
(2018) 05 CAL CK 0214
In the Calcutta High Court
Case No : W. P. 16399(W) of 2016

Oodlabari Company Ltd.

APPELLANT

Vs

State Of West Bengal And Ors.

RESPONDENT

Date of Decision : 16-05-2018

Acts Referred:

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

Citation : (2018) 05 CAL CK 0214

Hon'ble Judges : RAJASEKHAR MANTHA, J

Bench : Single Bench

Advocate : Soumya Majundar, A. Khan, A. K. Sinha

Final Decision : Disposed Of

Judgement

The writ petitioner is aggrieved by an order passed by the appellate authority under the Employees' State Insurance Act, 1948 dated 20th July, 2014. Prior thereto, the Assessing Officer by an order dated 1st April, 2016 had held the writ petitioner's establishment at its registered office at 6th floor, R. N. Mukherjee Road was covered under the ESI Act. The said order was passed under Section 45A of the E. S. I Act, 1948. The records of the proceedings of the order under Section 45A indicate that the writ petitioner's official was summoned to appear before the said assessing officer.

The writ petitioner despite having received notice and having made one appearance failed to make any further appearances. The writ petitioner did not produce any documents as directed by the assessing officer. The assessing officer based on records available with him, inter alia, found that the establishment had eight employees. Despite whereof the Assessing Officer brought the establishment under the purview of the said Act. A sum of

Rs.2, 27, 317/- was directed to be contributed towards the insurance cover and arrears under the said Act for the said eight employees.

The writ petitioner aggrieved by the said order preferred an Appeal under Section 45AA of the ESI Act, 1948. The Appellate Authority relying upon a

report by the Social Security Officer dated 20th January, 2013 found that the writ petitioner had in fact 11 employees. In addition to the 8 employees

found by the assessing officer, the appellate authority included two executives and one director also as employees. It was not examined as to whether

the two executives also stood covered under the said Act. The writ petitioner also did not get an opportunity to counter/explain such finding.

In the normal course of accepted hierarchy in decisionmaking process collection of evidence is done by the First Authority. An appellate authority

generally does not go outside the evidence before the first authority. If new evidence is found, the Appellate Authority is required to either grant an

opportunity to the appellant to explain the same or as per standard practice the matter is remanded back to the First authority for an Enquiry afresh.

In the instant case, there is no such fining. On the contrary, I find that the order of the First authority i. e. the assessing officer dated 1st April, 2016 is

ex facie without jurisdiction as only eight employees have been found with the writ petitioner. The Act mandates ten or more employees for an

establishment to be covered. Although a specific prayer has not been made to include a challenge to the order of the appellate authority, a pleading is

available at paragraph 33 of the writ petition. Based on the said pleading and the submissions made before me, I am inclined to consider such prayer.

For the reasons already set out hereinabove, both the order of the Assessing Officer dated 1st April, 2016 being C/Ins. VI/41000537200000699/50 as

also the order dated 20th July, 2016 being No. C/Ins VI/41000537200000999/2165 passed by the Assessing Officer and the Appellate Authority are

hereby quashed and set aside. The matter is remanded back to the Assessing Officer who will start the proceeding afresh under Section 45A of the

Act. The writ petitioner shall communicate a copy of this order to the respondents.

While parting the writ petition, this Court expresses anguish at the conduct of the writ petitioner in not participating in the proceeding under Section

45A of the E. S. I Act. The records indicate that the writ petitioner absented

himself deliberately and with full knowledge of the same. In those circumstances, the writ petitioner shall pay costs assessed at Rs.60,000/- to the Office of the Director, Employeesâ?? State Insurance Corporation, regional office at 5/1, Grant Lane, Kolkata - 700001.

Â It is made clear that the quashing of the impugned order will take effect only upon the writ petitioner paying costs as indicated hereinabove to the respondents. The respondent authorities shall ensure compliance of the same and recover the same in accordance with law from the writ petitioner, if not paid. With the above observation, W. P. 16399(W) of 2016 is hereby disposed of. There will be no order as to costs. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.