
(2016) 07 OHC CK 0013

In the Orissa High Court

Case No : FAO No. 53 of 2005 and FAO Nos. 59, 61 and 62 of 2005

M/s. OCL India Limited, Rajgangpur

APPELLANT

Vs

The Regional Director

RESPONDENT

Date of Decision : 01-07-2016

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 31, 31A
Employees State Insurance Act, 1948 — Section 2(22), 39(4), 39(5)(a), 39(5)(b),
82(2)

Citation : (2017) 1 CLR 436 : (2016) 2 ILRCuttack 601 : (2016) 3 LLJ 585

Hon'ble Judges : Shri D. Dash, J.

Bench : Single Bench

Advocate : M/s. S.P. Sarangi, B.C. Mohanty, P.P. Mohanty, D.K. Das, P.K. Dash, S. Pattnaik and A.K. Kanungo, Advocates, for the Appellant; M/s. P.P. Ray, D.P. Ray, N.C. Pradhan and Mr. S.N. Mohapatra, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

Shri D. Dash, J.—The above noted appeals under sub-section 2 of Section 82 of the Employees State Insurance Act, 1948 (hereinafter referred to as "the ESI Act") have been filed calling in question the order dated 24.12.2004 passed by the learned District Judge, Bhuaneswar as the Employees State Insurance Court, Bhubaneswar rejecting the applications filed by the appellant as the petitioner under Section 75 of the ESI Act giving rise to ESI Misc. Case Nos. 267/95 of 2001/1996, 261/351 of 2001/1993, 266/94 of 2001/1996 and 262/352 of 2001/1994.

2. The appellants by presenting the above applications under section 75 of the ESI Act prayed before the ESI Court for quashment of order passed by the Deputy Director, ESI Corporation, Bhubaneswar in raising the demand on account of the non-payment of the contribution as the employer towards overtime wages paid to the employees, the leave travel allowance, the cycle allowance as also the interest.

3. The following table is given for easy reference and to avoid unnecessary lengthy descriptions:-

Sl.No.

Appeal Nos. before this Court

ESI Misc. Case Nos. Before ESI Court

Date of the Order sought to be Quashed before ESI Court

Quantum of Demand

Date of the Order of ESI Court sought to be modified in appeal.

Demanded contribution with reference to component/s

1.

FAO No. 53/2005

Misc. Case no. 267/95 of 2001/1996

27.6.1995

Rs. 2,06,883/-

24.12.2004

Remuneration for overtime + Leave Travel Allowance + Cycle Allowance

2.

FAO No. 59/2005

Misc. Case No. 261/351 of 2001/1994

21.3.1991

Rs. 1,79,962/-

24.12.2004

do

3.

FAO No. 61/2005

Misc. Case No. 266/94 of 2001/1996

18.7.1995

Rs. 4,63,166/-

24.12.2004

do

4.

FAO No. 62/2005

Misc. Case No. 262/352 of 2001/1994

2.11.1993

Rs. 3,77,261/-

24.12.2004

do

4. The appeals as mandated under the provision of section 82 of the ESI Act have been admitted on the following substantial questions of law:-

(i) Whether in the facts and circumstances of the case the appellant while being liable to pay its contribution as the employer under the ESI Act towards the remuneration paid to the employees for overtime work as wages in view of the law laid down by the Hon"ble Apex Court by judgment dated the 6th day of November, 1996 in the case of Indian Drugs and Pharmaceuticals Ltd. & others v. Employees State Insurance Corporation & others; 1997(9) SCC 71, if is also be liable to pay the interest over the amount remaining unpaid on the above score for the period prior to the delivery of the judgment by the Hon"ble Apex Court in laying down the law by setting at rest several divergent views taken by the High Courts?

(ii) Whether the demand of contribution under the ESI Act towards the "cycle allowance" paid to the employees falls within the definition of "wages" as defined in section 2(22) of the ESI Act?

The respondents having filed the cross-objection questioning the quashment of demand of contribution towards payment of Leave Travel Allowance, the same has been admitted on the following substantial question of law:-

(iii) Whether the Leave Travel Allowance paid to the employees falls within the definition of "wages" as contained in section 2 (22) of the ESI Act so as to attract the liability of the appellant for making due contribution under the ESI Act on that component?"

