



2024:KER:83428

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

MONDAY, THE 11TH DAY OF NOVEMBER 2024 / 20TH KARTHIKA, 1946

WP(C) NO. 18214 OF 2023

PETITIONER:

KERALA STATE ELECTRICITY BOARD LTD.,
REPRESENTED BY ITS SECRETARY (ADMINISTRATION),
VYDUDHI BHAVANAM, PATTOM,
THIRUVANANTHAPURAM, PIN - 695004

BY ADVS.
SRI.C.JOSEPH ANTONY
SRI.RAJU JOSEPH

RESPONDENTS:

- 1 THE EMPLOYEES STATE INSURANCE CORPORATION,
REPRESENTED BY DIRECTOR GENERAL,
EMPLOYEES' STATE INSURANCE CORPORATION, HEADQUARTERS,
PANCHDEEP BHAWAN COMRADE INDERJEET GUPTA (CIG) MARG,
NEW DELHI, PIN - 110002.
- 2 THE REGIONAL DIRECTOR,
THE REGIONAL OFFICE,
EMPLOYEES STATE INSURANCE CORPORATION,
PANCHDEEP BHAWAN,
NORTH SWARAJ ROUND,
TRICHUR, PIN - 680020
- 3 THE DEPUTY DIRECTOR,
SUB REGIONAL OFFICE,
EMPLOYEE STATE INSURANCE CORPORATION,
PANCHDEEP BHAVAN, THYCAUD,
THIRUVANANTHAPURAM,
PIN - 695014



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4 THE RECOVERY OFFICER,
OFFICE OF THE RECOVERY OFFICER, REGIONAL
OFFICE, EMPLOYEES STATE INSURANCE CORPORATION DIMS
OFFICE COMPOUND, NEAR GUEST HOUSE, THYCAUD,
THIRUVANANTHAPURAM, PIN - 695014

*ADDL.5 KSEB KARAR THOZHILALI FEDERATION,
REG. NO.01/21/2013, SHILPA,
TC 25/3035, MRRA - C20,
MATHUVILAKAM LANE, MALLOOR ROAD,
VANCHIYOOR P.O.,
THIRUVANANTHAPURAM,
REPRESENTED BY ITS GENERAL SECRETARY,
ABDUL LATHEEF E., AGED 70 YEARS,
SON OF EBRAHIMKUTTY,
RESIDING AT BINU COTTAGE,
CLAPPANA P.O, KARUNAGAPPALLY,
KOLLAM-690 525.

*(ADDITIONAL 5TH RESPONDENT IS IMPEADED AS PER
ORDER DATED 11.11.2024 IN I.A.No.1 OF 2024 IN
W.P.(C) No.18214 OF 2023).

BY ADVS.
ADARSH KUMAR
ASHOK SHENOY
SHASHANK DEVAN
P.S.GIREESH
SALIH P.A.
THEJALAKSHMI R.S.
UMASANKER U.U.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30.07.2024, THE COURT ON 11.11.2024 DELIVERED THE
FOLLOWING:



N. NAGARESH, J.

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W.P.(C) No.18214 of 2023

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Dated this the 11th day of November, 2024

J U D G M E N T

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The petitioner is a fully owned Government Company engaged in the business of electricity generation, transmission and distribution. The petitioner seeks to quash Exts.P4, P7, P9 and P10 and to direct the respondents not to initiate any steps to recover the amount covered by Exts.P4 and P7.

2. The petitioner states that the employees of the petitioner-KSEBL are in receipt of benefits substantially similar or superior to the benefits provided under the Employees State Insurance Act, 1948 and therefore they are not covered by the ESI Scheme. The salary of of the employees of the petitioner is more than ₹21,000/- per month and hence beyond the



maximum limit prescribed under Section 2(9) for being covered under the ESI Scheme.

3. The 3rd respondent launched Special Schemes for Promoting Registration of Employers and Employees (SPREE), as part of extending social security measures to the entire work force in the country. The Social Security Officer (Recovery) of the ESI visited the petitioner's office to conduct a survey. He informed the petitioner that a distinct code number is mandatory for the petitioner for availing exemption from ESI Scheme every year. The Chief Personal Officer of the petitioner therefore expressed willingness to join the SPREE Scheme subject to approval of the Board of Directors. The very next day, the petitioner was served with a notice stating that the factory of KSEBL falls within the purview of Section 2(12) of the ESI Act. The petitioner was required to register their employees.

