

**M/S Manpower Services India Pvt. Ltd. Vs. Additional Commissioner-cum-regional Director, Esi**

**M/S Manpower Services India Pvt. Ltd. Vs. Additional Commissioner-cum-regional Director, Esi**

**SooperKanoon Citation :** [sooperkanoon.com/1119191](http://sooperkanoon.com/1119191)

**Court :** Delhi

**Decided On :** Jan-20-2014

**Judge :** Valmiki J. Mehta

**Appellant :** M/S Manpower Services India Pvt. Ltd.

**Respondent :** Additional Commissioner-cum-regional Director, Esi

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO No.30/2014 20th January, 2014 % M/S MANPOWER SERVICES INDIA PVT. LTD. ....Appellant Through: Mr. Trideep Pais, Advocate. VERSUS ADDITIONAL COMMISSIONER-CUM-REGIONAL DIRECTOR, ESIC & ANR. .... Respondents Through: CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This appeal is filed by the appellant/assessee under Section 82 of the Employees State Insurance Act, 1948 (hereinafter referred to as ESI Act) impugning the judgment of the ESI Court dated 22.7.2013 which has dismissed the petition filed by the appellant herein under Section 75 of the ESI Act. The petition under Section 75 of the ESI Act was filed by the appellant challenging the demand of damages of Rs.8,03,688/- under Section 85B of the ESI Act.

2. A reading of the impugned judgment of the ESI Court shows that the appellant had led evidence of one witness PW-1Sh. Rahul Garg. The respondent led evidence of five witnesses who deposed orally, proved relevant documents and justified the imposition of penalty/damages upon the petitioner. It is further noted by the ESI Court that the deposition of the only witness of the appellant herein is such that hardly any weightage can be given to the same because the witness of the appellant in cross-examination more or less answered by saying I do not know. Also the ESI Court has noted that the witness who deposed was not employed at the relevant time with the appellant and therefore evidence is only hearsay. The relevant observations are contained in para 19 of the impugned judgment and the same reads as under:

19. The onus to prove the issue no.1 was on the applicant/petitioner. Admittedly, the petitioner is covered under the ESI Scheme. The petitioner before this court is a company. Affidavit by way of evidence of Sh. Rahul Garg, Company Secretary to the petitioner was filed and the witness was examined as AW1 to support the claim of the petitioner. The witness has deposed that he was empowered and authorized to depose on behalf of the petitioner but during cross examination the witness admitted that no resolution has been passed by the company to file the present case or to depose on behalf of the company in his favour. The witness has not produced any such appointment letter also to show that he has been appointed by the company as Company Secretary and there is nothing on record except his oral submissions. Contrary to the contention, the witness admitted that he was attached with the company only for the period from mid 2002 to mid 2003 and as per record this case was filed in the year 2011 and therefore, the testimony of the witness does not have much credence. The witness was not working or attached with the petitioner during the period in question in this petition at all. The witness has further admitted/deposed regarding the inspection but failed to explain that how the petitioner has discharged liability. It is necessary to mention at the outset that witness has deposed nothing about any document relied by the petitioner in support of contention nor has deposed the complete facts. From the testimony of the witness during cross examination it also appears that the witness is not aware regarding the complete facts of the case and this petition is filed merely in mechanical manner, for the sake of filing the petition. In fact the witness

mostly/only answered I do not know as the answer to most of the questions and the witness even failed to depose regarding the documents which were put during his cross examination. In nut shell, the witness had admitted all the documents and correspondence relied by the respondent to show the liability of the petitioner during his cross examination and therefore, the testimony of the witness is not of much help to save the petition. The witness further admitted in one way or the other the liability of the applicant as all the material documents put during cross examination were admitted. Moreover the testimony of the witness also appears to be based on hearsay and therefore, cannot be relied. In fact the witness has also done nothing except the filing of the petition before this court and filing affidavit towards evidence. As admitted by the witness, the respondent has called the company for personal hearing and he has no personal knowledge about the present case. Further, the witness does not appear to be competent to file the petition or to depose before the court as he is neither authorized representative nor attorney of the petitioner, which is a company. The relevant documents in this respect have neither been produced nor proved by the petitioner.

