

**(1987) 10 DEL CK 0006**  
**In the Delhi High Court**  
**Case No : F.A.O. No. 139 of 1973**

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| R.S. Ganesh Dass Dhomi Mal and Others | APPELLANT  |
| Vs                                    |            |
| E.S.I.C.                              | RESPONDENT |

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**Date of Decision :** 15-10-1987

**Acts Referred:**

Employees State Insurance Act, 1948 — Section 45B, 75(2)

**Citation :** (1995) 3 LLJ 655

**Hon'ble Judges :** Sunanda Bhandare, J

**Bench :** Single Bench

**Final Decision :** Partly Allowed

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## Judgement

Sunanda Bhandare, J.—This first appeal is directed against the order of the Employees' Insurance Court dated 23rd May 1973 whereby the application filed by the appellant u/s 75 of the Employees State Insurance Act (hereinafter referred to as the Act) challenging the demand of Rs. 5,007.69 as employees contribution together with interest and another demand of an equal amount as employer's special contribution and interest for the period 18-8-1966 to 6-10-1967 was dismissed.

2. The appellant has challenged this order on two grounds. Firstly, it was contended by the learned Counsel for the appellant that the appellant was not a factory within the meaning of the Act because the employees who were stated to be working in the factory premises were not its employees but were the employees of the contractor. Secondly, it was contended that the assessment of the contribution to be paid by the appellant on ad hoc basis even after the record had been produced was not valid.

3. I find substantial force in the second contention made by the learned Counsel for the appellant though I find that the first contention is without any merit. There is a clear finding of fact of the Employees' Insurance Court that when the inspection was taken the employees were seen to be working in the premises

belonging to the appellant and the appellant though produced some agreements stated to have been entered into with some contractor, the agreements seem to be fictitious because they contained several blanks. In fact, all the agreements with the contractor are written on the stamp paper purchased on the same date by the same person and from the same stamp vendor. All of them were executed on the same day i.e. the date of purchase, signed by the same witness and even did not mention the rates at which the work was to be done. In my opinion, Therefore, the Employees' Insurance Court was right in coming to a conclusion that these agreements could not be believed and appear to have been prepared merely for purposes of escaping the liability to pay contribution.

4. Now, coming to the second contention. Admittedly, after the first ad-hoc assessment was made by the Employees' State Insurance Corporation (hereinafter referred to as the Corporation) in the Employees' Insurance Court the appellant had produced all the records. The Employees' Insurance Court has held that the amount calculated by the Corporation at a subsequent date was not on ad-hoc basis because the account books of the appellant were checked in Court by the Inspector of the Corporation and that Inspector namely Mrs. Sheela Kumar was examined as R.W.1. It is clear that if the employer fails to produce the record, then the Corporation has the power to make assessment u/s 45A and recover the same u/s 45-B of the Act, however if the record is produced, the assessment has to be done as provided u/s 75(2)(a). Admittedly, in the present case as observed by the Employees' Insurance Court in its finding on issue No. 3, the appellant had produced all the record in Court and the contribution was enhanced by the Corporation only after seeing the record. Once the record was seen, to my mind, it was imperative for the Corporation to make a final assessment u/s 75(2)(a) and not ad-hoc assessment as provided u/s 45-A of the Act which does not seem to have been done in the present case. It appears that after the appellant objected to the ad-hoc assessment made previously, this demand was raised. If it was a final assessment u/s 75(2)(a) of the Act, the recovery could be made in execution u/s 78(4) of the Act. If it is an ad-hoc assessment without record, the recovery could be made u/s 45-B of the Act. In the present case, though the Employees' Insurance Court held that the assessment was not an ad-hoc assessment but was made after seeing the record, it was not right in holding that the recovery could be made u/s 45-B of the Act. To that limited extent, this appeal has to be allowed.

5. I, Therefore, set aside the findings of the Employees' Insurance Court on issue Nos. 3 and 6, however leave it open to the respondent to take appropriate steps to get the contributions determined as provided u/s 75(2)(a) of the Act Since the appeal stands partly allowed, the security bond dated 10th December 1973 furnished by the appellant will stand discharged. No costs.