

(2007) 11 OHC CK 0046
In the Orissa High Court

Orissa Olympic Association	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 14-11-2007

Acts Referred:

Employees State Insurance Act, 1948 — Section 44, 45, 45A, 45B, 75

Citation : (2008) 116 FLR 584 : (2008) 2 LLJ 279

Hon'ble Judges : Indrajit Mohanty, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Indrajit Mohanty, J.—Heard S. Mishra, learned Counsel for the petitioner-Orissa Olympic Association and P.P. Ray, learned Counsel for Employees" State Insurance Corporation.

2. The learned Counsel for the petitioner submits that petitioner-Association is a registered society in the name and style Orissa Olympic Association. This writ petition has been filed, inter alia, challenging Annexure-4, which is an intimation initiating a certificate proceeding. Further prayer of the petitioner is for a direction to the State to consider its application for granting exemption from the purview of the coverage of the Employees" State Insurance Act, 1948 (hereinafter referred to as the "Act"). Application for the said purpose has been submitted by the petitioner since February, 2005.

3. Learned Counsel for the petitioner further submits that the impugned certificate proceeding under Annexure-4 is without jurisdiction, inasmuch as, no certificate proceeding should have been initiated without first determining the contribution required to be deposited in terms of Section 45A of the Act. He further submits that although a proceeding, u/s 45A of the Act has been initiated, no final order has yet been passed and therefore, without first determining the contribution required to be deposited as required u/s 45A of the Act, no certificate proceeding to enforce any demand could have been initiated.

4. Ray, learned Counsel for the Employees State Insurance Corporation (in short "Corporation") fairly admits that the final orders in the proceeding initiated against the petitioner u/s 45A of the Act have not yet been passed. But the delay in disposal is due to the non-co-operation of the petitioner. The petitioner has not produced the necessary registers, books of accounts etc. Ray further submits that the quantum of demand in the certificate proceeding is based only on the statements made by the officers and staff of the petitioner-Association.

5. Section 45A of the ESI Act, 1948 reads as follows:

45A. Determination of contributions in certain cases.-(1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Section 44 or any Inspector or other official of the Corporation referred to in Sub-section (2) of Section 45 is (prevented in any manner) by the principal or immediate employer or any other person, in exercising his functions or discharging his duties u/s 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment:

(Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.)

(2) An order made by the Corporation under Sub-section (1) shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount determined by such order as an arrear of land revenue u/s 45B (or the recovery under Sections 45-C to 45-1).

6. As stipulated hereinabove, the proviso to Section 45A of the Act stipulates that no order determining the amount of contribution payable in respect of the employees shall be passed by the corporation unless the employer has been given a reasonable opportunity of being heard. Sub-section (2) of Section 45A of the Act further clarifies that an order of the Corporation under Sub-section (1) shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount determined by such order as an arrear of land revenue u/s 45B or recovery under Sections 45-C to 45-1.

7. On a plain reading of the aforesaid provisions of law it is clear that there has to first be a determination of the amount of contribution payable in respect of the employees as required u/s 45A of the Act and only then on payment of such demand can a certificate proceeding for recovery of such amount as an arrear of land revenue be initiated.

8. In view of the clear provisions of the statute, as stipulated u/s 45 of the Act, since no final order has admittedly been passed, the initiation of a certificate proceeding under Annexure-4 is illegal, unlawful and unauthorized., Therefore, I am of the considered opinion that the certificate proceedings initiated u/s 45A of

the Act is premature and therefore without jurisdiction and is quashed.

9. Further I direct the petitioner to co-operate with the authorities of the Employees' State Insurance Corporation and provide all necessary documents as may be required for determining the contribution payable for such purpose and for such purpose the petitioner is directed to appear before the appropriate authority of the Employees' State Insurance Corporation on November 30, 2007 with a copy of this order. On such appearance, the Corporation shall fix a date of hearing and dispose of the matter within a period of three months from the date of appearance of the petitioner.

10. So far as petitioner's application to exempt the Organization from the purview of the coverage of E.S.I. Act is concerned, Ray, learned Counsel for the Corporation, submits that delay for such consideration is on account of the fact that the petitioner- Association had not complied with necessary, statutory formalities required in the matter.

11. He further submits that necessary rectification or corrections to the application have only been carried out in August, 2007. Since the application of the petitioner-Association for exemption from the purview of the coverage of ESI Act is pending before the State Government for its consideration, the Commissioner-cum- Secretary, Government of Orissa, in the Department of Labour is directed to dispose of the petitioner's application for exemption within a period of two months from the date of receipt of this order. It is the responsibility of the petitioner to produce certified copies of this order, both before the Employees State Insurance Corporation and also before the Commissioner-cum-Secretary, Government of Orissa in the Department of Labour for necessary compliance of the aforesaid direction.

12. The writ petition is allowed to the extent indicated above. Misc. Case No. 9398/2007 is also disposed of.

Urgent certified copy of this order be granted on proper application.