4. As per Ext.P3 notice dated 25.10.2017, the 3rd respondent-Deputy Director, ESI informed the petitioner that under Section 40 read with Section 39 of the ESI Act, the



principal employer is required to pay employers' contribution and employees' contribution at the rate specified in Rule 51 of the ESI Central Rules. As per the notice, the 3rd respondent proposed to determine and recover amount of contribution from the petitioner for the period from 30.03.2017 to 31.03.2017 and from 01.04.2017 to 30.09.2017 on the assumption that there were 2000 employees and the average wages of each employee is ₹11,550/-. As per Ext.P3 notice, ₹91,05,871/- was proposed as contribution.

5. To Ext.P3 notice, the petitioner replied that the petitioner was not engaging any contract workers. Petty contract works were awarded to petty contractors. The petitioner had no control or supervision over those workers during the execution of the work. However, the respondents issued Ext.P4 notice dated 29.03.2021 demanding an amount of ₹1,70,29,595/- from the petitioner. Subsequently, the 3rd respondent passed Ext.P7 order dated 29.04.2022 demanding a total amount of ₹16,40,12,977/-. In Ext.P7 order, the number



of contract employees of the petitioner was shown as 4399 and the average monthly wages is shown as ₹14,766/-.

6. The petitioner was again served with Exts.P9 and P10 notices dated 17.04.2023. In Ext.P9, ₹2,87,05,415/- was demanded and in Ext.P10, ₹23,53,83,700/- was demanded. The petitioner states that Exts.P4, P7, P9 and P10 are highly illegal and arbitrary.

7. The petitioner argued that they are a Government Company and their employees are getting wages exceeding the ceiling limit of ₹21,000/- per month. Hence, they are exempted from the provisions of the ESI Act. The contributions demanded by the respondents are in respect of the workers engaged by petty contractors. The KSEB has no supervisory control over those workers and therefore KSEB cannot be considered as their principal employer. This issue goes into the very jurisdiction of the 3rd respondent to initiate proceedings against the petitioner.



8. The petitioner urged that the 3rd respondent ought to have considered the terms of the contract on the basis of which work contracts were awarded to petty contractors. No such attempt was made while issuing Exts.P4 and P7 orders. The ESI Corporation is empowered under Section 45 to conduct requisite enquiry in this regard. Exts.P4, P7, P9 and P10 are therefore liable to be set aside.

9. Respondents 1 to 4 resisted the writ petition filing counter affidavit. Respondents 1 to 4 submitted that the petitioner is covered under the ESI Act. The petitioner is engaging several workmen on contract / daily wage / piece rate basis, in addition to their permanent employees. Any establishment carrying on systematic, economic or commercial activities arising from customer service, is a “shop” under Section 1(5) of the ESI Act. Even if some power generation stations of the petitioner may come under the definition of “Factory”, since the petitioner is employing more than 10 employees, provisions of ESI Act are applicable to the



petitioner.

10. Being a Government organisation, the petitioner has the primary obligation to uphold all labour laws and set a model for other companies. The petitioner is however, hesitant in implementing the ESI Scheme in their establishment. The ESIC has extended the benefits of the Special Scheme for Promoting Registration of Employers and Employees (SPREE) to KSEB Limited. Following the coverage of the petitioner under the KSEB Scheme, the Sub Committee of the Regional Board of ESI Corporation in its meeting held on 02.08.2017 has rejected the pending exemption application filed by the petitioner. The petitioner was informed as per Ext.R1(e) letter dated 01.11.2017 that it has been covered under the SPREE Scheme and has been exempted from payment of ESI dues for the back period. The writ petition is therefore liable to be dismissed, contended respondents 1 to 4.

11. I have heard the learned counsel for the petitioner and the learned Standing Counsel representing respondents 1



to 4.

12. The petitioner is before this Court seeking to quash Exts.P4, P7, P9 and P10. Ext.P4 is an order issued by the Deputy Director of ESIC under Section 45A of the Employees State Insurance Act, 1948. By Ext.P4, the Deputy Director ordered the petitioner to pay contributions totalling to ₹1,70,29,595/- for the period from 30.03.2017 to 30.09.2017. Ext.P5 required the petitioner to pay an amount of ₹8,80,74,525/-.

13. The contention of the petitioner is that the petitioner is a Public Sector Undertaking. They have a Provident Fund Scheme and their employees are receiving benefits substantially similar or superior to the benefits provided under the ESI Act, 1948. The salary of their employees is more than ₹21,000/- per month, hence beyond the maximum limit prescribed under Section 2(9) for being covered under the ESI Scheme. The respondents, however, have demanded contributions in respect of the contract workers engaged by the



petitioner.