5. The appeals as well as the cross-objections have been heard together in view of involvement of similar substantial questions of law and thus are accordingly taken up for disposal by this common judgment.

6. The High Court of Calcutta and Karnataka in case of M/s. Hindusthan Motors Ltd. v. ESI Corporation and others; (1979) LABIC 852 and Hind Arts Press, Mangalore v. ESI Corporation and Another; (1990) II LLJ 195 respectively as well as this Court (Orissa High Court) in the case of Regional Director, ESI, Corporation v. P.B.Gupta; (76)1993 CLT 893 had negated the contention in favour of the interpretation that the definition of "wages" as contained in section

2 (22) of the ESI Act does embrace within its sweep the remuneration paid to the employees towards overtime work. The Bombay High Court in case of *Shivraj Fine Arts Litho works, Nagpur v. Director, Regional Office, Maharashtra and others*; 1974 Lab (1) C 328, the Delhi High Court in case of *ESIC, New Delhi v. Birla Cotton, Spinning and Weaving Mills Ltd., Delhi*, 1977 (II) LLJ 420 and Andhra Pradesh High Court in case of *M/s. The Hyderabad Allwyn Metal Works Ltd. v. Employees State Insurance Corporation*; 1981 Lab IC 457 however favoured the interpretation that overtime due is "wages" as defined in the ESI Act.

The respondent no. 2 being the competent authority demanded the contribution from the appellant employer under the ESI Act towards the remuneration paid to the employees for the overtime work claiming the same to be falling within the purview of the "wages" as provided under Section 2 (22) of the ESI Act.

7. The Hon'ble Apex Court, in the case of *Indian Drugs and Pharmaceuticals Ltd. Etc. (supra)*, finally laid down the law, that both the remuneration received during the working hours and overtime constitute a composite "wages" and thereby the remuneration paid towards overtime work is "wage" coming within the net of the definition of section 2 (22) of the ESI Act and the employer as such has to make the contribution under the ESI Act for that also. The judgment by the Hon'ble Apex Court was delivered on 6th day of November, 1996. Till this judgment of the Hon'ble Apex Court laying down the law in the field covering the particular subject, there were conflicting views of the different High Courts. In the above decision of the Hon'ble Apex Court in case of *Indian Drugs and Pharmaceuticals Ltd. (supra)*, the approach adopted by the Calcutta High Court in "*M/s. Hindusthan Motors Pvt. Ltd.*" (*supra*) and that of Karnataka High Court in "*Hind Arts Press, Mangalore*" (*supra*) were held to be unsustainable and incorrect whereas the decisions of Bombay High Court, in "*Shivraj Fine Art Litho Works*" (*supra*) Delhi High Court in "*ESIC, New Delhi*" (*supra*) and Andhra Pradesh High Court in "*Hyderabad Allwyn Metal Works Ltd.*" (*supra*) were held to have been correctly rendered with correct interpretation. The decision of our High Court in case of *Regional Director, ESIC Corporation (supra)* thus stood overruled.

8. The appellant now here firstly seeks the relief of nonpayment of interest over the contribution under the ESI Act over that remuneration paid towards overtime work that has been paid in view of the judgment of the Hon'ble Apex Court laying down the law. Thus now the matter stands confined on the question of payment of interest as provided under sub-section 5 of section 39 of the ESI Act read with Regulation 31 and 31-A of the Regulations for the period till 5th day of November, 1996 i.e. prior to the date of delivery of the judgment by the Hon'ble Apex Court in case of "*Indian Drugs and Pharmaceuticals Ltd.*" (*supra*).

9. Mr. Ashok Parija, learned Senior Counsel appearing on behalf of the appellant submits that despite the provision of sub-section 5 of section 39 of the ESI Act in the peculiar facts and circumstances when the legal position stood volatile and the views were divergent till the pronouncement of the judgment of the Hon'ble

