

62 M/s Matharu Tractors & Motors Versus ESI and others

Present: Sh. Arshdeep Singh Adv counsel for the petitioner.
Sh. G.S Brar Adv counsel for the respondent no.1 to 3.
Respondents no.4 and 5 exparte.

Order

1. Heard upon the application seeking temporary injunction, so filed by the petitioner against respondents, under Order 39 Rule 1 and 2 CPC. In abstract, it has been asserted by the petitioner that the petitioner is a proprietorship firm run by Harinder Singh and he is the sole proprietor. The stance of the petitioner being that since the franchisee of the petitioner has been cancelled, currently it is more of a defunct firm. Besides that, earlier to the cancellation there were only two employees, respondents no.4 and 5, working in the petitioner firm and consequently the unit of the petitioner was not amenable to the provisions of the Employees State Insurance Act, 1948. The grievance of the petitioner being that out of the blue, an inspector of ESI had visited the premises of the petitioner and obtained his signatures and rubber stamp on form no.1. Noteworthy is the fact that the form had been partially filled and many relevant columns had been left blank. It was further contended that instead of inscribing the names of respondents no.4 and 5, the list was unjustifiably expanded to ten employees by including eight imaginary persons which had been cryptically referred to in the form. Subsequently, after staying dormant for about three years, letter dated 15.01.2018 was received from the office of respondents no.1 and 2 raising a claim of ₹1,93,050/- as a regular contribution for the allegedly non existence ten employees, quantified according to notional wages. Thereafter correspondence between the petitioner and respondents no.1 and 2 ensued since the petitioner remonstrated with the

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petitioners against the demanded amount . Eventually the petitioner was called upon to deposit the demanded amount through letter dated 06.6.2018 within six days failing which recovery under Section 45-C to 45-I of the Act was to be initiated. In succession, letter dated 05.11.2019 was issued in which the demanded amount was enhanced to ₹2,67,480/- alongwith the interest. Terming the inspection report prepared by the inspector/SSO vague, whimsical and arbitrary, injunction had been sought. It was also averred in paragraph no.20 of the petition that as a condition precedent, 50% of the amount had been deposited by the petitioner. A sum of ₹90,547/- in the form of DD in favour of Regional Director ESI Corporation Chandigarh dated 29.01.2021 and another sum of ₹45,360/- on account of Regional Director ESI Chandigarh as DD no.638343 dated 03.7.2021 had been deposited by the petitioner. Ultimately a prayer for grant of injunction as made.

2. On notice being issued, respondents no.1 to 3 appeared through their counsel and filed a composite reply in which the assailed survey and survey form 01 alongwith the derivate correspondence between the petitioner and the respondents was defended with vehemence and it was counter averred that the petitioner was estopped from impeaching the legitimacy of the survey form since it bore the signatures and stamp of the petitioner. Remaining assertions were also refuted and ultimately a prayer for dismissal of the application was made.

3. Having recapitulated the very essence of the contending factions, at the very threshold of the deliberations, the Court adverts to Form no-01, Employers' Registration Form constituting the very epicenter of the

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controversy. Undeniably the same bears the signature and stamp of the petitioner but still the stance of the petitioner is that the same had been obtained in a ritualistic manner on the blank form and thereafter a half filled inchoate form had been handed over to the petitioner. Besides that the deficiency in recording the information in the assailed form was so grave that it left the form inherently flawed. Also the highlighted shortcomings in the form in question further vindicated the assertions of the petitioner at this prefatory juncture. On the first count, the Employer's Code number at the top of the first leaf of the form had been left blank. Besides that, the list of the employees so drawn on the last leaf of the form was as cryptic as it could be. Except for the first names of the referred ten employees neither their parentage nor any other essential antecedents had been mentioned and nor the signatures of the employees in question had been obtained. On this count, while assailing the legitimacy of this intrinsic document, predominant reliance was placed upon the judgment passed by *Hon'ble Karnataka High Court in case titled as Regional Director, ESI Corporation versus Karnataka Asbestos Cement Product and another reported in 1991(2) CLR 777* wherein a reference was made to the decision made by the Hon'ble High Court in case titled as *ESI Corporation Versus Subbaraya Adiga ILR 1988 Karnataka 1806*. In the said decision, it was held as follows:

“A list of employees prepared by the E.S.I. Inspector in the course of his visit to an establishment, in order to find out whether the provisions of the E.S.I. Act are attracted to it, must contain the name, father's name, place from which the employee hails, the designation, the length of service, emoluments and the signature or thumb impression of the employee, as the case may be, if at that time other persons other than the employees are present, the names and

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addresses of atleast two of them with their signatures and also the signature of the Proprietor or Manager or the person in-charge of the establishment should be obtained at the end of the list and a copy of which be furnished to the establishment.”

