

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: **MR. JUSTICE SALAHUDDIN PANHWAR &
MR. JUSTICE ADNAN-UL-KARIM MEMON**

C.P. NO.D-6712/2020

Petitioners : M/s. Telenor Microfinance Bank Limited,
Mr. Waheed Ali Ghumro advocate.

Respondents : Province of Sindh and others.
Mr. Jawad A. Sarwana advocate for SESSI.
Mr. Abdul Wahab Baloch DAG.
M/s. Ali Safdar Depar, Syed Hussain Shah and
Abdul Sadiq Tanoli, AAGs.

Date of hearing : 13.09.2021.

Date of announcement : 07.10.2021.

JUDGMENT

SALAHUDDIN PANHWAR, J. This petition seeks direction to respondents/Sindh Employees Social Security Institution(*hereinafter referred to as 'the SESSI*) to issue registration cards for its insured workers/employees.

2. Briefly facts of the case are that petitioner is a company incorporated under the Companies Act 2017 registered under Provincial Employees' Social Security (Employer's Return and Records) Regulations 1967, pays contributions under Sindh Employees' Social Security Act 2016(*the Act of 2016*); that the Minister for Labour & Human Resources is a chairman of governing body of SESSI and its general superintendence vests with governing body while SESSI is an autonomous body under the Act of 2016 whose main function is to provide medical care and cash benefits to secured workers and their dependents as well death grant; financial

benefit for *iddat*, disablement gratuity, disablement pension, survivors' pension and ex-gratia grant; SESSI's Commissioner (respondent No.2) is Chief Executive of the Institution, respondent No.3 is Director Administration responsible for registration of employees of petitioners and issuance of registration cards to secured employees/persons enabling them to avail benefits under the law. It is stated that petitioners have huge number of employees out of which 590 are secured persons with SESSI; that though petitioners have registration certificate and paying contributions yet its employees are still without registration cards therefore unable to avail benefits under the law; SESSI was approached even served with a legal notice dated 01.12.2020 yet in vein hence this petition.

3. Respondent No.2/Sindh Employees Social Security Institution filed their comments in CP No.D-6712/2020 contending that petitioner under the Provincial Employees Social Security (Contributions) Regulations, 1967 (*the PESS [Contributions] Regulations of 1967*) as a notified establishment under PESS Ordinance, 1965 (*the Ordinance of 1965*)/Sindh Employees Social Security Act, 2016 is required to pay social security contribution under Section 20 and submit Form C-1 (Contribution Schedule) under Rule 4(11) of the Provincial Employees Social Security (Contribution) Rules, 1966 (*the PESS [contribution] Rules 1966*) along with such payment to the Respondent Institution; Forms R-1 and R-2 (Registration of Secured person) under the Regulations 3 and 4 of the PESS (Employees Rules and Records) Regulations, 1967; that upon notification u/s 1(3) of the Ordinance of 1965/the Act of 2016, the petitioner was required to submit without delay to the Respondent institution Forms R-1, R-2, etc. under Employers (Returns and

Records) Regulations, 1967 in respect of secured persons working with the Petitioner's Establishment; that Section 22 of the Act of 2016 (Section 21 of repealed PESS Ordinance, 1965) mandates that the responsibility of submission of Forms R, R-1, R-2, etc. which pertain to the registration of secured workmen is that of the Employer, i.e. the Petitioner but the Petitioner is not submitting the said information/forms to the Respondent Institution; the Petitioner Establishment has not filed any evidence with his petition which shows that the Petitioner submitted Form R-1 or R-2 with the Respondent Institution. Once completed, Forms R-1 and R-2 are required to be submitted to SESSI for processing and issuance of the R-5 Registration.

4. The submission of the forms can also be made online on SESSI's web-portal. in fact, the Petitioner has miserably failed to complete and submit Forms R-1 and R-2; instead he has been dilly-dallying the matter unnecessarily and has filed this frivolous Petition; that Section 70(d) of the Act of 2016 (Section 66(d) of the repealed Ordinance of 1965) states that failure on the part of an establishment not to furnish the above information (Forms R-1, etc.) are a criminal offence. As such Petitioner is in criminal breach of its duties with its failure to submit the requisite returns under the 1976 Regulations. It was further contended that Section 61 of the Act of 2016 (Section 57 of the Ordinance of 1965) states that if any person has any complaint regarding any question or dispute as to any benefit payable and or any other matter in respect of benefits, then such person may approach the Competent Authority with his/her grievance, i.e. the Commissioner, SESSI; that Petitioner complaint pertains to non-registration of secured workmen which is a matter that concerns