14. The petitioner states that contract workers are engaged by the petty contractors. The petitioner has no direct or indirect control over such contract workers. Their work is not monitored or supervised by any of the officers of the petitioner. Therefore, there is no master and servant relation between the petitioner and the contract workers.

15. It is to be noted that the respondents have computed that the number of contract employees of the petitioner is 4399 and that the average monthly wages per contract employee is ₹14,766/-.

16. Going by Section 41 of the ESI Act, the basic liability is on the immediate employer, even though a principal employer has the liability to recover and to pay contribution from the immediate employer. The immediate employer is bound to maintain a register of employees engaged by him. In the case of the petitioner, the respondents have not taken any steps to gather such details. In the afore circumstances, I am



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of the view that the respondents shall reconsider the assessments made as per Exts.P4 and P7 after giving an opportunity of hearing to the petitioner.

17. Exts.P4, P7, P9 and P10 are therefore set aside. The respondents are directed to reconsider the matter and pass orders afresh after giving an opportunity of hearing to the petitioner.

The writ petition is disposed of as above.

Sd/-

N. NAGARESH, JUDGE

aks/07.11.2024



APPENDIX OF WP(C) 18214/2023

PETITIONER'S EXHIBITS:

- Exhibit-P1 TRUE COPY OF THE NOTICE DATED 29.03.2017 ISSUED BY THE 3RD RESPONDENT TO THE MANAGING DIRECTOR OF THE PETITIONER
- Exhibit-P2 TRUE COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT DATED 31.03.2017
- Exhibit-P3 TRUE COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DATED 25.10.2017
- Exhibit-P4 TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT DATED 29.03.2021
- Exhibit-P5 TRUE COPY OF THE NOTICE ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DATED 30.12.2021
- Exhibit-P6 TRUE COPY OF AN AGREEMENT ENTERED INTO BETWEEN ONE A.V.PREJEESH AND KSEB DATED 08.04.2022
- Exhibit-P7 TRUE COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT UNDER SECTION 45A OF THE ESI ACT DATED 29.04.2022
- Exhibit-P8 TRUE COPY OF WAGE CERTIFICATE ISSUED BY ONE PURUSHU E.K SHOWING THE MONTHLY WAGES GIVEN TO ONE OF HIS WORKERS NAMELY RAJESH MOTTEMEL
- Exhibit-P9 TRUE COPY OF THE NOTICE NO.780000355310000909/CP/566964/7815 ISSUED BY THE 4TH RESPONDENT DATED 17.04.2023 FOR THE PERIOD 3/2017-9/2017.



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Exhibit-P10 TRUE COPY OF THE NOTICE
NO.780000355310000999/544967/7814
ISSUED BY THE 4TH RESPONDENT DATED
17.04.2023 FOR THE PERIOD 10/2017-
11/2021

RESPONDENTS' EXHIBITS:

EXHIBIT R1 A TRUE COPY OF THE CIRCULAR NO.
PSVIII/WCC/CW/INSURANCE/2020 DATED
06.11.2020 OF M/S KSEB LTD.

EXHIBIT R1 (M) A TRUE COPY OF THE LETTER DATED 20-06-
2018 ISSUED BY THE PETITIONER.

EXHIBIT R1 (H) A TRUE COPY OF THE
COMPLAINANT/REPRESENTATION DATED 29-1-
2018 ISSUED BY THE KSEB KARAAR
THOZHILALI FEDERATION (KETF) .

EXHIBIT R1 (A) A TRUE COPY OF THE LETTER DATED 29-03-
2017 ISSUED BY THE DEPUTY DIRECTOR,
ESIC, SUB REGIONAL OFFICE,
THIRUVANANTHAPURAM TO THE MANAGING
DIRECTOR, KSEB LTD

