

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1311 of 2012

IN

Civil Writ Jurisdiction Case No. 14747 of 2011

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1. The Regional Director Employee'S State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna
 2. Assistant Director Employee'S State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna
 3. Rajesh Kumar, Revenue Recovery Officer Employee'S State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna
 4. Employees State Insurance Corporation, Through Its Director General, New Delhi

.... Appellants

Versus

1. N.T.P.C. Ltd., A Company Incorporated Under The Provisions Of Companies Act, 1956 Having Its Registered Office At Core 7, Institutional Area, Scope Complex, Lodi Road, New Delhi Having Its One Of The Projects Kahalgaon Super Thermal Power Station, Kahalgaon, Bhagalpur, Bihar Through Its General Manager
2. Union Of India, Through Secretary Ministry Of Labor And Employment, New Delhi

.... Respondents

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Appearance :

For the Appellants : Mr. DR. ANSHUMAN, Advocate.

For the Respondents : Mr. K.D. Chatterjee, Sr. Advocate. &
Mr. Anil Kumar Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 24-03-2015

Heard learned counsel for the Employee State Insurance Corporation (ESIC) and the learned counsel for the N.T.P.C. and with their consent this appeal is being disposed of at this stage itself.

A proceeding was taken up against the N.T.P.C. by the



ESIC in respect of non compliance of the provisions of E.S.I. Act. N.T.P.C. appeared and asked the E.S.I. Corporation to add those contractors as parties in respect of whom the default was alleged stating that it is those contractors who had the list of employees for whose benefit payment had to be made. Instead of acceding to this request, ignoring the same they proceeded to assess the amount of dues. This is what was challenge in the writ petition.

The ground of challenge being that evidently it was denial of principles of natural justice as the contractors are necessary parties to the proceeding of this nature and on request having been made they ought to have been noticed before fixing the liability of the N.T.P.C. It is now further submitted that the contribution of the employees under the ESI Act are not akin to tax. They are in respect of specified set of individual and for their benefit. Unless those individual are identified no amount could be realized from the N.T.P.C on behalf of unknown set of employees. The writ court relying upon the decision of the Apex Court in the case of **“Food Corporation of India Vs. Provident Fund Commissioner & Ors.”** reported in (1990) 1 SCC 68 and in the case of **“Bharat Heavy Electrical Limited Vs. E.S.I. Corporation”** reported in (2008) 3 SCC 247 held it to be a clear case of denial of principles of natural justice and accordingly set aside the order and the proceeding.

In our view, firstly no prejudice is caused to the E.S.I. Corporation by being directed to comply the principles of natural justice rather prejudice, if any, had been caused to the N.T.P.C. by denial of compliance of the principles of natural justice.

Learned counsel for the E.S.I. Corporation submits that there being statutory remedy of appeal available against the order passed by the authority the writ Court should not have entertained the writ petition. The plea is of availability of alternative remedy. In the case of **“M/S Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad, Muzaffarnagar”**, reported in AIR 1969 SC 556 and in the case of **“Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors.”** reported in (1998) 8 SCC 1, the Apex Court had settled the position that firstly, alternative remedy is a self imposed restriction. Secondly, it has no application in three contingencies: (1) if the authority is acting under the statutes which is ultra-virus the constitution, (2) when order is wholly without jurisdiction the person is not required to go through the entire process of statutory remedies and (3) when proceedings are being taken out in violation of principles of natural justice.

In these cases alternative remedy cannot be forced upon the petitioner. The present case falls squarely within the exception. Therefore, we find no merit in this appeal, which is accordingly

dismissed. However, it would be open to the E.S.I. Corporation to initiate proceedings in accordance with law, if so advised.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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