
(2023) 02 OHC CK 0040
In the Orissa High Court
Case No : Writ Petition (C) No. 23143 Of 2014

Hotel Kalinga Ashok

APPELLANT

Vs

Dy. Director (Rev II) ESI And Others

RESPONDENT

Date of Decision : 09-02-2023

Acts Referred:

Employees' State Insurance Act, 1948 — Section 44, 45A

Citation : (2023) 02 OHC CK 0040

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Narendra Kishore Mishra, Nitish Kumar Mishra, Purnendu Prasad Ray, A. P. Ray

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Narendra Kishore Mishra, learned senior advocate along with Mr. Nitish Kumar Mishra, learned advocate appear on behalf of petitioner. Learned senior advocate submits, impugned is annexure 10 being notice dated 2nd September, 2014, of demand to defaulter issued by the Recovery Officer, for recovery of principal contribution of Rs.2,17,963/- and Rs.2 for cost as well as further interest at Rs.71.66 per day with effect from 5th June, 2014 till date of payment. He submits, in respect of said alleged principal contribution of Rs.2,17,963/-, notice dated 9th February, 2010 was issued by the Corporation. Said notice is part of annexure 1 series. He submits, his client has specifically stated in paragraph 3(c) of the petition that said notice was one issued under section 45-A in Employees' State Insurance Act, 1948.

2. He submits, another notice of same date was also issued. His client replied to both notices. At page 24 and part of annexure 2 series is reply dated 19th April, 2010 of his client, specific to the notice for recovery of alleged contribution of Rs.2,17,963/-. There was no determination inasmuch as there is no order of it.

Straightaway the Corporation embarked on recovery resulting in impugned demand. This was in clear violation of first proviso in section 45-A. He seeks interference.

3. Mr. Ray, learned advocate appears on behalf of the Corporation. He submits, the notice in question was not issued under section 45-A. He relies on section 44 to submit, inspection was made and on discrepancies found, the demand.

4. In reply, Mr. Mishra refers to paragraph 6.7 in the counter. He submits, it is apparent therefrom that though there is admission of reply made by his client, there is omission to disclose the order under section 45-A or result of consideration of the objection invited by the notice.

5. Court finds from paragraphs 6.2 and 6.3 in the counter that the Corporation said, inter alia, concerned notice regarding Rs.2,17,963/- was issued in respect of regular employees in Form-C (actual) yet, petitioner was called on put forth objection if any and was told, may represent their case on 10th March, 2010 during personal hearing. Paragraph 6.3 carries statement of petitioner's appearance and prayer for adjournment.

6. Paragraph 6.7 of the counter, relied upon by petitioner, is reproduced below.

"6.7. That, in response to Annexur-6 series, the petitioner submitted their reply enclosing Xerox copies of some return of contribution and another letter on the same date with reference to the Notice dated 09.02.2010 under Annexure-B of this counter. However, as the petitioner did not clear up the statutory dues amounting to Rs.2,17,963/- under Annexure-C, the Authorized Officer of the Corporation submitted certificate requisition dated 05.06.2014 for realization of the same. By letter dated 21.06.2014 under Annexure-9, the petitioner stated that, they have already deposited the ESI dues of Rs.3887/- in Certificate Case no.17544/2010 and the issue of demand amounting to Rs.2,17,963/- was replied by them vide their reply dated 08.12.2011.

As the petitioner did not clear up the contribution amounting to Rs.2,17,963/-, the Opp. Party No.3 by demand Notice dated 02.09.2014 under Annexure-14 directed the petitioner to deposit the same. Instead depositing the amount as directed, the petitioner filed this writ application on frivolous and vexatious grounds and the same is liable to be rejected. "

7. There appears to be omission on part of the Corporation to have dealt with demand on having given opportunity to petitioner to object. There is nothing said in the counter that in view of repeated adjournments obtained, ultimately adjournment was not granted for the demand to be confirmed and thereupon proceeded with for recovery. In the circumstances, though opportunity was stated as given to petitioner, materials on record do not disclose that in fact it was given.

8. Without going into the controversy as to whether the notice was under section 45-A or not, on opportunity of hearing stated to be given but appearing to not

have actually been given, impugned demand notice is set aside and quashed. The notice in Form-C dated 9th February, 2010, demanding as contribution on discrepancies found, at Rs.2,17,963/-, is restored. The Corporation will notice petitioner to appear to ventilate its objection to the demand, on a hearing to be held on any working day in the afternoon. Petitioner must ensure availability of its authorized representative, to attend the hearing. Petitioner will also be entitled to rely on documents at the hearing.

9. The writ petition is allowed as above and disposed of.

.....