

(2023) 05 OHC CK 0224
In the Orissa High Court
Case No : Writ Petition (C) No.15079 Of 2023

Aska Co operative Sugar Industries Limited	APPELLANT
Vs	
Employees State Insurance Corporation, Bhubaneswar And Others	RESPONDENT

Date of Decision : 15-05-2023

Acts Referred:

Employees? State Insurance Act, 1948 — Section 45A

Citation : (2023) 05 OHC CK 0224

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Baijayanti Mohanty, A. P. Ray

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

W.P.(C) No.15079 of 2023 and I.A. no.6952 of 2023

1. Ms. Mohanty, learned advocate appears on behalf of petitioner. She submits, initial demand by the Corporation regarding period in year, 1994 is subject matter of challenge before the Insurance Court. The challenge was consequence of her client having earlier moved the writ Court. While the challenge is pending, there has been purported determination under section 45-A of Employees' State Insurance Act, 1948. Subject matter of the dispute is whether or not her client is liable under the Act, having seasonal activity. The controversy yet to be adjudicated, the Corporation could not have proceeded for subsequent period and raise demand with attendant consequences to distress of her client. She prays for quashing of impugned order made under section 45-A and the appellate order confirming it. On query from Court, Ms. Mohanty submits, no interim restraint order was passed in the case pending before the Insurance Court.

2. Mr. Ray, learned advocate appears on behalf of the Corporation and relies on view taken on judgment dated 6th December, 1996 in Misc. Appeal no.27 of

1996 (Regional Director, Employees' State Insurance Corporation, Regional Office, Orissa vs. M/s. Orissa Agrico (P) Ltd. and another). He relies on paragraphs 9 and 10, reproduced below.

"9. The appellant is also aggrieved by the impugned order inasmuch as the E.S.I. court has granted an interim injunction restraining the Corporation from raising any demand even for the subsequent periods which are not subject matter of E.S.I. Misc. Case No.14 of 1994. It has been pointed out that the respondents have challenged the demand only on the factual dispute whether during the relevant period the respondents were employing the requisite number of employees to bring them within the purview of the Act. The dispute being related to a question of fact confined to the disputed period the E.S.I. court should not have granted a blanket injunction restraining the Corporation from raising and realizing any demand even for the subsequent period. The E.S.I. court has thus exceeded its jurisdiction in granting an injunction in respect of periods not covered under the E.S.I. Misc. Case No.14 of 1994.

10. In the facts and circumstances, this Court makes it clear that the interim order passed by the E.S.I. court is to be treated as confined only to the period covered under the E.S.I., Misc. Case No.14 of 1994 and the same will have no operation in respect of any subsequent period. The Corporation will be free to raise the demands in accordance with law in respect of periods subsequent to the periods under dispute in the E.S.I. Misc. Case No.14 of 1994 and the respondents will be at liberty to avail of such remedies as are permissible under law."

(emphasis supplied)

He submits further, in event petitioner wants to resist impugned orders, fresh application before the Insurance Court needs to be made. For this, he relies on view taken by another learned single Judge of this Court by order dated 29th August, 2000 in OJC no.2029 of 2000 (M/s. Cuttack Diesels vs. Employees' State Insurance Corporation and others).

3. Subject matter of challenge is the case before the Insurance Court is order dated 25th April, 1994 made under section 45-A. Controversy between the parties is whether petitioner does seasonal activity. The Corporation said, as appears in the order under challenge that as per vigilance report dated 16th April, 1992, distillery section of petitioner runs with the help of power house throughout the year and, inter alia, the factory is not exclusively engaged in the manufacture of sugar or rectified spirit but it manufactures both. In impugned order dated 10th November, 2022 same contention of the Corporation has been reiterated. Furthermore, it has been stated that petitioner could not produce any stay order/direction from the Court.

4. It appears from paragraphs 9 and 10 in M/s. Orissa Agrico (supra), view taken and direction made therein was in respect of factual disputes in that case on whether during the relevant period, the respondents were employing requisite

number of employees. In those circumstances, view taken was, blanket restraint order could not have been passed. It is appreciated that the Bench took the view because it was entirely possible for the establishment to employ larger number of people in subsequent period, to bring it under purview of the Act. In this case, contention of petitioner before the Insurance Court is that it is carrying on seasonal activity and not liable under the Act. Dispute raised by the Corporation in the Insurance Court has been reiterated in impugned orders. No changed circumstances have been referred to.

5. Regarding second contention of Mr. Ray that separate application must be filed against subsequent demands, the contention is not appealing inasmuch as accepting it would give rise to multiplicity of judicial proceedings. Furthermore, order dated 29th August, 2000 (supra) was made on consent.

6. The controversy awaiting adjudication in the Insurance Court is whether petitioner is liable. Had it been regarding the assessment, interference could have been limited to the disputed amount. However, since petitioner is claiming to be outside purview of liability under the Act and the adjudication pending, there will be stay of operation of impugned orders till three weeks from date. Parties are directed to communicate this order to the Insurance Court. It is for said Court to either adjudicate and dispose of the dispute within that time or extend interim protection thereafter, to petitioner.

7. The writ petition is disposed of.

.....