

(2019) 02 CHH CK 0174

Chhattisgarh High Court

Case No: Writ Petition (L) No. 20 Of 2019

M/s Kashinath And Sons Bengali
Colony

APPELLANT

Vs

Employee State Insurance
Corporation And Ors

RESPONDENT

Date of Decision: Feb. 13, 2019

Acts Referred:

- Employees' State Insurance Act, 1948 - Section 45A, 45AA, 45C

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Sharmila Singhai, Reena Singh

Final Decision: Allowed/Disposed Of

Judgement

P. Sam Koshy, J

1. Challenge in this petition is two orders dated 06.12.2018 (Annexure P/1) and order dated 11.10.2017 (Annexure P/2). Order dated 11.10.2017

(Annexure P/2) is the regional order passed by the Deputy Director, Employee State Insurance Corporation under Section 45-A of the Employees'

State Insurance Act, 1948 (in short, the Act). Annexure P/1 is the order dated 06.12.2018 passed by the appellate authority rejecting the appeal of the

petitioner and subsequently the recovery officer has initiated recovery proceedings against the petitioner under Section 45-C of the Act.

2. The whole dispute revolves around non depositing of ESI contribution for the period between September, 2012 to November, 2012 and between

May, 2014 to December, 2016.

3. The contention of the petitioner is that, the two impugned orders are per se illegal for the reason that sufficient opportunity of hearing has not been granted to the petitioner by the Deputy Director before determining the assessment made by the impugned orders. The petitioner has been regularly making ESI contribution and details of which have been submitted periodically as is required under the Act before the corporation and as such there is no default. Moreover, the assessment arrived at by the respondents also is incorrect for the reason that the assessment has been made on the basis of total strength of employee as it stood in the year, 2008 i.e. 10 years ago whereas, down the line, many of the employees have either left the employment or are no longer in employment and as on date the total number of employees that the petitioner-establishment has is much less than 146 as has been assessed by the respondents.

4. The petitioner further submits that true it is that the petitioner had been issued with a show cause notice on 16.08.2017 asking the petitioner to appear before the authorities with an explanation and records, if any, on 15.09.2017, however, for some unavoidable reasons the petitioner could not appear and the respondent appears to have proceeded with the available material on the same day itself without further granting sufficient opportunity of hearing to the petitioner. The respondents ought to have granted one more opportunity in the interest of justice before passing an order of assessment under Section 45-A of the Act. She further submits that even the appellate authority has not appreciated these facts and in a mechanical manner turned down the appeal by a non speaking order without taking into consideration the contentions which the petitioner has raised in the appeal under Section 45-AA of the Act.

5. The counsel for the petitioner further submits that since the petitioner has not been heard and that the documents available with the petitioner have not been considered or scrutinized by the authorities concerned, let the petitioner be given one more opportunity to establish their case before the authorities concerned and let the Assessing Officer i.e. Deputy Director pass a fresh order.

6. Having heard the counsel for the petitioner and on perusing the impugned order dated 10.11.2017 (Annexure P/2) passed under Section 45-A of the

Act, what reveals is that the authorities concerned have initially issued a show cause notice on 16.08.2017 calling upon the petitioner to appear before him and to produce the relevant records on 15.09.2017 for proper assessment and determination of the contribution. It appears that on 15.09.2017 since the petitioner could not put up their appearance before the Assessing Officer, the authorities proceeded further and decided the case with the available records with the Corporation.

7. What is relevant at this juncture is that, makers of the law while amending Section 45-A of the Act w.e.f. 20.10.1989 has inserted proviso clause which clearly envisages that before passing any order, the Principal or immediate employer, as the case may be, should be given a reasonable opportunity of hearing. It is any body's guess that when the intention of the law makers was to provide a reasonable opportunity of hearing, they had definitely meant that the authorities should have taken into consideration whether reasonable opportunity of hearing has been granted or not. If for any reason the petitioner was unable to appear before the authorities on the first date of hearing i.e. on 15.09.2017, keeping in mind the fact that the requirement of law was to provide reasonable opportunity, the authorities should have granted one more opportunity. If not, a notice of four weeks atleast two weeks time could have been issued to the petitioner, which in the instant case is not done.

8. It appears that on 15.09.2017 since the petitioner did not appear, the officer concerned proceeded further and closed the matter and passed the impugned order Annexure P/2 dated 11.10.2017 making an assessment of an amount of Rs.27,40,238/-. This aspect has also not borne in mind by the Appellate Authority while deciding the appeal, rejecting the same on 06.12.2018 (Annexure P/1). Though the petitioner in their appeal have produced certain documents and the appellate authority has rejected the appeal on merits holding that complete records have not been produced before the appellate authority, but as far as reasonable opportunity of hearing is concerned, this aspect has not been considered by the appellate authority also.

9. Given the aforesaid facts and circumstances of the case, this court is of the opinion that ends of justice would serve if the two orders are set aside

at this juncture and the matter is remitted back to the Deputy Director for a fresh adjudication of the case.

10. Accordingly, keeping in view the aforesaid facts and also taking note of the plea of the reasonable opportunity not being given to the petitioner, the

matter is remitted back before the Deputy Director. Let the petitioner appear before the Deputy Director, Employee State Insurance Corporation,

Raipur, on 12.03.2019 along with all relevant records including the records which have been discussed by the appellate authority in its order dated

06.12.2018 i.e. the balance sheet, ledger, attendance and wage register etc. for the relevant period and on due verification of the records, let the

Deputy Director, Employee State Insurance Corporation, Raipur, pass a fresh order.

11. It is made clear that under no circumstances the petitioner would be granted further time to produce these records.

12. With the aforesaid observations, the present writ petition in its present form stands allowed and disposed of.