Apex Court in the case of "Indian Drugs and Pharmaceuticals Ltd." (supra) on 6.11.1996, the non-payment of the contribution under the ESI Act by the employer on account of the overtime wages till then more particularly in view of our High Court's finding in case of Regional Director, ESI, Corporation (supra) can neither be termed as wilful nor will fall within the ambit of delayed payment. It has been argued that said contribution towards overtime wages as demanded after the pronouncement of the judgment of the Hon"ble Apex Court laying down the law to be followed throughout the country if not paid thereafter will certainly carry interest as per section 39 (5) of the ESI Act. However, he vehemently contends that because of the view taken by the Calcutta and Karnataka High Court as also our High Court, since the appellant was having no legal obligation to pay the contribution as the employer towards the overtime wages paid to the employees under the ESI Act, the appellant cannot be saddled with the liability of the payment of interest for the period uptill 5th day of November, 1996. According to him, such non-payment as above, can never attract the penal consequence of running with interest as provided in section 39 (5) of the ESI Act. It is submitted that such imposition of interest in accordance with the provision is basically there to take care in preventing the delayed payment when contribution has been ascertained and has thus fallen due and in order to ensure timely payment in view of the fact that the legislation is a socio-beneficial one. Here his contention is that although the appellant is liable to pay the interest with effect from 6.11.1996, the date of pronouncement of the judgment of the Hon"ble Apex Court in the case in Indian Drugs and Pharmaceuticals Ltd. (supra) till the date of actual payment of the contribution under the ESI Act towards the overtime wages paid to the employees, yet such interest is not payable for the period that has elapsed prior to said pronouncement of the judgment laying down the law by final interpretation.

He next contends that the demand of the contribution from the appellant under the ESI Act on the component of cycle allowance is untenable as it has not been shown by the respondent that it was being paid at intervals not exceeding two months. So, according to him the order of the ESI Court on that score is bad and liable to be set aside.

Lastly, he contends that the ESI Court has rightly held that the Leave Travel Allowance is excluded from the purview of the definition of "wages" as defined in section 2 (22) of the ESI Act as it is clearly under the excepted category. Thus he contends that the cross-objections are untenable.

10. Learned Counsel, Mr. S.N.Mohapatra for the ESI Corporation in response contends that the provision of sub-section 5 of the section 39 being very clear and that when read with regulation 31 and 31-A of the Regulations, although the divergent views of different High Courts have been set at rest by the Hon"ble Apex Court on 6.11.1996, yet it would be deemed to have fallen due from the very beginning in view of the interpretation that has been finally made and therefore the liability of payment of interest as provided under section 39 (5) of

the ESI Act stands and the appellant has to abide by it in paying the interest over that unpaid contribution towards the remuneration paid for the overtime also for that prior period.

His contention on the score of demand of contribution as regards cycle allowance is that the appellant having failed to show that the same falls beyond the ambit of the definition of "wages" as defined in section 2(22) of the ESI Act that it was paid at the interval exceeding the period of two months, there is no illegality on the part of the ESI Court in accepting the demand.

He further presses the cross-objections that the Leave Travel Allowance has to be held as "wage" and the ESI Court's order on that score warrants interference so as to be finally held favouring the demand on that component.

11. In order to address the above submission and find out the answer to the question of law as per the contention of the learned counsel for the respondent in the affirmative whereas in the negative as contended by the learned Senior Counsel for the appellant, it would be proper at the outset to pay attention to the relevant provisions of the ESI Act.

Sub-sections (4), (5)(a) and (5)(b) of Section 39 read as under:-

"39. xxx xxx xxx

"(4) The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period, and where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the regulations.

(5)(a) If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the regulations till the date of the actual payment:

Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled Bank.

(b) Any interest recoverable under Clause (a) may be recovered as an arrear of land revenue or under section 45-C to section 45-I".

In addition to the above, in the Employees State Insurance (General) Regulation, 1950 (hereinafter referred to as the Regulations) made by the Corporation in exercise of the power conferred under Section 97 of the ESI Act, the relevant regulation 31 and 31-A run as under:-

"31. Time for payment of contribution.- An employer who is liable to pay contributions in respect of any employee shall pay those contributions within 21 days of the last day of the calendar month in which the contributions fall due:

Provided that where a factory/establishment is permanently closed, the employer shall pay contribution on the last day of its closure.

Provided xxx xxx xxx (not required for our purpose)

31-A. Interest on contribution due, but not paid in time. An employer who fails to pay contribution within the periods specified in regulation 31, shall be liable to pay interest at the rate of six per cent annum in respect of each day of default or delay in payment of contribution."