EXHIBIT R1 (B) A TRUE COPY OF THE VISIT NOTE DATED 30-
03-2017 ISSUED BY THE SSO (RECOVERY),
ESI CORPORATION

EXHIBIT R1 (C) A TRUE COPY OF THE PRELIMINARY SURVEY
REPORT DATED 30-03-2017 ISSUED BY THE
ESIC AUTHORITIES

EXHIBIT R1 (D) A TRUE COPY OF THE COMMUNICATION DATED
10-08-2017 ISSUED BY THE GOVERNMENT OF
KERALA

EXHIBIT R1 (E) A TRUE COPY OF LETTER DATED 01-11-2017
ISSUED BY THE 3RD RESPONDENT

EXHIBIT R1 (F) A TRUE COPY NOTICE DATED 25.10.2017 OF
RS.91,05,871/-FOR THE PERIOD WAS ISSUED
TO THE EMPLOYER



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- EXHIBIT R1 (G) A TRUE COPY OF THE ACKNOWLEDGMENT CARD DATED 10-11 -2017 EVIDENCING RECEIPT BY THE PETITIONER
- EXHIBIT R1 (I) A TRUE COPY OF THE LETTER DATED 12/02/2018 ISSUED BY THE 3RD RESPONDENT TO THE GENERAL SECRETARY, KSEB KARAAR THOZHILALI FEDERATION (KETF)
- EXHIBIT R1 (J) A TRUE COPY OF LETTER DATED 06- 04-2018 ISSUED BY THE PETITIONER
- EXHIBIT R1 (K) A TRUE COPY OF THE LETTER DATED 25-04-2018 ISSUED BY THE 3RD RESPONDENT
- EXHIBIT R1 (L) A TRUE COPY OF THE LETTER DATED 07-06-2018 ISSUED BY THE PETITIONER
- EXHIBIT R1 (N) A TRUE COPY OF THE LIST WAS RECEIVED FROM KSEB KARAAR THOZHILALI FEDERATION VIDE THEIR LETTER DATED 19/06/2018
- EXHIBIT R1 (O) A TRUE COPY OF LETTER DATED 06- 07-2018 ISSUED BY THE 3RD RESPONDENT TO THE GENERAL SECRETARY, KSEB KARAAR THOZHILALI FEDERATION
- EXHIBIT R1 (P) A TRUE COPY OF THE LETTER DATED 22-11-2018 ISSUED BY THE 3RD RESPONDENT TO THE DEPUTY CHIEF ENGINEER, KSEB LTD
- EXHIBIT R1 (Q) A TRUE COPY OF THE LETTERS DATED 30/01/2019 ISSUED BY THE 3RD RESPONDENT TO THE DEPUTY CHIEF ENGINEER, DISTRIBUTION CIRCLE-SOUTH, AND DEPUTY CHIEF ENGINEER, TRANSMISSION CIRCLE SOUTH
- EXHIBIT R1 (R) A TRUE COPY OF THE LETTER DATED 03-02-2020 ISSUED BY THE 3RD RESPONDENT TO ADDITIONAL CHIEF SECRETARY, LABOUR AND SKILLS A) DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM



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- EXHIBIT R1 (S) A TRUE COPY OF THE 45-A ORDER DATED 29.03.2021 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER
- EXHIBIT R1 (T) A TRUE COPY OF THE ACKNOWLEDGMENT OF RECEIPT WITH RESPECT TO THE PETITIONER
- EXHIBIT R1 (U) A TRUE COPY OF C19 NOTICE DATED 05-04-2023
- EXHIBIT R1 (V) A TRUE COPY OF C18 ADHOC NOTICE DATED 30.12.2021 WAS ISSUED TO THE APPLICANT COMPANY VIDE REGISTERED POST
- EXHIBIT R1 (W) A TRUE COPY OF THE 45-A ORDER DATED 29.04.2022 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER
- EXHIBIT R1 (X) A TRUE COPY OF THE ACKNOWLEDGMENT OF RECEIPT WITH RESPECT TO THE PETITIONER
- EXHIBIT R1 (Z) A TRUE COPY OF CP-2 RECOVERY NOTICE DATED 17-04-2023 ISSUED BY THE 4TH RESPONDENT WITH RESPECT TO THE PERIOD FROM 3/2017 TO 9/2017
- EXHIBIT R1 (AA) A TRUE COPY OF CP-2 RECOVERY NOTICE DATED 17-04-2023 ISSUED BY THE 4TH RESPONDENT WITH RESPECT TO THE PERIOD FROM 10/2017 TO 11/2021
- EXHIBIT R1 (Y) A TRUE COPY OF C19 RECOVERY NOTICE DATED 05.04.2023
- EXHIBIT R1 (AB) A TRUE COPY OF THE SUMMON DATED 18.05.2023 ISSUED BY RECOVERY OFFICER UNDER RULE 83 OF THE SECOND SCHEDULE TO THE INCOME TAX ACT1961
- EXHIBIT R1 (AC) A TRUE COPY OF THE REPRESENTATION DATED 21-12-2021 ISSUED BY THE GENERAL SECRETARY OF THE KSEB KARAR THOZHILALI FEDERATION TO THE HONBLE LABOUR MINISTER, STATE GOVERNMENT.