secured workman. An aggrieved person in the present circumstances is/will be the secured workman who has been denied registration and not the Petitioner. The main cause of action in the current situation lies with the secured person to sue his employer/Petitioner for non-compliance of the SESSI laws and its failure to submit the Forms R-1 and R-2 which would enable it to avail benefits under the Act of 2016. This petition has not been filed by the aggrieved person, i.e. the secured workman. Instead, the person who is in breach of its statutory duty to file the relevant forms and get his employees registered with SESSI, has malafide filed this petition against the Respondent. Additionally, even if it is assumed that the petitioner is aggrieved by any action on the part of the Respondent Institution, then the Petitioner's adequate alternate remedy available to lodge its grievance lies under Section 61 of the Act of 2016, i.e. to file a Complaint against the Commissioner, SESSI. The petitioner cannot leap-frog the special law and special forum provided by the Legislature in case of complaints in relation to social security under the Act of 2016 and agitate this Petition; reliance was placed on the above proposition on (i) Standard Printing Press (PLD 1978 Karachi 945); (ii) Sunshine Dairies (PLD 1976 Karachi 1228; (iii) and Naveed Ullah Khan Bhatti (Lahore) (2006 PLC 593). It was further contended that Payment of contribution and service of benefits cannot be co-mingled and onus is on Petitioner to submit proper forms to Institution. The Supreme Court of Pakistan in the cases of (i) Spencer & Company (Pak) Ltd. (1998 SCMR 440) and (ii) Sindh Abadgars Sugar Mills Limited (2009 SCMR 367) has consistently held that the payment of contribution and service of benefits to the secured workmen cannot be connected. They are separate and the Petitioner

cannot wriggle out of his liability to pay social security contribution and submit Forms; that onus is on the petitioner to submit the relevant forms which it has miserably failed to do. On receipt of Form (R-2) the Respondent Institution then issues the Secured Persons' Registration Card Form R-5 under Employers (Returns and Records) Regulations, 1967 to such secured persons whose information has been provided by the Petitioner but the Petitioner has not done the needful. The Respondent institution has made efforts by sending notice (Annexure M) to the Petitioner to submit the above Forms, so that secured persons' Registration Card (R-5) may be issued to such persons to enable them to avail all the benefits mentioned but without any luck. Form R-1, R-2, etc. are available online on SESSI website, stationary shops, in the Rules and Regulations of SESSI. The Petitioner continues to hide behind excuses not to register its employees. In spite of the above the Petitioner, Telenor Microfinance Bank Ltd. has not submitted details of its workmen on whose behalf it has been paying contribution on Form R, R- 1 and R-2, which are mandatory forms in order for the Respondent Institution to register its employees with SESSI. The Petitioner Establishment has been filing Form C1 (containing the names and CNIC of the secured workmen); but the same are neither sufficient for registration nor a substitute for Forms R-1, R-2, etc. required for registration of secured workmen. The Petitioner must follow the proper procedure for registration laid down in the Rules and Regulations of SESSI which are publicly available. The Petitioner, Telenor Microfinance Bank Ltd. has failed and continues to fail to provide the missing information forming part of forms R, R-1 R-2 etc. to the respondent. It was further stated that Notification is issued by the Government of Sindh

not SESSI hence Petition not maintainable against SESSI; that Government of Sindh has issued the present notification under Section 1(3) of PESS Ordinance, 1965 which is currently in force and applicable to the Petitioner Establishment, as per Section 1(3) of the "SESSI Act, 2016 the Scheme is establishments defined in Section 2(12) of the Act, from such date or dates and with regard to the provisions of such benefits as Government may be notification, specify in this behalf. As per directive of the Honourable Supreme Court of Pakistan the provision under Section, 1(3) of the Act, is applicable on Territorial Basis w.e.f. December, 2011. As mentioned above the current Notifications in force have been issued pursuant to the Judgment of the Supreme Court of Pakistan in the Citizen's Foundation case reported in 2009 SCMR 367/2010 PLC 489. Further, the Supreme Court of Pakistan has clarified that no grievance regarding the procedure for issuance of the Notification can be raised in respect of the grounds as alleged by the Petitioner detailed therein in PLD 2002 SC 726. In addition to the above-titled Petition, i.e. CP No.D-6712/2020 Petitioner has also filed CP No.D-2249/2021 in which they have also impleaded SESSI in the array of Respondents. The Petitioner continues to harass the Respondent institution by filing frivolous litigation from time to time; instead of complying with the law and paying social security contribution and submitting the relevant forms to get their employees registered; there also appears to be yet another Petition filed by Telenor but respondent institution is not party to these proceedings i.e. CP No.D-6713/2020.

