
(2016) 07 JH CK 0008
In the Jharkhand High Court
Case No : W.P. (C) No. 3358 of 2016

H.N. Pareek

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 04-07-2016

Acts Referred:

Employees State Insurance Act, 1948 — Section 45-A, 45-AA, 87

Citation : (2017) 170 AIC 329 : (2016) 4 AIRJharR 586 : (2016) 3 CLR 220 :
(2016) 150 FLR 980 : (2016) 4 JBCJ 96 : (2016) 4 JCR 500 : (2016) 3 JLJR 549

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : M/s. V.P. Singh, Senior Advocate, Arun Kr. Singh, A.K. Das and Rashmi Kumar, Advocates, for the Appellant; Mr. Ashutosh Anand, Advocate, M/s. Rajiv Anand, G.A. IV, Shyam Narsaria, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Aparesh Kumar Singh, J.— Heard learned counsel for the parties.

2. The order dated 14.6.2016 (Annexure-13) passed by the Recovery Officer, Employees State Insurance Corporation, Ranchi (herein after referred to as ESIC) is under challenge in the present writ petition where under the General Manager (ER,W &CSR) M/s Tata Motors Limited (Contractor Cell), Jamshedpur has been asked to remit an amount of Rs. 1,64,69,615/- from the account of petitioner towards ESI dues. The order dated 31.5.2016 (Annexure-12) issued by the Recovery Officer has also been impugned which restrains the General Manager (ER,W & CSR) M/s Tata Motors Limited (Contractor Cell), Jamshedpur from delivering any bill to the petitioner. The order of the same date 31.5.2016 (Annexure-10) addressed to the petitioner has also been impugned where under he has been informed about the initiation of certificate proceeding on the request made by the ESIC Officials for recovery of an amount of Rs. 1,64,46,460/- towards ESI dues for the period July 2010 to May 2015 and interest up to 24.5.2016.

3. Conspectus of background facts borne out of the pleadings are as follows:- In W.P.C. No. 6970 of 2006 vide judgment dated 11.1.2007 (Annexure-1), the learned Single Judge of this Court was pleased to direct the respondent-Corporation to reconsider petitioner's prayer for allotment of independent registration and code number and pass appropriate reasoned order in accordance with law. A direction was also issued upon the respondent-State of Jharkhand to consider the petitioner's application for exemption from the application of the provisions of ESI Act by passing speaking order within stipulated period. It was also observed that until final order is passed on petitioner's representation, no coercive action shall be taken against the petitioner for realisation of the amount as contained in impugned Annexure-7 thereof dated 17.10.2006, where under he had been directed to pay the employees contribution to the tune of Rs. 31,92,750/- for the period from November, 2004. In L.P.A. No. 70 of 2007 preferred by the respondent-ESIC and others being aggrieved against the said judgment dated 11.1.2007 passed in W.P.C. No. 6970 of 2006 learned Division Bench declined to interfere finding no merit there in vide order dated 19.6.2008 (Annexure-2). Petitioner was allotted an independent code thereafter. The exemption application of the petitioner was rejected by the respondent-Department on 26.5.2009. It was assailed in W.P.C. No. 122 of 2010 on the ground that the Officer who heard the petitioner did not pass the final order rather the Principal Secretary passed the order rejecting petitioner's application for exemption. The said writ petition was disposed of quashing the order of rejection dated 26.5.2009 vide judgment dated 24.11.2011 (Annexure-9) remitting the matter to the Principal Secretary, Labour, Employment and Training Department to pass a fresh order after hearing the parties in accordance with law within a stipulated period of 3 months.

4. As is evident from of the statements of the petitioner through the supplementary affidavit; the exemption application i.e., subject matter of the earlier two writ petitions was for the period from 2004 to 2006 filed on 31.10.2006. Petitioner has thereafter also, as per the statement made in para 12 of the supplementary affidavit, filed exemption application for the period 2007 to 2012 on 17.9.2012 and for the period 2013 to 2016 on 1.7.2016. Learned counsel for the petitioner has tried to make out a case that when exemption application have not been decided by the competent authority under the Department of Labour, Employment and Training, the respondent-Corporation should not have proceeded to levy a demand and seek recovery of the same for the period July 2010 to May 2015. Arguments have been advanced that petitioner did not have adequate service of notice in the assessment proceeding and was completely in dark thereof. In that sense, the principles of natural justice have been violated. Therefore, the instant writ petition quashing the recovery proceeding is maintainable in law. Learned counsel for the petitioner has also tried to impress that protection granted by the Writ Court till exemption application is pending vide order at Annexure-1, in effect should operate in favour of the petitioner from taking any coercive steps in the matter of recovery

of the demand of ESIC dues in question. Learned counsel for the petitioner has also sought to challenge the Assessment order dated 17.8.2015, brought on record as Annexure-B to the counter affidavit of the ESIC through I.A. No. 3998 of 2016.