"Simple interest at the rate of "fifteen per cent" per annum" by notification dated 1.11.94 (w.e.f 1.9.94); ""twelve per cent" by notification dated 1.7.2005 (w.e.f. 1.10.2005)

12. Giving a careful reading to the above, it is seen that subsection 5 of section 39 of the ESI Act and Regulation 31 of the (General) Regulations enjoin upon the appellant to make the payment of the contributions within the time frame. Now the claim of the respondent is the interest for delayed payment within the meaning of section 39 of the Act in respect of the contribution on the component of the remuneration paid to the employees for the overtime work that we may say overtime wages. As provided in sections 39 (5) (a) read with regulation 31-A, when the provision of section 39 (5)(a) attracts the liability of payment of interest if the contribution payable under the ESI Act is not paid; the Regulation 31-A provides that where the employer fails to pay the contribution. A harmonious reading being given to both the above, it becomes clear that there surfaces an element of default in making the payment within the time frame. Once the default comes, the statutory liability to pay the interest automatically springs up and there arises no scope for escape or waiver under any circumstance.

13. Mr. Parija, learned Senior Counsel in support of his submission has placed reliance on two decisions of the High Court of Karnataka in HMT Limited, Watch Factory IV, Tumkur v. Employees" State Insurance Corporation, 1998-I-LLJ-841 and Joint Director of ESI Corporation Hubli and another v. Ribbhisiddhi and Chemicals Ltd. Gokaka, 2004-I-LLJ 272.

It has been held in case of "HMT Ltd."(supra) that applicability of the provision relating to the payment of interest comes in where the employers fail to pay the contribution. If such failure is on account of circumstances beyond his control or if the circumstances make it impossible for the employer to make contributions even if he wanted to do so unless he risks being hauled up for the contempt of the Court. It has been held that such failure on the part of the employer in making payment in time cannot be called a failure within the meaning Clause-a of sub-section 5 of Section 39 of the ESI Act so as to warrant levying of interest.

In that case in exercise of the power conferred by Section 2 (9)(iii) (b) of the ESI Act, the State Govt. issued a notification enhancing wage limit coverage of the employees under the ESI Act from Rs. 1600/- to Rs. 3000/-. This notification was

challenged by the Union of Employees of HMT Ltd. The operation of the notification was stayed by the High Court. The parties were directed to forbear from giving effect to the said notification with further direction to the HMT Ltd. not to proceed to deduct contributions towards ESI Scheme from the salary of the employees. At the end, when the matter was disposed of by the learned Single Judge extending the doctrine that the "Act of the Court prejudices none", the ESI Corporation was restrained from recovering the amount from the employers in respect of the employees whose monthly wages were Rs. 1600-3000/-, till the date of the order while saving the recovery already effected in respect of some employees from the net of the said order.

The order of the learned Single Judge was challenged carrying writ appeals before the Division Bench of the Court. The Division Bench while affirming the decision of the learned Single Judge regarding the validity of the concerned notification held the postponement of the said notification as ordered by the learned Single Judge as erroneous and accordingly, the observations in that regard made by the learned Single Judge were held to be of no avail and inoperative. After the learned Single Judge disposed of the writ petition and during the pendency of the appeals before the Bench, the Division Bench had also stayed the operation of the notification. This finally stood vacated when the Division Bench disposed of the writ appeals mentioning therein clearly that the notification has come into effect from the date it was meant to be enforced and not from any posterior date i.e. the date of the order of learned Single Judge. In that factual background when the question of payment of interest came to be decided, it was held that the employer was even having no opportunity to make the contributions till the Division Bench disposed of the appeals.

This being the state of affair on the question of payment of interest which was disputed, finally the view has been taken that such delay in payment for the reasons of which the employer could not be held responsible at all, but on the other hand, since it was impossible on its part to make payment in the circumstances and thus it cannot be called or taken as wilful non-payment which alone attract the liability of payment of interest in terms of Clause-a of sub-section 5 of section 39 of the ESI Act read with regulation 31 and 31-A of the Regulations.