5. Respondents/SESSI have further contended that they are an autonomous body with a Three-tier organization affiliated with

Labour Department, Government of Sindh. The general direction and superintendence of the affairs of the institution vests in the Governing Body, which with the assistance of the Commissioner (Chief Executive), exercises all powers. As a body corporate the Respondent Institution works and carries on its business independently without any impediment of the Government (except instructions or question of policy given by the Government under Section 4(2) of SESSA, 2016 (Section 4(2) of the repealed PESS Ordinance and under the rules and regulations framed for its operation, function and running. (Reliance is placed on PLD 1956 SC 445 and 2008 PLC (C.S.) 949). The Respondent Institution neither relies on any government funds or public or taxpayer money nor borrows any monies from the Federal or Provincial or any other authority for running of its affairs. The Respondent Institution has its own Fund which is generated on the basis of **contributions paid by notified establishments, profit on investment and other income (Section 28, PESS Ordinance, 1965).**

6. It is further the case of SESSI that after registration of an establishment the employer of the establishment is liable to pay social security contribution **to the Institution in respect of every employee, as defined in Section 2(9) of the Act, 2016, whether employed by him directly or through any other person at the rate of 6% of his wages** provided that an employee shall not, cease to be an employee for the reason that his monthly wages exceed the statutory threshold of minimum wages plus Rs.5,000. Presently, S.S. Contribution is received/receivable at the rate of minimum wages. The payment of social security contribution by the employer is statutory and

mandatory. It is not subject to demand by the Institution. The social security contribution for the preceding month is payable in the following month. If any employer fails to pay social security contribution to the Institution by the due date, the contribution payable by him increases day by day at the rate of 1/2% per day subject to the maximum of 50% of the amount due as per Section 24(1) of the Act of 2016. **The primary aim of Application of Scheme of Social Security on the establishment is to provide benefits and facilities to secured employees or their dependents in the event of sickness, maternity, employment injury or death, lddat benefits, disablement gratuity, disablement Pension, survivors Pension and medical care and for the matter ancillary thereto as provided Section 36 and 47 of the Sindh Employees Social Security Act, 2016.** Although the Government of Sindh aims to issue fresh rules and regulations under the Act of 2016, the same are still under process of being replaced; hence the 1966 rules and the 1976 regulations issued under the Ordinance of 1965 continue to remain in force. SESSI conducted awareness programs through SESSI Public Relation Wing cum-Training & Research institute. SESSI Public Relation Wing-cum-Training & Research Institute from time to time publishes advertisement in the leading newspapers documenting and informing general public about the activities of the institution. (clipping enclosed). Besides, Public Relation Wing-cum— Training & Research Institute, SESSI publishes Annual Administration Reports, Pamphlets and Quarterly News Bulletin in the name of BEHBOOD" which mentions activities performed by SESSI every quarterly. Prior to the Coronavirus (Covid-19) pandemic beginning February 2020, advertisement regarding awareness of

Social Security published in leading newspapers on 5th November 2019. One seminar has been conducted at Hyderabad (Hyderabad and Kotri Directorates) on 29-10-2019 and one seminar at Sukkur Directorate on 30-10-2019 and on 8th November 2019 at Karachi Report regarding awareness programs held at Hyderabad, Sukkur and Karachi were also published. in daily newspapers. Directions have already been issued to the Directors of SESSI Local Directorates to convene meetings with Deputy Commissioner concerned and to apprise them regarding awareness programs conducted by SESSI and convey message of Social Security Scheme. SESSI also runs awareness program on Typhoid vaccination with collaboration of District Health Officer West (WHO) held at KVSS SITE Hospital on 7th November,2019. Apart from above, Commissioner, SESSI and Local Directors of SESSI hold meetings with the Employers and Employees Associations of Karachi, Hyderabad, Kotri and Sukkur from time to time of regarding Social Security Contribution and benefits provided by the SESSI to the Secured Workers and their dependents admissible under SESSI Act, 2016. These awareness and informational programs which were shut down through most of 2020 due to the Coronavirus (Covid-19) pandemic have recently restarted since March 2021 subject to NCOC and Government of Sindh Lockdown Orders/Permissions for Public Gatherings. **The mechanism for providing medical facilities to secured worker and their dependents through 42 Dispensaries and 5 Hospitals of SESSI at Karachi, Kotri, Hyderabad and Sukkur Sindh, which are easily accessible for secured worker to get medical facility.** SESSI not only provides basic medical and surgical facilities to secured workers and their dependents but also provides a treatment of

Hepatitis, Cancer, Cardiac, Neurosurgery, Bone Marrow and Kidney Transplantation as well from private hospital on the recommendation of concerned Medical Superintendent and Chief Medical Officer by paying amount through permission/reimbursement. During the Coronavirus (Covid-19) pandemic, SESSI has also provided medical care and support in the national fight against the virus. In August 2021, the Respondent Institution and NADRA have signed an MOU for preparation of Smart Card (Benazir Mazdoor Card) for registered Industrial workers. NADRA has also started registration and the facility is also available to the secured workmen of the Petitioner Establishment. But the statutory onus of submission lies with the Petitioner as per Section 22 of SESSI, 2016. The step-by-step procedure for the registration of the Employees at SESSI, as per the Provincial Employee's Social Security (Employers' Return and Records Regulations, 1967) is set out as follows:

STEP 1: Form C-1: On notification of the establishment the establishment is required on its own to submit form C-1 (Regulation 8). Form C-1 states the payment and the names of the Employees in respect of whom the payment is made. The online version of Form C-1 is attached to the pleadings in electronic format. This electronic format is submitted on the SESSI website online.