4. Apparently the requirement so highlighted in the cited judgment has not been even remotely adhered to by the ESI Inspector while filling up the assailed form in the case at hand. Needless to observe, it is the foregoing form which constitutes the fundamental underpinning of the succeeding proceedings which had been initiated by respondents no.1 to 3 against the petitioner. On the converse, the contesting petitioners were unable to explain as to why the elementary particulars of the enumerated employees along with their signatures or thumb impressions had not been obtained while filling up the form in question.

5. To further establish the fact that on the technical premise, the Court was qualified to grant injunction at this juncture, reliance was placed upon the judgment passed by *Hon’ble Calcutta High Court in case titled as Agarwal Hardware Industries Versus Employees’ State Insurance Corp reported in 1975(80) Cal. W.N.848* wherein it had been held in paragraph no. 7 that:

‘The same principle, in our opinion, would equally apply in the cases like the present one. There may be cases where not granting an interim relief pending an adjudication under Section 75 of the said Act may frustrate the very adjudication itself and render the final order to be passed by the Tribunal illusory. Therefore, it would be reasonable to consider that the said Act in conferring the jurisdiction to adjudicate on disputes specified by Section 75 of the Act impliedly granted the power of doing all such acts and employ all such means as are essentially necessary for effectively discharging its obligation to adjudicate and that statutory power carries with it the duty in proper cases to make orders for stay.

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6. Hence after compounding the entire gamut of foregoing deliberations the Court concludes that at this prefatory juncture it is the version of the petitioner which carries preponderance over the version of the respondents for the fundamental reason that prima facie, on the force of a sketchy Employers Registration Form ridden with fundamental deficiencies, respondents no.1 to 3 would not be able to establish at the outset with certitude that indeed the petitioner was amenable to the provisions of Employees State Insurance Act, 1948. It is only through the medium of evidence that this claim of the respondents can be decisively determined. Therefore a prima facie case is indeed made out in favour of the petitioner. Balance of convenience to that extent is also found tilting in favour of the petitioner and irreparable loss would ensue to the petitioner in case respondents no.1 to 3 proceed ahead with the recovery proceedings.

7. As far as the deposit of 50% of the amount due, mandatory under Section 75(2-B) of the Act is concerned, the claim of the petitioner was that already an amount of ₹90,547/- in the shape of Demand Draft had been deposited in favour of the Regional Director ESI Corporation Chandigarh on 29.01.2021 and another amount of ₹45,360/- had been placed upon record in the Court file in the form of Demand Draft no. 638343 dated 03.7.2021 drawn in favour of Regional Director, ESI Corporation. The consolidated amount, so deposited by the petitioner, therefore being 50% of ₹2,71,805/- which has been demanded by respondents no.1 to 3 from the petitioner. Having observed so, it surfaces on the scrutiny of the Demand Draft bearing no. 638343 for an amount of ₹45,360/- dated 03.7.2021 that it was valid only for a time frame of three

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months and the same has already lapsed. On the same analogy, the deposit made by the petitioner in the form of Demand Draft for an amount of ₹90,547/- cannot be counted as a deposit of the amount in question with the Court.

8. However, since the petitioner has exhibited his earnest intention to honour the requirement under section 75 (2)B of the Act by accounting for the 50% of amount so deposited by him through the means outlined hereinbefore, an opportunity is granted to the petitioner for ensuring effective compliance of the mandatory requirement under Section 75(2)(B) of the Act. Consequently the petitioner shall deposit the actual 50% amount so demanded by respondents no.1 to 3 in the Court/through treasury challan within a period of 20 days from the date of this order and on the deposit of the same in the Court, the following consequence in furtherance to the foregoing findings would arise :

9. Respondents no.1 to 3 would be restrained from recovering the amount in question in execution of the assailed order dated 06.06.2018 which had been subsequently enhanced to ₹ 2,71,805/- till the conclusion of the proceedings. On the deposit of the 50% amount in the Court, the petitioner will be at liberty to retrieve back the lapsed demand draft so placed upon record in the file as well as the other piecemeal amount which had been deposited in the name of Regional Director, ESI Corporation Chandigarh to the tune of ₹ 90,547/-.

10. Needless to observe, if the petitioner falters to deposit the directed amount in the Court within the outlined time frame in the manner so highlighted hereinbefore, the injunction application would be deemed to have been dismissed for non-compliance of the directive so issued by the Court.

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Injunction application is, therefore, disposed of accordingly. No observation made in this order would have any bearing upon the final outcome of the proceedings.

11. Proceeding further, from the perusal of the pleadings of the parties following issues are framed :-

1. Whether the demand so raised by the respondents from the petitioner though the impugned order dated 06.06.2018 and subsequently enhanced to ₹ 2,71,805/- is liable to be set aside, it being illegal and vexatious? OPP
2. Whether the petition is not maintainable in the present form? OPR
3. Whether the petition is barred by law of limitation? OPR
4. Relief.

No other issue arises or pressed for. Now to come upon 25.7.2022 for evidence of petitioner. PF/DM, list of witnesses and list of documents be filed within week by petitioner.

Pronounced in Open Court
Date of order: 01.4.2022
Manish Singh
Stenographer-II

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