14. In the other case of "Joint Director of ESI Corporation" (supra) the facts are almost akin to the present case in hand. It was concerning the contribution towards overtime wages. The contribution was not made in view of the Division Bench decision of the Karnataka High Court in case of "Hind Art Press" (supra) disavowing the interpretation that the remuneration paid to be employee for the overtime work falls within the ambit of the term "wages" as defined under sub-section 22 of section 2 of the ESI Act. The judgment of the Karnataka High Court in case of "Hind Arts Press" (supra) was overruled by the Apex Court in case of "Indian Drugs and Pharmaceuticals Ltd. and others" (supra) and it was held that the overtime wages are included within the term "wages" as defined in

subsection 22 of section 2 of the ESI Act.

So the question of payment of interest fell for consideration. The Court was called upon to decide the underlined bit question first as to whether the non-payment of contribution in time in the facts and circumstances was due to the voluntarily act on the part of the employer or on account of its disability suffered in view of the Division Bench ruling of the High Court holding the field till its being overruled by the Apex Court. Reliance for the purpose was then also placed on the decision of the court in case of H.M.T. Pvt. Ltd. (supra). The view at the ultimatum has been taken that the employer could not be held responsible for the delay in payment of contribution on the component of overtime wages in view of law that had been laid down by the Division Bench of the Court. In Case of "Hind Art Press, Mangalore" (supra) until the same came to be overruled by the Apex Court on 6th of November, 1996 and as making the payment by the employer was impossible, it cannot be called wilful non-payment attracting the liability of paying the interest in terms of clause (a) of sub-section (5) of section 39 of the ESI Act. It was however held that the employer cannot certainly contend that no interest is payable at all and he is undoubtedly liable to pay the interest over the contribution on that component on and from 6th of Nov., 1996, the date on which the Apex Court overruled the judgment of the Division Bench of the Court.

15. The word "fails" as finds mention in regulation 31-A of the Regulation as per the Black's Law Dictionary (10th edition) means to be "deficient or unsuccessful" to "fall short of achieving something expected or hoped for". In the given case the employer is no doubt expected and hoped to pay the contribution under ESI Act in time and that is the legal obligation as mandated under the ESI Act. But the question remains that can it be said to be a deficiency on its part. It certainly refers to the "in-action" or "failure" on the part of the employer in giving due regard to the statutory provision that the contribution has to be made in time as provided in the ESI Act.

16. Adverting to the factual settings of the present case, the contention of the appellant stands that because of the views of the High Court of Calcutta, Karnataka and then of this Court, under the circumstance, the appellant was not having the strict legal obligation to make the payment of contribution on that very component of remuneration paid to the employee towards overtime work, as the views were that the same does not come within the definition of sub-section 22 of section 2 of the ESI Act. So this position having prevailed till 6.11.1996 when the divergent interpretations and views were set at rest and the law was finally laid down by the Hon"ble Apex Court, the question of liability on the part of the appellant to pay the contribution on that very component springs upon and from 6.11.1996 which is undoubtedly for the period both prior and later to it but the levying of interest for non-payment of the contribution on that component for the period prior to 6.11.1996 is not legally permissible. The employer under the circumstance cannot be said to have failed to pay the

contribution in time and that under no circumstance be held to be a deficiency on its part in making the contribution on that component in defiance to the strict statutory provision governing the field when in view of the rulings of three High Courts including that of ours, it was not required to be so paid being held beyond the scope.

Since the law stood finally settled by setting at rest the divergent views of different High Courts including this Court as regards the payment of contribution under the ESI Act on that particular head, undoubtedly the law as settled with the interpretation has to be read to be there in the statutory provision from very inception. But when we go to view the imposition of interest on the ground of non-payment of contribution on that particular head in time, the due date of payment of contribution cannot be reckoned beyond the date, the law stood finally set at rest by the Apex Court as regards the particular interpretation. This is because of the simple reason that the imposition of interest is for non-payment of contribution by the due date which in the facts and circumstances cannot be reckoned from a date anterior to the decision of the Apex Court.

The legislation undoubtedly is a socio-welfare one and accordingly, the provisions embodied therein for extending benefits to the employees burdening the employers for payment of contribution are to be given the broad and liberal interpretation shunning the narrower one so as to subserve the purpose and objectives sought to be achieved.

However, the provisions contained therein which are having penal consequences such as relating to payment of interest or otherwise for non-payment of contribution in adherence to the provisions of said legislation, those cannot receive the same interpretation. For those, the rule of strict construction will have their play as those are for the purpose of ensuring timely payment and not in the direction of preventing evasion of payment of contribution which stand undisputed.