STEP 2: R-1 Form: Simultaneously with the filing of Form C-1, the Employer is also required to submit R-1 form; informing the number of employees. The employer shall within 10 days submit the R-1 form to SESSI.

STEP 3: R-2 Form: Together with the R-1 form, the Employer is also required to submit the R-2 form duly completed by the Secured workman with all missing data mentioned in the form populated with the required information and photographs. The Employer usually passes the R-2 Form to his employees to fill it and hand it back to the Employer for handing them over along with Form R-1 to the Respondent Institution. The secured person shall fill the R-2 form by providing the details which includes his Name, CNIC, Address, Name of Dependents (including Parents and his children), and the marriage certificate, if he is married, and the birth certificate of the children, if he has children along with the 3 passport size Photos of secured person and all of his Dependents). The

photos are also attested by the Company to confirm that the said person is employed at the notified establishment. In R-2 Form, the Employee shall also identify the Dispensary to which he wishes to be associated and from where he would collect the benefits. The R-2 form also is submitted by the Employer along with R-1 form to SESSI. Forms R-3 and R-4 given in the Regulations of 1967 have been discontinued and are no long in practice/vogue anymore.

STEP 4: Form R-5: On receipt of duly completed R-2 Form along with all its particulars from the Establishment the Institution shall within 15 days issue R-5 (card), of each of the Employees to the Employer and/or his company. The employer would then pass on the R-5 cards to his respective employees. Registration ID Card has photos of secured workmen and their dependents.

All Forms R, R-1 and R-2 are available online as well as can be submitted online. Physical forms are available with SESSI and Stationary shops which carry proforma of other forms under the labour laws of Pakistan, such as, Petiwalla in Karachi. Further the format is given in the Regulations of 1967.

7. It was further contended that Petitioner's establishment is a notified unit under the Social Security Scheme and the same was registered with the name and style of M/s. Tameer Microfinance Bank Ltd., vide Notification No. L-II(SESSI)5-9/2010 dated 19/12/2011 the name of M/s. Tameer Micro Finance Bank Ltd. was changed to M/s. Telenor Microfinance Bank Lid. **Social Security Contribution for the month of July 2021 in respect of 408 employees for which contribution amounting to Rs.550,470 has been deposited by the Petitioner online.** Approximately for the last one year the petitioner is making online payment that is fluctuated according to the strength of the employees of the Petitioner, and prior to online deposit of S.S. Contribution the same was being deposited manually. Recently, the Petitioner, Telenor Microfinance Bank Ltd. has become litigious and filed CP No.D-2249/2021 challenging the

quantum of contribution dues set out in SESSI's Demand Notice dated 20.01.2021 sent to the Petitioner and challenging the demand in the Court. The Respondent Institution is in the process of filing Written Comments in the said CP No.D-2249/2021 and expects the petitioner to pay the true and correct social security contribution payable by them in accordance with law. The Written Reply does not constitute a waiver or release of SESSI's claims against the Petitioner. According to the policy of the Respondent Institution where the establishment is situated it is registered with the concerned Directorate of the Institution, and the concerned Directorate of the Institution is approached by the employees for getting the R-5 Card under the Social Security Scheme. However, the complete picture is already submitted above. It is admitted that the strength of employees of the Petitioner fluctuates, and that S.S. Contribution is deposited according to the strength of employees. The burden of submission of the proper forms is on the Petitioner. Ignorance of law is no excuse; the Petitioner's employees have never applied for getting R-5 Registration Card. As a matter of fact the thorough procedure for getting the R-5 Card is laid down and the respective employee has to undergo the process for getting the R-5 card. In this regard the Petitioner was apprised in our very first letter of Notification as already attached herewith and marked as Annexure M) along with which all the relevant documents were provided to the Petitioner. Neither the Petitioner nor his employees have approached the Institution for getting the R-5 Card, if the Institution would have been approached by the Petitioner or his employees, the R-5 Registration Card had definitely been issued. Moreover, the Institution has started making online the NADRA R-5 Registration Card with the help of

NADRA, and for this purpose the employee has to visit the office of the Institution. The Petitioner has not produced any evidence whatsoever when and how he complied with the law and submitted the relevant form "R" series. There is no contemporaneous evidence submitted by the Petitioner. As a matter of fact the applications required as precursor to the R-5 Card were never made and thus for want of information of the employees, the R-5 Card could not be made.

8. Respondents/SESSI have emphasized that there is not a single example that the R-5 Registration Card might have been refused by the Institution after its formal application. Petitioner has never applied for getting the R-5 Cards for his employees, and there is no evidence on the hand of the Petitioner that at any stage the R-5 Registration Cards may have been applied by the Petitioner or his employees. Even otherwise, No R-5 card can be issued without submission of the R series forms such as R-1, R-2, R-3, etc. All these forms are required to be submitted to the Institution first and the Petitioner has not filed any evidence before this Court that such materials as per the Rules and Regulations were provided to the Institution; hence Respondent Institution has no objection to the grant of the relief prayed by the Petitioner after submission to the Institution of the duly completed relevant forms, such as, R-1, R-2, etc. (Annexure M) required to register the employees of the Petitioner Establishment. **The Respondent Institution will be pleased to extend social security benefits to the secured workmen of the Petitioner in accordance with law after the Petitioner has complied with all the provisions of law**

and happily grant the R-5 Registration to the secured workers of the Petitioner Establishment after provision of the requisite information of his employees is submitted by the Petitioner Establishment to the Institution.

