 1977 and 31st March, 1988 in respect of the regular employees and raised a dispute regarding application of the ESIC Act in respect of the employees purportedly engaged as contractual employees/casual employees.

6. Learned counsel for the respondent goes on to state that the appellant did not produce the records especially the ledgers etc. from the date of coverage despite several visits and requests made to it and instead, it kept sending letters for postponing the hearing. An Inspector from the office of the respondent conducted an inspection of the premises of the appellant on 10th July, 1991 and verified the ledgers for the period between 01st April, 1978 and 31st March, 1991, which reflected that the predecessor-in-interest of the appellant had left out 29 casual employees engaged through contractors as on the date of the inspection. After gathering the requisite information from the ledgers for the period between 01st April, 1978 to 31st March, 1991, the respondent issued a letter on 20th September, 1991 calling upon CMC Limited to pay the

contributions on the omitted wages, which it failed to do. Finally, a notice was issued under Section 45-A of the ESIC Act, details whereof have been referred to hereinabove.

7. It is, thus, submitted by learned counsel for the respondent that the appellant was under an obligation to deposit the contributions in respect of the 29 employees, as detailed in its ledger and it is not for the respondent to identify the contractors under whom the said workmen were purportedly serving, as the appellant would have been treated as a principal employer in the instant case.

8. As for the plea taken by learned counsel for the appellant that the demand raised by the respondent ought to be for a reasonable period and not an unlimited period dating back to the block period between 1977 and 1988, learned counsel for the respondent submits that the appellant cannot take the benefit of the second proviso to sub-section (1) of Section 45-A of the ESIC Act that deals with determination of contribution in certain cases, as the said proviso was inserted in the ESIC Act by virtue of an amendment vide Act No.18 of 2010, that came into effect from 01st June, 2010. In other words, prior to the year 2010, there was no limitation provided for recovery of contribution under the ESIC Act.

9. We have heard learned counsel for the parties, perused the impugned judgment and the records.

10. The limited plea taken by learned counsel for the appellant before us is that the observations made by the High Court in the final para of the impugned judgment to the effect that it would be open for the appellant herein to state the extent of contributions, if any, made by it or the contractors, who had supplied the labour before the respondent, which could be taken into account before making any recovery, is untenable and impracticable in view of the long passage

of time. The appellant herein had stepped into the shoes of CMC Limited in the year 2015. In our opinion, absence of the records for the relevant period or their non-availability on a plea that CMC Limited had moved from the premises that was earlier occupied by it in Hyderabad to another premises in the same city, thereby making it difficult for the appellant to lay its hands on the relevant records or produce them before the respondent for seeking any set off, cannot be a valid plea to shirk payment of statutory dues.

11. Once CMC Limited had merged with the appellant herein in the year 2015, in terms of the Scheme of Amalgamation, duly sanctioned by the High Court of Bombay, and had taken over all the assets and liabilities of CMC Limited, there can be no doubt that the appellant had stepped into the shoes of CMC Limited for all effects and purposes. That being the position, the appellant cannot shake off the responsibility/liability, cast on it under the Statute. If the records are unavailable as stated by learned counsel for the appellant, the consequence would be that no set off can be given to the appellant for any contributions that it might have made by it or its predecessor-in-interest or for that matter, the contractors, who had supplied the labour at the relevant point of time. This would mean that the entire burden will fall on the shoulders of the appellant. In any case, as has been indicated by learned counsel for the appellant, the principal sum of ₹2,80,209/- (Rupees Two Lakhs Eighty Thousand Two Hundred Nine only) has mounted to ₹11,84,117/- (Rupees Eleven Lakhs Eighty Four Thousand One Hundred Seventeen only) as on 21st February, 2024. Looking at the financial stature of the appellant—Corporation, the said amount is so meagre that even otherwise, this Court is not inclined to interfere with the impugned judgement.

12. Accordingly, the present appeal is dismissed as meritless along with pending

application(s), if any.

13. Since the predecessor-in-interest of the appellant had deposited a sum of ₹71,208/- (Rupees Seventy One Thousand Two Hundred Eight only) before the Industrial Tribunal, Hyderabad towards 25% of the demanded amount at the time of filing a petition under Section 75 of the ESIC Act, the appellant is held entitled to claim a set off for the said amount alongwith interest, if any, accrued thereon. The appellant shall deposit the balance amount before the Industrial Tribunal within four weeks from today. The respondent will be entitled to approach the learned Presiding Officer, Industrial Tribunal, Hyderabad for release the entire amount alongwith interest, if any.

.....J.
(HIMA KOHLI)

.....J.
(AHSANUDDIN AMANULLAH)

**NEW DELHI;
13th MARCH, 2024.**

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No(s).10343/2011

TATA CONSULTANCY SERVICES LTD

Appellant(s)

VERSUS

DEPUTY DIRECTOR EMPLOYEES STATE INSURANCE CORPORATION Respondent(s)

Date : 13-03-2024 This appeal was called on for hearing today.

CORAM : HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Appellant(s) Mr. Shraman Sinha, AOR

For Respondent(s) Mr. Vaibhav Manu Srivastava, AOR
Mr. Mahesh Srivastava, Adv.
Ms. Ritika Prasad, Adv.UPON hearing the counsel the Court made the following
O R D E R

1. In terms of the signed order, the Civil Appeal is dismissed.
2. Pending application(s), if any, shall stand disposed of.

(RAVI ARORA)
COURT MASTER (SH)(NAND KISHOR)
COURT MASTER (NSH)

(signed order is placed on the file)