(2015) 02 JH CK 0179

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3594 of 2013

Excel International APPELLANT

Vs

Employees State Insurance Corporation and Others RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:
Employees State Insurance Act, 1948 — Section 2(12), 45-A, 45-G(3)(iv)

Citation : (2015) 146 FLR 471

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : D.K. Pathak, Saket Upadhyay and Sweta Rani, for the Appellant; Ashutosh Anand, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J—Aggrieved by order dated 28.9.2012 and 20.5.2013, the petitioner has preferred the present writ petition. The brief facts of the case are that, vide letter dated 7.2.2011 a notice was issued to the petitioner for complying the provisions of the Employees'' State Insurance Act, 1948. Thereafter, notices dated 1.8.2011 and 26.9.2011 were issued to the petitioner for complying the provisions under the Act by making payment. The petitioner''s unit was inspected on 14.12.2011 and it was directed to produce records however, the petitioner did not produce any record. Subsequently, the petitioner''s establishment was again inspected on 29.12.2011. Since, the petitioner did not comply with the provisions of the Employees'' State Insurance Act, 1948, a notice dated 18.1.2012 was issued to the petitioner for appearance. Thereafter, sufficient opportunities were granted to the petitioner and under section 45-A of the Act, a liability of Rs. 4,65,465/- for the period between September, 2007 and December, 2011 was determined and the petitioner was directed to make payment. Vide order dated 14.12.2012, an amount of Rs. 6,34,635/- was sought to be realised from the petitioner and it was finally realised through demand draft dated 9.1.2013. Thereafter, notice dated

20.5.2013 was issued to the petitioner for fixing the quantum of damages.

A counter-affidavit has been filed on behalf of the respondents stating that the petitioner''s unit is liable to make payment under the provisions of Employees'' State Insurance Act, 1948 and it is covered under section 2(12) of the Act since 1.1.1999. Notices dated 14.12.2011 and 29.12.2011 were issued to the petitioner however, the petitioner did not produce record to the authority and therefore, on 18.1.2012 a provisional assessment was made, requiring the petitioner to pay an amount of Rs. 5,25,525/- for the period between 1.1.2007 and 31.12.2011. Still, the petitioner did not make payment nor did it submit records and therefore, final assessment was made vide order dated 28.9.2012. It is submitted that in exercise of power under section 45-G(3)(iv), the authority is empowered to realise the amount so assessed. An amount of Rs. 6,34,635/- was recovered on 9.1.2013. It is submitted that the provisions under the Employees'' State Insurance Act, 1948 is a beneficial provision and it has been enacted for the benefit of the employees. The activities of the petitioner''s unit has been notified by the Central Government and thus, the petitioner''s unit is covered under the provisions of the Act. An objection to the maintainability of the writ petition on the ground of availability of alternative remedy of appeal and in not approaching the ESI Court have also been taken by the respondents. The learned Counsel for the respondents further submits that there is inordinate delay on the part of the petitioner in approaching this Court in as much as, after the impugned order dated 28.9.2012 was passed, notice was issued to the petitioner and an amount of Rs. 6,34,635/- till 14.12.2012 was found due from the petitioner which was realised on 9.1.2013.

2. From the materials brought on record, it is apparent that no physical inspection of the unit of the petitioner was carried by the respondent-authority though, on 14.12.2011, the Insurance Inspector visited the petitioner''s unit and directed the petitioner to produce record. On 29.12.2011, the Insurance Inspector again visited the petitioner''s unit and directed the petitioner to produce record. These notices have been issued in a Format for Notice and there is no reference of the number of employees employed by the petitioner. From the provisional assessment order dated 18.1.2012 and the final assessment order dated 28.9.2012, I do not find any reference of physical inspection of the petitioner''s unit. It has nowhere been disclosed by the respondents that at the time of the physical inspection by the Insurance Inspector, 21 employees were found working in the petitioner''s unit and thus, it has been assessed for employing 21 employees. The petitioner has filed supplementary affidavit producing on record the "profit and loss account" in the Income Tax return filed by the petitioner. The learned Counsel for the petitioner submits that from the statement of account, it would appear that at no point in time 20 or more employees were employed by the petitioner. Without going into this aspect, I am of the definite opinion that the provisional assessment dated 18.1.2012 and the final order dated 28.9.2012 have been passed without any material before the Assessing Authority for concluding that the petitioner has employed 21

employees. It is the case of the respondents that the petitioner did not produce any record still, the petitioner''s unit has been assessed for employing 21 employees.

3. In view of the above, I find that since, the petitioner did not produce the record before the Assessing Authority, the Assessing Authority could not have assessed the petitioner''s unit either provisionally or finally, without a physical inspection report. Considering the above facts, the impugned orders dated 28.9.2012 and 20.5.2013 are hereby quashed and the petitioner is directed to produce necessary records to the respondent No. 2 within a period of four weeks. The petitioner is further directed to appear before the respondent No. 2 on 2.4.2015. Since the petitioner did not produce the record, a cost of Rs. 2,000/- is imposed upon the petitioner to be deposited with JHALSA, within a period of four weeks.

4. The learned Counsel for the petitioner submits that the amount illegally realised from the petitioner may be refunded to the petitioner. The learned Counsel for the respondents submits that since the petitioner is liable under the Act, no direction for refund may be made however, the amount deposited by the petitioner would be adjusted in the final assessment. The writ petition is allowed, in the above terms.