9. Heard learned counsel for the parties and perused the record.

10. The *core* issue, compelled the petitioner to approach this court was that of denial of institution (respondent) from issuing registration cards to workers/employees of petitioner, however, the respondent (institution) through comments while admitting :-

- i) the Act is beneficial for workers/employees;
- ii) the status of institution as ***autonomous body*** which generates its own funds;
- iii) every industry was/is required to register its workers/employees with institution;
- iv) every single worker was/is entitled for benefit but if he/she earns status of **secured worker**;
- v) the status of **secured worker** could only be earned if the industry *itself* while completing formalities submits required Form (s) and pays **contribution**;

categorically stated that if the petitioner completes formalities then the respondent (Social Security Institution) shall happily issue the registration card(s).

11. Though, the *dispute* appears to be no more a *dispute* yet has given rise to number of *propositions* to be answered which, *prima facie*, include:

- a) Whether on failure of the industry establishment as notified in getting its employees registered, the institution has any role to play?

12. In search of an answer to above proposition, at the very outset, we shall feel quite *safe* in adding that the all the laws, involved in the matter, were/are beneficial one and were/are made for *specific* purpose, so was/is held in the case of *National Embroidery Mills Ltd. & Ors. V. Punjab Social Security Institution* (1993 SCMR 1201) as:-

“---Preamble---Ordinance being a beneficial legislation intended to provide benefit to the workers of a particular group measured with the salary must be interpreted liberally”.

therefore, the institution was/is always obliged to act and behave while keeping such aspect as well that such law was/is to be interpreted ***liberally***. We would add that liberal interpretation of a ***beneficial legislation*** shall always mean in favour of ‘***objective***’ thereof. The position shall stand clear from the submission, so made by the respondent, regarding objective of the scheme of Social Security as:-

The primary aim of Application of Scheme of Social Security on the establishment is to provide benefits and facilities to secured employees or their dependents in the event of sickness, maternity, employment injury or death, Iddat benefits, disablement gratuity, disablement Pension, survivors Pension and medical care and for the matter ancillary thereto as provided Section 36 and 47 of the Sindh Employees Social Security Act, 2016.

13. We would also add that the objective of the law also requires registration of every ***single employee/worker*** so is evident from Section 2(9) of the Act, 2016 which reads as:-

“***employee***” means any person employed, whether directly or through any other person for wages or otherwise to do any skilled or unskilled, supervisory, clerical, manual or other work in, or in connection of

service or apprenticeship, whether written or oral, expressed or implied but does not include—

The above meaning leaves nothing to doubt that every such **'employee'** was/is entitled to benefits, so aimed in the scheme of SESSI which, per preamble thereof, is:-

“WHEREAS it is expedient to introduce a scheme of Social Security for providing benefits to **certain employees** or their dependents in the event of sickness, maternity, employment, injury or death, and for matters ancillary thereto;

14. Now, the question remains as to who are the **certain employees?** For this referral to section 2(26) of the Act, being relevant, is made hereunder:-

“**secured person**” means a person in respect of whom contributions are or were payable under this Act”

15. No doubt, scanning of the Act, *prima facie*, puts the **'establishment'** under an obligation to get its employees registered with the Social Security institution by submitting requisite form (s) but if the plea of the institution of having no liability in event of such failure is believed the purpose of establishment thereof shall lose its purpose. The section 3 of the Act speaks as:-

“3. Establishment and incorporation of Employees' Social Security Institution. (1) As soon as, may be, after the commencement of the said, Government shall establish by notification in the official gazette, an institution to be called the Employees' Social Security Institution.

(2) The institution shall be a body corporate having perpetual succession and a common seal, with power, subject to the provision of this Act, **to acquire, hold and dispose of properties, both moveable and immovable**, and shall by the aforesaid name sue and be sued.

(3) The institution shall have its own funds, **to be called the Employees' Social Security Funds**, and may incur out of the said funds such expenditure as may be necessary.

16. We are not able to understand as to how the *Social Security Institution* shall function if the failure of the *establishment* in getting its '*employees*' registered is allowed to continue? and as to how the objective of the Scheme would be achieved?. These compel us to go a little deep. A referral to section 23 of the Act, being relevant, is made hereunder:-

“23. Officials of Institution to check employer’s books.—(1) Any official of the Institution duly authorized by a certificate in a form specified in the regulation, may, for the purpose of inquiring into the correctness of any of the particulars stated in the records or returns referred to in section 22 or for the purpose of ascertaining whether any of the provisions of this Act have been complied with—

(a) require an employer to furnish to him such information as he may consider necessary; or

(b) at any reasonable time enter in any establishment or other premises occupied by such employer and require any person found incharge thereof to produce and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages, or to furnish to him such information, as he may consider necessary; or

(c) examine, with respect to any matter relevant to the purpose aforesaid, the employer , his agent or any person found in such establishment or other premises , or any other person whom the said official has reasonable cause to believe to be or to have been a secured person.

