

(2009) 07 DEL CK 0489

In the Delhi High Court

Case No : Writ Petition (C) No. 10735 of 2006 and CM No. 8223 of 2006

Sunny Packers

APPELLANT

Vs

Employees' State Insurance Corporation and Another

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Employees State Insurance Act, 1948 — Section 45A

Citation : (2009) 162 DLT 91 : (2009) 123 FLR 498 : (2010) 1 LLJ 668 : (2009) 156 PLR 6 : (2010) 7 RCR(Civil) 2354

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Rajesh Banati, for the Appellant; K.P. Mavi, for the Respondent

Judgement

S.N. Aggarwal, J.—The petitioner M/s Sunny Packers, in this writ petition filed under Article 226 of the Constitution, seeks setting aside of an order dated 16.02.2006 passed by respondent No. 1 directing the petitioner to deposit the amount as per C-19 dated 20.01.2005 immediately.

2. The petitioner at the relevant time was a proprietorship firm. This firm was covered by the provisions of the Employees' State Insurance Act, 1948 w.e.f. 01.05.1998. The petitioner firm, vide order dated 06.10.2000 of the Commissioner of Industries, Government of NCT of Delhi, was ordered to close down its unit as it was operating in residential and non-conforming area at RZ-15-A, Narsingh Garden, Khayala, New Delhi-110018. A copy of this order was sent by the Commissioner of Industries to the Chairman, Delhi Vidyut Board also with a request to disconnect the electrical power being used by the petitioner for industrial activity. The petitioner firm allegedly closed down its unit from RZ-15-A, Narsingh Garden, Khayala, New Delhi-110018 w.e.f. 31.10.2000. Its electricity was also allegedly disconnected w.e.f. 31.10.2000. However, the Inspector of Employees State Insurance Corporation allegedly visited the petitioner's unit lastly on 20.01.2004 and at the time of his alleged inspection, found the

petitioner's unit in function and five employees working there. The Employees' State Insurance Corporation (respondent No. 1 herein) allegedly gave a show cause notice in Form C-18 dated 01.09.2004 to the petitioner's unit calling upon it to appear in person on 30.09.2004 and show cause why it has not deposited the Employees' State Insurance contributions payable by it under the said Act. Since nobody appeared on behalf of the petitioner firm before the Employees State Insurance Corporation on 30.09.2004, date fixed for hearing, respondent No. 1 Corporation vide its order dated 01.12.2004 u/s 45A of the Employees' State Insurance Act, 1948 passed an order directing the petitioner's unit to deposit Rs. 70,250/- with the Employees State Insurance Corporation being its liability under the Act for the period from August, 2000 till March, 2004. Thereafter, the petitioner's establishment wrote a letter dated 21.06.2005 which is Annexure P-2 at page 10 of the paper book and apprised it of closure of its unit operating from RZ-15-A, Narsingh Garden, Khayala, New Delhi 110018 w.e.f. 31.10.2000 and set down the circumstances under which, it was not liable to pay the amount directed to be paid vide order dated 01.12.2004. This communication of the petitioner dated 21.06.2005 was responded to by the ESI Corporation vide reply dated 15.02.2006 which is at page 12 of the paper book. I have gone through the communication of the petitioner dated 21.06.2005 as well as the reply of the ESI Corporation dated 16.02.2006 and on going through the same, I find that there are disputed questions of fact raised by the parties relating to liability of the petitioner's establishment under the Employees' State Insurance Act, 1948 for the period from August, 2000 till March, 2004. The main dispute between the parties is whether the petitioner's unit was closed w.e.f. 31.10.2000 as claimed by it or not. In case the unit as claimed was closed w.e.f. 31.10.2000 then the question of its liability under the Employees' State Insurance Act, 1948 after 31.10.2000 would not arise.

3. Mr. Rajesh Banati learned Counsel appearing on behalf of the petitioner contends that the show cause notice in Form C-19 dated 01.09.2004 was never received by his client. He further submits that even the order dated 01.12.2004 u/s 45-A of the Employees' State Corporation Act, 1948 was also not received by his client till the time he sent the communication dated 21.06.2005 referred above. The petitioner denies violation of principles of natural justice.

4. Mr. K.P. Mavi learned Counsel appearing on behalf of the respondents has referred and relied upon a judgment of the Supreme Court in Employees' State Insurance Corporation v. F. Fibre Bangalore (P) Ltd. 1997 SCC (L&S) 190 wherein it is held that when an order u/s 45-A is passed by the Employees' State Insurance Corporation and in case the employer denies its liability arising out of that order then the appropriate remedy for the employee denying his alleged liability arising out of that order is to approach the Employees' State Insurance Corporation.

5. The petitioner in this case contends that it did not get opportunity of hearing before the impugned order was passed by respondent No. 1. The Supreme Court

in M.P. State Agro Industries Development Corporation Ltd. and Another Vs. Jahan Khan, Supreme Court 3153 has held that a writ petition against the impugned order which was passed in violation of principles of natural justice is maintainable notwithstanding availability of an alternative remedy.

6. In the present case there are two important facts that have emerged which cannot be completely ignored. One is about the alleged closure of the petitioner's unit at RZ-15-A, Narsingh Garden, Khayala, New Delhi-110018 and disconnection of electricity to its premises w.e.f. 31.10.2000 and the second is denial of opportunity of hearing before passing of the impugned order u/s 45-A. Having regard to these two important facts, this Court is of the opinion that ends of justice shall be met in case an opportunity of hearing is afforded to the petitioner to establish before respondent No. 1 itself that it had closed down w.e.f. 31.10.2000 and was therefore not liable to make any deposit after the said date under the Employees' State Insurance Act, 1948. Under the circumstances, the impugned order is hereby set aside and respondent No. 1 is directed to pass a fresh speaking order regarding liability of the petitioner for the period in question i.e. from August, 2000 to March, 2004 after giving an opportunity of hearing to the petitioner in this regard. Mr. K.P. Mavi learned Counsel appearing on behalf of the respondents submits that directions may be given to the petitioner for his appearance before the Deputy Director (Legal) as he according to him is the competent authority to hear and decide the liability of the petitioner u/s 45-A of the Employees' State Insurance Act, 1948. The petitioner is accordingly directed to appear before the Deputy Director (Legal) of respondent No. 1 at Rajender Bhawan, Rajender Place, New Delhi for necessary directions at 3:00 PM on 22.07.2009 and the competent authority under the Employees' State Insurance Act, 1948 is directed to decide the matter afresh by a speaking order as expeditiously as possible preferably within one month to be reckoned from 22.07.2009 after giving an opportunity of hearing to the petitioner including permission to be granted to him to place such documentary evidence as it wants to place before him for establishing his plea of closure of its unit w.e.f. 31.10.2000. Needless to say that in case the petitioner would have any grievance against the fresh order to be passed by respondent No. 1 then he can avail his remedy against the said order as may be available to him in law.

7. In view of the above, this writ petition stands disposed of. Stay application also stands disposed of.

8. Order dasti.