

(2024) 07 OHC CK 0049

In the Orissa High Court

Case No : Writ Petition (C) No. 7369 Of 2020

M/s D.K. Enterprises

APPELLANT

Vs

Asst. Director (Revenue), ESIC, Khurda & Another

RESPONDENT

Date of Decision : 16-07-2024

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A

Citation : (2024) 07 OHC CK 0049

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : S. Mishra, A.P. Ray

Final Decision : Disposed Of

Judgement

S.K. Mishra, J.

1. This Writ Petition has been preferred challenging the orders, both dated 17.01.2018/ 19.01.2018, passed by the Asst. Director (Rev-II), ESI Corporation, under section 45-A of the Employees State Insurance Act, 1948, shortly, "The Act, 1948", so also consequential orders dated 11.12.2019 as at Annexure-7 and dated 27.01.2020 as at Annexure-9, passed by the Recovery Officer respectively.

2. The sole ground of challenging the said orders is that, despite filing nil return and intimating the E.S.I. Authority that the Petitioner-Contractor's Establishment is not undertaken any work after September, 2013, without due notice and affording reasonable opportunity to have its say and produce relevant documents, the Authority concerned proceeded ex parte against it and passed the impugned orders as at Annexure-5 series behind the back of the Petitioner-Establishment.

3. Controverting the said stand taken in the Writ Petition, a Counter Affidavit has been filed by the Opposite Parties-Corporation to substantiate its action to be legal and justified, apart from technical grounds as to non-maintainability of the Writ Petition on the ground of availability of alternative remedy.

4. In response to the said Counter, the Petitioner-Establishment has filed a short Rejoinder Affidavit denying as to the averments made in the Counter regarding giving due notice to the Petitioner-Establishment by the Authority concerned to participate in the 45-A proceeding.

5. In response to the said Rejoinder, the Corporation has also filed an Additional Affidavit appending thereto certain documents to substantiate its stand as to giving due notices to the Petitioner-Establishment before passing the impugned orders.

6. Learned Counsel for the Petitioner, drawing attention of this Court to the documents appended to the said Additional Affidavit, as at Annexure-D series, submits, the A.D. Card pertaining to notice dated 24.07.2017, which has been appended to the Additional Affidavit, does not bear the date and signature of his client, vide which the date of appearance was fixed to 23.08.2017. Similarly, though the notice dated 19.09.2017, fixing a date of personal hearing to 27.10.2017, has been appended to the Additional Affidavit but no proof has been annexed to the said Affidavit to substantiate the stand of the Corporation that the said notice was duly served on his client.

7. In response to the said submissions made by the Mr. Mishra, learned Counsel for the Petitioner, a query being made by this Court, Mr. Ray, learned Counsel for the Corporation submits, there is no such postal receipt or A.D. card on record to demonstrate before this Court that notice dated 19.09.2017 was duly communicated to the Petitioner-Establishment.

8. Mr. Ray, learned Counsel for the Corporation further submits, once the notice dated 24.07.2017 was served on the Petitioner-Establishment, it was not obligatory on the part of the Corporation to give further notice to the Petitioner-Establishment. Rather, it was obligatory on the part of the Petitioner-Establishment to make a query as to the next date and purpose of posting of the said 45-A proceedings and do the needful.

9. However, from the pleadings and documents available on record so also submissions made by the learned Counsel for the parties and specific stand of the Petitioner-Establishment as to non-receipt of notices and filing of "Nil Return" and giving intimation to the ESI Authority of the fact regarding closure of its activities after September, 2013, without expressing any opinion regarding merits of the case, the impugned orders as at Annexure-5 series, both dated 17.01.2018/19.01.2018, passed by the Asst. Director (Rev-II) so also consequential orders dated 11.12.2019, as at Annexure-7 and dated 27.01.2020, as at Annexure-9, passed by the Recovery Officer are hereby set aside.

10. The matter is remitted back to the Authority concerned for rehearing of the 45-A proceedings.

11. In order to avoid delay in re-adjudication of the said matters, the Petitioner is directed to appear before the Asst. Director (Rev-II) (Opposite Party No.1) on

5th August, 2024 at 11 A.M.

12. On so appearing, the Asst. Director (Rev-II) shall fix a date for production of records and filing of written submissions, if any, and shall proceed further in accordance with law and conclude the same within three months thereafter.

13. With the said observation, Writ Petition stands disposed of.

14. It is made clear that any recovery made from the Petitioner for the period in dispute, shall be subject to final outcome of the orders to be passed by the Authority concerned afresh in the 45-A proceedings.

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