(2) The official referred in sub-section (1) shall be bound to secrecy as regards all matters with which he becomes acquainted in the performance of his duties and which do not relate to matters provided for in this Act.

(3) If an employer fails to maintain such records or to submit as required by regulations, or otherwise fails to comply with the provisions of sub-section (1) and thereby makes it difficult to ascertain the identity of persons required to be secured or the amount of contribution payable, the contribution shall be assessed on the basis of such evidence as the Institution may find satisfactory for this purpose.

(4) No staff member of the Institution shall visit the premises of any establishment, opting for the Self-Assessment Scheme under section 21, for the purpose of checking of employer's books, record, etc **during the period of two years.**

(5) The number of annual inspection in respect of those establishments which do not opt for self-assessment scheme shall be restricted to only one which shall be notified to the establishment in advance and shall, at the maximum, be restricted to last two years.

The induction of the above provision makes it quite clear that the **establishments (Employers)** have not been left to continue ignoring their obligations to get their employees secured as well to pay the **contributions** rather the **Social Security institution** has been given powers to examine such record as well to make inquiry with regard to 'employees' of the establishment as well their entitlement to earn status of **secured persons**. The sub-section (3) of Section 23 makes it quite clear that mere failure of the **establishment** shall not stop the **institution** from performing its obligations i.e to take *legal* course/initiatives for maintaining record of workers, liable to earn status of '**secured persons**'.

17. The referral to section 24 shall make it rather clear that failure of the establishment shall also bring its own consequences. The same reads as:-

“Section 24. Increase of unpaid contributions and recovery of contributions, etc, as arrears of land revenue.—(1) If an employer fails to pay, on the due date, the contributions payable by him under sub-section(1) of section 20, the amount so payable by hi shall be increased by such percentage or amount as may be prescribed.

Provided that in no case shall such increase exceed fifty per centum of the amount due:

Provided further that no part of such increase shall be payable by, or the liability to pay the same be passed on by the employer to his employees.

(2) Without prejudice to any other remedy, the amount of contributions due, together with the increase provided for under sub-section (1), **may be recovered as arrears of land-revenue.**

18. The right to recover arrears as well '***fine***' of failure to pay contributions at due time, as **arrears of land-revenue**, was/is sufficient to take away all the clouds with regard to liabilities of the **Social Security Institution** in:-

- a) *its (institution's) authority in examining all the establishments, within its jurisdiction, regarding employee (s) working therein;*
- b) *its (institution's) authority in inquiring/verifying the record of establishments, within its jurisdiction, whether same is proper or otherwise?*
- c) *its (institution's) authority in checking the default of the establishments towards payment of contribution for secured persons or for whom the same (contribution) is payable;*
- d) *its (institution's) authority in recovering the due amount couple with permissible fine, as **arrears of land-revenue;***

Though, the above discussed facts and legal positions are sufficient to answer the proposition, so framed, as nothing but a big '**YES**' but we would also add that the legislature has included the "**CHAPTER-VIII**" with title as '**Offences & penalties**'. It begins with Section 70 which for sake of convenience and making point clear is referred hereunder:-

Section-70. Offences—(1) If any person—

- a) for the purpose of obtaining the allowance or denial of any payment or benefit under this Act, whether for himself or some other person, or for the purpose of avoiding any payment

to be made by himself or any other person under this Act—

- (i) knowingly makes or causes to be made any false statement or false representation; or
- (ii) produces or furnishes, or causes or knowingly allows to be produced or furnished any document or information which he knows to be false in material particular; or
- (b) fails to pay any contribution which under this Act he is liable to pay; or
- (c) recovers or attempts to recover from a secured person, or deducts or attempts to deduct from his wages the whole or any part of the contribution; or
- (d) fails or refuses to submit any return required by regulations or makes a false return; or
- (e) obstructs any official of the Institution in the discharge of his duties; or
- (f) is guilty of any contravention of, or non-compliance with, any of the requirements of this Act or the rules or the regulations,

he shall, without prejudice to any action to which he may be liable under section 24, or section 74 or any other provisions of this Act, be punished with imprisonment which may extend to three months, or with fine not exceeding fifty thousand rupees, or with both.

The referral to above provision was/is sufficient to take away all clouds or *pleas* of the **respondent (SESSI)** whereby it (respondent/establishment) attempted to avoid its obligations while putting whole responsibilities of getting employees registered with **Social Security institution** upon the **'establishment'**.