17. Learned counsel for the ESI Corporation in response has placed the decision of the Apex Court in "GOGETZE (India) Ltd. v. ESI Corporation" 2008 (8) SCC 705. There the component was "efficiency bonus". The employer took the stand that the same falls outside the definition of wages under section 2 (22) of the ESI Act and thus it had raised a dispute which according to it was a bona fide one, placing reliance upon the decision of the Apex Court in Whirlpool of India Ltd. v. ESI Corporation (2000) 3 SCC 185 wherein the law had been laid down that the payment of "production incentive" by the employer to its worker in the facts of the said case was not falling within the definition of the term "wages" as defined in section 2(22) of the ESI Act. The dispute was carried to the Court and finally a compromise had been arrived at. The ESI Corporation however took the stand that the liability to pay the interest being statutory, there could not have been any compromise on that count. The employer took the stand that as the compromise was made stating nothing further to be payable as ESI contribution the question of payment of interest under Section 39 (5) and regulations 31 and

31-A would not arise. The Apex Court held in that case held that the liability to pay the interest being statutory and there being no power of waiver, the question of any compromise or settlement with regard to that liability of payment of interest did not really arise and the word "no further dues" finding mention in the order of the ESI Court was obviously relatable to the contribution payable and nothing beyond that. Facts and circumstances of the case cited by the learned counsel for the ESI Corporation are quite distinguishable from the facts and circumstances with which we are faced here to address the question of attraction of the liability of payment of interest under section 39 (5) of the ESI Act. Therefore, the ratio of above cited decision does not come to the aid of the respondents in support of the demand of payment of interest as aforesaid.

18. For the aforesaid discussion and reasons thus I conclude that for the non-payment of contribution under the ESI Act on the component of remuneration paid to the employees for the overtime work for the period up to 5th of Nov. 1996 in the peculiar circumstances does not warrant levying interest in accordance with the provision of Clause ? a of sub-section 5 of section 39 of the ESI Act read with regulations 31 and 31-A of the Regulations.

19. Now coming to the next limb of submission in relation to the second substantial question of law, if we read clause (b) of section 2 (22) of the ESI Act which is the excepted clause from the definition of "wages", the travelling allowance or the value of travelling concession very much finds place therein. The learned Counsel for the ESI Corporation has not been able to place anything on record so as to show that said leave travel allowance as is being paid is an additional remuneration or that it would come within the other additional remuneration paid at intervals not exceeding two months. The learned Senior Counsel for the appellant submits that it has been rightly so held by the ESI Court that the said component is not to be visited with the contribution under the ESI Act as it is a sort of travelling allowance.

Regard being had to the nature of payment as leave travel allowance in view of available materials when the same is tested in the touchstone of the definition as provided in the ESI Act, it clearly passes through the said net. Thus I do not find any such reason to hold the order of the ESI Court in that regard quashing the demand of contribution on that head to be a flawed one. The cross-objections are accordingly found to be devoid of merit and as such are liable to be dismissed.

20. Lastly, so as to answer the second substantial question of law relating to the demand of contribution on account of payment of cycle allowance to the employees, it is seen that the appellant has not placed any material on record in showing the interval of the payment so as to conclude that its made exceeding the interval of two months in escaping from the paw of the definition of "wages". This being so keeping in view that the ESI Act is a social legislation enacted to provide benefits to the employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto, the

said allowance has to be deemed to have been paid every month so as to attract the meaning of wages, as other additional remuneration making the appellant squarely liable for payment of the contribution under the ESI Act. Thus, the submission of the learned Senior Counsel in this regard cannot be countenanced with. Therefore, the view taken by the ESI Court on this score has to receive the seal of approval.

21. The aforesaid discussion and reasons accordingly provide the answers to the substantial questions of law that the answers to question nos. 1 and 3 stand recorded in favour of the appellant whereas the answer to the question no. 2 is recorded against the appellant.

22. In the wake of aforesaid, the appeals are partly allowed and the order of the ESI Court in the above ESI Misc. Cases stand modified to the extent as indicated above. The cross-objections filed by the respondents are hereby dismissed.

23. No order as to costs.