



कर्मचारी राज्य बीमा निगम
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)
EMPLOYEES' STATE INSURANCE CORPORATION
(Ministry of Labour & Employment, Govt. of India)



मुख्यालय

Headquarters'

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F.No.T-11/13/52/1A/2022 Rev.II

Dated: 08.02.2023

To

All AC & RD/Director I/c/JD I/c/DD I/c
ROs/SROs, ESI Corporation

**Sub: Judgement dt.20.01.2023 in CA No.312/2023 @SLP No.12520/2022
in the matter of ESIC Vs. M/s Radhika Theatre - regarding**

Sir,

I am directed to enclosed herewith a copy of the judgement of the Hon'ble Supreme Court of India in the above mentioned CA/SLP wherein the Hon'ble Supreme Court has proclaimed an important question of law by holding that the section 1(6) of the ESI Act shall be applicable irrespective of number of persons employed at any time falls below the limit specified by or under the Act.

The establishment M/s Radhika Theatre, situated at Warangal, Telangana was covered under ESI Act w.e.f. 16.01.1981 on the basis of Form 01 dt. 27.01.1981 submitted by the petitioner establishment. Thereafter Corporation issued C-11 dated 04/02/1981 to the Employer informing the coverage of the unit.

The establishment paid ESI Contributions from 1982 to till September, 1989, however it stopped paying contribution assuming that employees were less than 20 in number and thus not liable to pay ESI Contribution.

Since ESI Contribution was stopped, Corporation issued several demand notices to the employer requesting to clear the dues. Upon finding that no action was taken by the establishment to clear the dues, the Recovery Officer passed prohibitory Order dated 27.10.1993 thereby prohibiting the employer to operate its bank account in Andhra Bank. The establishment challenged the action of the respondent by filing W.P No. 20788 of 1994 before Hon'ble High Court, Telangana which was disposed of on 20.11.2002 by the court with the direction to the petitioner establishment to approach the appropriate office.

Thereafter petitioner establishment filed case no EIC No. 14/2003 before the Hon'ble EI Court at Hyderabad challenging the demand notices issued by ESIC stating that prior to the insertion of Sub-section (6) of Section 1 of the ESI Act, 1948 w.e.f 20.10.1989, it employed less than 20 persons and therefore, it was not liable to be covered under the provisions of the ESI Act. The EI Court dismissed the petition vide order dated 13.12.2010 which was in the favour of ESI Corporation.

Aggrieved by the order date.13.12.2010 of EI Court, the petitioner employer approached Hon'ble High Court at Hyderabad by filing Civil Miscellaneous Appeal No. 125 of 2011 to challenge the demand notice dated 31.08.1994 issued by ESIC.

The Hon'ble High Court after hearing both the parties, allowed the appeal observing that Legislature has specified a date for a specific provision, it is applicable only with effect from that particular date and for transactions done on or after that date but not retrospectively.

Since the judgement of Hon'ble High Court went against the ESI Corporation, Civil Appeal No. 312/2023@SLP No.12520/2022 was filed by the Corporation. Hon'ble Apex Court vide order dt. 20.01.2023 allowed the appeal and set aside the order dt. 17.02.2021 of Hon'ble High Court and the demand notices for the period post 20.10.1989 have been restored. Apex Court has observed that ESI Act shall be applicable even with respect to those establishments, established prior to 31.03.1989/20.10.1989 and the ESI Act shall be applicable irrespective of the number of persons employed or notwithstanding that the number of persons employed at any time falls below the limit specified by or under the ESI Act.

Keeping in view of the above decision, copy of the judgement is circulated herewith for information & necessary action.

This issues with the approval of the Insurance Commissioer (Rev).

Encls: As above

Yours faithfully,



(Niraj Kumar)
Asstt. Director (Rev)

Copy to : Website Content Manager with the request to upload on the website of ESI Corporation.

ITEM NO.1512
(For Judgment)

COURT NO.4

SECTION XII-A

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 S

Civil Appeal No. 312/2023

THE ESI CORPORATION

Appellant(s)

VERSUS

M/S RADHIKA THEATRE

Respondent(s)

([HEARD BY : HON. M.R. SHAH AND HON. C.T. RAVIKUMAR, JJ.]
IA No. 97163/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

Date : 20-01-2023 This matter was called on for pronouncement of
judgment today.

For Appellant(s) Mr. Mahesh Srivastava, Adv.
Mr. Vaibhav Manu Srivastava, AOR
Ms. Niharika Gupta, Adv.
Mr. Abhishek Gupta, Adv.

For Respondent(s)

Hon'ble Mr. Justice M.R. Shah has pronounced the reportable
judgment of the Bench comprising His Lordship and Hon'ble Mr.
Justice C.T. Ravikumar.

The appeal is allowed in terms of the signed reportable
judgment.

Pending applications, if any, stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
ASSISTANT REGISTRAR

(signed reportable judgment is placed on the file)