19. The affirmative answer to above proposition, makes us to say a little more that **'worker/labourer'** falls within the category of those **'citizens'** (under poverty line class) who, regardless of all guarantees by Constitution towards **fundamental rights** as well **social justice**, normally does not get such protections, therefore, the Act was/is promulgated whereby the **'employees/labourers'** have

been assured number of '**benefits/protections**' which are specified in '**CHAPTER-V**' with title '**Benefits**'. Same includes:-

- (1) **Sickness benefit** (section 36)
- (2) **Maternity benefit** (section 37)
- (3) **Death grant** (section 38)
- (4) **Medical care during sickness and maternity.** (section 39)
- (5) **Medical care of dependents, etc** (section 40)
- (6) **Injury benefits.** (section 41)
- (7) **Disablement pension** (section 42)
- (8) **Disablement gratuity** (section 43)
- (9) **Survivor's Pension** (section 44)
- (10) **Death grant in case of death while in receipt of injury benefit or total disablement pension** (section 45)
- (11) **Medical care in the case of employment injury** (section 46)

20. It is pertinent to mention that these benefits, provided by the law *itself*, can't be provided if the **institution** does not discharge its obligations i.e '**generating funds**' which *normally* are entirely dependent upon the contributions of **secured persons or those for whom same is payable?**. Before answering to this question, we feel it quite justified to refer the report of the Mr. Samiullah Qureshi, 2nd Senior Civil Judge/Assistant Sessions Judge, Shikarpur, who in a CP No.D-5642/2019 was appointed as Commissioner to examine the status of SESSI in terms that :-

1. Whether existing mechanism, fixing wages, is implemented in its letter and spirit?
2. Whether ordinary worker is aware about the SESSI, Wages Board, and Workers Welfare Board and have access to it?
3. Whether mechanism to avail facility is easily accessible so as to ensure timely help or needs improvements? If so, what

steps could further make it more convenient and easy accessible?

4. Whether methods adopted by the SESSI and Welfare Boards compelling the masters, failing within such definition of acts, are comprehensive so as to get registration of workers with the SESSI and payment of the fix amount as provided under the act and rules? If not, what steps needs to be added?
5. Whether the mechanism of distribution of budget (funds) is, prima facie, eliminating possibilities of illegalities?
6. Whether there is any prima facie, illegality, requiring auditing of the utilization of budget or criminal negligence on the part of SESSI and Workers Welfare Board?
7. Also examine any malfeasance committed by SESSI and Workers Welfare Board.

because the Commissioner (Mr. Samiullah Qureshi, 2nd Senior Civil & Assistant Sessions Judge, Shikarpur) *did* a marvelous job and submitted a comprehensive report which not only brought the *brightening aspects* of the Act but also consequences of the failure of the **Social Security Institution** towards its obligation(s). It would be conducive to refer relevant paragraphs of the report, which are as under:-

In my humble opinion, “worker” can be divided under two major categories. One is “**Ordinary Worker**” may be termed as a worker/labor who is not registered with SESSI or EOBI ” and second is “**Secured Worker** ” who is registered with SESSI or EOBI, hence it can safely be said that apart from Secured worker all other workers fall under the category of Ordinary worker.

As per record furnished by the SESSI 65,1364/- workers are registered with them in throughout the province of Sindh meaning thereby, they are entitled to all the benefits provided by SESSI or Sindh Workers Welfare Board and they are well aware regarding minimum wages too. (Annexure B page 469)

Presently, in Sind, tentatively, labour force is constituted upon at least 0.5 Million persons/workers, through independent sources available on net. This suggests only 12.5% of workers are registered with SESSI who are eligible to obtain Social Security Benefits and they are aware of the same, whereas, 88.5 % workers are falling in the class of “ordinary workers” who are not registered with

SESSI due to lack of awareness by them or due to unwillingness of Employers. In either of the cases, it is the **Sindh Labour Department and Sindh Employees Social Security Institute** responsible for non-registration of ordinary workers so that they can also enjoy status of Secured Worker.

Sindh is still home to the largest group of population left **without any kind of protection against social risks**. Ordinary workers still face daunting challenge of extending social security benefits to all workers; obviously the need for efficient protection mechanisms that can reduce their particular vulnerability to various shocks and stresses.

It will not be out of place to mention here that during visits of Commission focal person of SESSI Dr. Saadat Memon, apprised the Commission that project of **“Universalization of SESSI”** is soon to be started so the **“ordinary workers”** may also register with the SESSI without any cumbersome process of filling forms through employer on the contrary they will register themselves online and avail the full benefits of Social Security.

The formal workers/ secured worker are aware about SESSI, Wages board and Workers welfare board and also they have access to it. But ordinary workers/ unregistered workers are not known to the said departments and **they are deprived of the fruits of registration by their employer(s) in connivance of Sindh Labour Department and SESSI.**

3. Whether mechanism to avail facility is easily accessible so as to ensure timely help or needs improvements? If so, what steps could further make it more convenient and easy accessible?