5. Learned counsel for the respondent-Corporation refers to the contents of their counter affidavit. Taking the Court through the chronology of facts, it is stated that petitioner has in his supplementary affidavit accepted receipt of letter dated 17.6.2015 calling upon him to pay the contribution, which is Annexure-14 to his supplementary affidavit. Learned counsel for the respondent-Corporation has sought to dispel the contention regarding the lack of service upon petitioner of the letters dated 20.7.2015, Annexure-A series and the order of assessment dated 17.8.2015, Annexure-B series passed under section 45 A of the ESIC Act, 1948 by referring to the extract of the dispatch register and the receipts of the registry enclosed thereto under which the same were dispatched to the petitioner. It has also been pointed out that these letters were dispatched not only to the petitioner but also to his other partners. Petitioner therefore cannot feign ignorance of the assessment proceeding. Reference is also made on the letter, Annexure-C dated 25.5.2016 which is in relation to initiation of recovery proceeding under Section 45 C to 45-I of the ESIC Act, 1948 addressed by the Assistant Director of the Corporation to Recovery Officer with copy to the petitioner and other partners. According to him, the said letter has also been dispatched to the petitioner as per the extract of the dispatched letter enclosed thereto. Learned counsel for the respondent-Corporation also submits that these documents maintained in the ordinary course of business in the performance of statutory duties by the ESI authority should be treated as prima facie service of notice as presumption of regularity is attached to official proceeding. He has also referred to Annexure-D, letter of M/s Tata Motors dated 22.6.2016 requesting the Recovery Officer, Ranchi to refrain from realisation of outstanding dues from the petitioner as the principal employer. The said letter, according to the respondent indicates that petitioner was also in know of the proceeding. It is additionally submitted that all these issues of fact and grounds of law, if any, are available to the petitioner to be raised before the Appellate Authority under Section 45 AA of the Act of 1948. According to them petitioner has not shown diligence in submitting return over a long period of time distributed for more than 5 years as would be evident from its conduct. It is also submitted that the exemption application are to be filed for each year and prior in time as per Section 87 of the ESI Act. Moreover pendency of exemption application filed in 2012 for the period 2007-2012 cannot be meant to absolve the petitioner from the liability of the ESI dues. Therefore, he is dis-entitled to the discretionary remedy of this Court.

6. Learned counsel for the petitioner submits that the exemption application of the petitioner are still under consideration before the respondent-Department and any observation made in the present proceeding challenging the order of assessment and recovery should not prejudice the case of the petitioner in the matter of its pending exemption application.

7. Learned counsel for the respondent-Department submits that the competent authority empowered to pass an order on such exemption application is in seisin of the matter and notices have been issued upon the petitioner to participate in such proceeding. However, according to his instruction, no final order has been passed on such application.

8. I have considered the submission of the parties in the light of relevant material facts pleaded. In the presence of an alternative statutory remedy available under Section 45AA of the Act of 1948 against any such order of assessment under Section 45 A of the Act or recovery proceeding initiated there under, this Court considers it proper to relegate the petitioner to pursue the Appellate Authority with liberty to raise all such grounds of law and facts available to him.

9. This Court therefore refrains from making any comment upon the rival pleas of the parties in the present proceeding.

10. Learned senior counsel for the petitioner submits that there is statutory period of 60 days for preferring an appeal before the appellate authority. However, since the order of assessment has been brought on record through the counter affidavit of the respondent only today, this Court may grant adequate time to the petitioner to challenge the same before the appellate authority which may condone the delay in filing the same. Having regard to the aforesaid submission it is observed that if the petitioner files an appeal within a period of 2 weeks from today, the appellate authority would consider the question of delay sympathetically. For the period of 2 weeks from today the respondents would not take any coercive steps for realisation of the outstanding dues . However the interim protection granted above shall cease to operate on expiry of the period of 2 weeks from today.

11. The writ petition is disposed of accordingly.