(underlining added) 3. ESI Court thereafter has referred to the evidence led on behalf of the respondents and has referred to the fact that each of the witnesses has proved each of the different aspects of the case for imposition of damages against the appellant and these observations are contained in para 21 of the impugned judgment and which reads as under:

21. The respondent has examined its five officers in support of contention and justified the imposition of the penalty/damages upon the petitioner. The respondent witnesses deposed on oath the relevant facts and also proved the necessary documents. RW1 Mr. R.S. Chauhan, Joint Director, ESIC, HQ proved the notice issued to the petitioner whereby the petitioner was called for personal hearing on 19.04.2010 and deposed that none appeared on behalf of the petitioner for hearing. RW2 Mr. Rakesh Kumar has also supported the contention of the respondent who inspected the petitioner. RW3 proved the order dated 21.10.2010 under section 85-B of the Act and deposed that it was passed after application of mind. RW4 proved the inspection made against the petitioner. RW5 Mr. Prem Nath Ghai, Joint Director of ESIC proved the letters issued to the petitioners

Ex.RW5/1 and Ex.RW5/2 deposing that the petitioner was given hearing and their representative appeared and signed the proceeding sheet Ex.RW5/4. The witness also deposed regarding the personal hearings to the petitioner on 2.3.2007, 4.4.2007 and 19.4.2007. It is reiterated that the testimony of the RWs remained un-impeached and un-controverted and therefore there is no reason to disbelieve their testimonies. All the witnesses categorically proved the stand of the respondent along with the relevant documents in support of contention. The contention of the petitioner therefore, that levying of penalty/damages by the respondent is arbitrary and without any ground cannot be sustained. The applicant was inspected, given opportunity for proper hearing, their stand was considered and thereafter the order was passed levying the damages. As the petitioner has failed to pay the outstanding dues the respondent was right in taking appropriate legal action in this respect. The petitioner was given opportunity of hearing before passing of the orders against him.

4. In view of the above, it is clear that there is absolutely no error either in fact or in law in the impugned judgment whereby petition of the appellant herein under Section 75 of the ESI Act was dismissed.

5. Counsel for the appellant argued before me that the imposition of damages under Section 85B are discretionary and therefore ESI Court had committed an error in not quashing the imposition of penalty/damages once otherwise the requisite arrears were paid by the appellant. It is argued that the appellants mens rea and justification had to be considered and only thereafter damages/penalty could have been imposed in the proceedings under Section 85B.

6. The argument urged on behalf of the appellant is misconceived inasmuch as it is already held above that the appellant led evidence of a witness who had neither any personal knowledge and nor he could effectively answer on the basis of any record. To satisfy my judicial conscience, I have gone through the affidavit which is filed on behalf of the appellant at running pages 361 to 363 of the appeal paper book, and even in this affidavit which is of just six paragraphs, I do not find that this affidavit by way of evidence in any manner gives reasons or justification as to why damages/penalty should not have been imposed in the proceedings under

Section 85B. The paragraphs 2 to 6 in the affidavit filed on behalf of the appellant contain factual statements only in paras 2 to 4 and paras 5 and 6 contain only legal submissions. Factual paras 2 to 4 in the affidavit, and which do not give any justification or reasons for not imposition of the penalty, read as under:

2. That the company is an establishment covered under the ESI Scheme under the Code No.-11-55189, new Code No.11000551890001001 and engaged in the business of supplying of manpower services.

3. That the company accordingly was/is subjected for inspection and the Insurance Inspectors of ESI Corporation conducted inspection on 18.10.2006 preceded by inspections dated 07.09.2006 and 20.09.2006. Based on the balance sheet for the year, 2001 to 2005, the Inspecting officials detected short payment of Rs.55,135/- which was deposited by the company besides Rs.8,79,059/-and Rs.5,99,827/- as demanded by the ESI Corporation. The company represented the matter to the ESI authorities but no relief was granted.

4. That the company discharged its liability and deposited the amount as verified and demanded from time to time under the bonafide that no further liability shall thereafter be raised but the notice of damages amounting to Rs.8,03,688/-, which was contested and submitted before the quasi judicial authority which afforded a personal hearing. It was submitted during the personal hearing that the imposing of damages is penal in nature and cannot be levied in a mechanical manner.

7. In view of the above, I do not find any merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs. JANUARY20 2014  
Ne FAO No.30/2014

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**