Before describing mechanism to avail facility it would be appropriate to mention here that SESSI provides following facilities to secured workers:-

(i) Medical Care facility,

(ii) Cash benefits including sickness, maternity benefits, death grants and Iddat benefits, injury benefits, disablement pension, disablement gratuity, survivor’s pensions.

Apart from above, **Sindh Worker Welfare Board Sindh (SWWB)** provides following facilities to secured workers:-

- (i) Housing facilities, education to children, financial assistance (grants in aid for marriage, death and scholarship) to those workers/labors who are registered by SESSI or EOBI.

21. Now, we would revert to question i.e

“How these benefit (s), provided by the law *itself*, can be provided if the **institution/SESSI** does not discharge its obligations i.e **‘generating funds’** which *normally* are entirely dependent upon the contributions of **secured persons or those for whom same is payable?**”

an answer to this, there could be no answer but the **‘discharge of legal obligations by the institutions, so provided in the Act itself’** which is not limited to but includes right to enter into **establishments** couple with right to check/examine the record/books of the **establishments** for **secured persons** as well for whom the same is payable even if they have not *yet* got status of **secured persons**. (section 23 of the Act), therefore, it is the time to direct the **Social Security Institution** that it (**Institution**) shall ensure strict adherence in bringing all the **‘employees’** within meaning of **secured persons** and the failure of the **establishments alone** shall not be an excuse to avoid such obligation(s). Needless to repeat, as pointed out in the referred report, that failure on part of the **institution** resulting into **557 millions rupees** in shape of recoverable arrears which, if the establishment would have discharged its obligations, the same could have been collected and used (invested) for benefit of the **secured persons**.

22. Accordingly, the **Social Security Institution** shall ensure recovery of said arrears by resorting to all legal course, including that provided by Chapter-VIII without any hesitation

because the most important integral part of **penal provisions** is not limited to punish the *guilty* but to avoid repetition thereof by others. The '**institution**' shall ensure physical verification of all the **establishments**, falling within its territory jurisdiction, and shall ensure registration of all the employee(s) who are liable to be given the status of **secured persons**. Thereafter, the **Social Security institution** shall resort to all available legal courses including the **penal one** if they find applicability thereof.

23. The **Social Security Institution** shall also work for registration of the **domestic worker** under The Sindh Home Based Workers Act 2018 for which necessary publication(s) shall be made thereby informing the **domestic workers** of their rights in case they get themselves registered as well shall take all other steps, including those pointed out in the report and it is agitated by the SESSI (Respondent) that they are making awareness among the workers, who are liable to be registered with **Social Security Institution**. Admittedly, a less number is registered with SESSI and Worker Welfare Board, hence, all Deputy Commissioner(s) shall provide every help to the SESSI Officers, they shall adopt all modes to ensure that every secured worker is registered with SESSI. SESSI shall issue publication in local newspapers and shall introduce digital modes and mobile application for registration enabling employees and self-employed workers to fill the required forms for issuance of card.

24. While parting, it has also come on record that *normally* the **Social Security Institution** was/is reluctant in resorting to available procedure for penal action against the *guilty* as no single precedent was/is referred rather all burden was attempted to be

shifted upon the **establishment**, which, as discussed above, was a wrong *plea*. The **institution** though claims to be functioning at different place(s) but all such place (s) have not been claimed having the **Social Security Courts** which, per section 2(30) of the Act, is defined as:-

“Social Security Courts” means a court, constituted under section 60;

The availability of **Social Security Courts** at all places was/is necessary so as to file complaint(s) for all *purposes* of the Act, including collection of the **contribution**.

25. Therefore, the Government of Sindh shall establish Social Security Courts at all places wherever such Courts are not notified/constituted. It has come on record that in whole province there is not a single court under Social Security Act, however, Government has notified two Labour Courts as Social Security Court. We feel that the Government has not taken serious efforts in favour of workers (Labours), admittedly Labour Courts are already small in number and overburdened, hence, in all divisions at least one Social Security Court and in Karachi at least four courts are the need of the *time*. The same, *hopefully*, shall help in determining the issues of the most *unprivileged* class i.e **workers/labours** hence same should be established without much loss of time. This process shall be completed within *least* practicable period. The report in this regard shall be submitted through MIT within a period of two (02) months.

26. In the end, it is added that the report of the Commissioner (Mr. Samiullah Qureshi, 2nd Senor Civil/ Assistant Sessions Judge, Shikarpur) shall also be sent to SWWB and labour department for consideration and action, as was/is suggested in the

report because such labour needs not be made a part of heap of papers but demands a little more. Besides, same shall be placed in High Court Website.

27. As regard the *issue*, involved in the instant petition, it would suffice to say that since the SESSI has agreed for issuance of registration Cards including with petitioner therefore, the petitioner shall ensure compliance of required formalities and all workers shall be registered within one month, hence instant petition is allowed with above direction. It is, however, worth adding that failure or delay on part of the petitioner would not be an excuse to let such *defaulting* establishment continue without legal consequences.

Office shall communicate this order to all concerned quarters.

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