

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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FAO No.2321 of 2016 (O&M)
Date of Decision: April 25, 2016

Regional Director, Employees' State Insurance Corporation

...Appellant

Versus

Coca-Cola India

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vikas Suri, Senior Standing Counsel-ESIC,
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.8405-CII of 2016

Prayer in this application is for condonation of delay of 25 days
in filing the appeal.

For the reasons mentioned in the application which is duly
supported by the affidavit of Shri Jatinder Kumar, Branch Manager,
Employees' State Insurance Corporation, Panchkula, Haryana, the present
application is allowed.

Delay of 25 days in filing the appeal stands condoned.

FAO No.2321 of 2016

Challenge in this appeal is to the order dated 17.12.2015 passed
by the Employees' Insurance Court, Gurgaon, whereby a petition preferred
by the respondent-petitioner under Section 75 of the Employees' State
Insurance Act, 1948, challenging the demand of contribution raised by letter
dated 16.05.2002 under Section 45-A read with recovery letter dated
03.09.2002 issued by the appellant, has been allowed and the demand of
amount sought to be charged as contribution under the Employees' State
Insurance Act, 1948, from the respondent, has been set aside being illegal.

2. It is the contention of the counsel for the appellant that the Court below has not taken into consideration the fact that apart from 233 employees of the respondent-Company, who were shown to have been ultimately and proved to be drawing salary more than ₹6,500/- at the time when the inspection was carried out of the premises of the respondent but qua the remaining employees, who were drawing wages upto ₹6,500/-, no liberty has been granted to proceed against the respondent. He contends that the Court being the creation of the statute, should have taken that into consideration and granted liberty to the appellant to take appropriate steps in accordance with law qua those employees. He, however, very fairly states that the Court has granted liberty to the appellant to conduct proper inquiry and to collect proper and cogent evidence and notify afresh against the respondent in case it is found to be violating the provisions of the Employees' State Insurance Act, 1948.

3. I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the impugned order.

4. The show cause notice dated 15.11.2011 Exhibit PW2/5 was issued to the respondent which pertains to 233 employees. This was the list of employees which was given by the respondent at the time of inspection. The notice was issued with an intent to get the records from the respondent to verify whether they would be covered under the Employees' State Insurance Act, 1948, or not. Since no records were produced by the respondent, best assessment was made and a demand of contribution raised by letter dated 16.05.2002 under Section 45A read with recovery letter dated 03.09.2002. These were challenged before the Employees' Insurance

Court, Gurgaon. The respondent produced evidence on record showing that these 233 employees were drawing wages beyond ₹6,500/- and, therefore, were not to be covered by the Employees' State Insurance Act, 1948. Since the notice was limited to 233 employees of the respondent-Company and evidence has been produced showing that these employees were drawing salary beyond the limit which would bring them within the ambit of the Employees' State Insurance Act, 1948, the order as passed by the Employees' State Insurance Court, Gurgaon, cannot be faulted with.

5. As regards the contention of the counsel for the appellant that there were other employees also during the same period, who would be coming within the ambit of Employees' State Insurance Act, 1948 as their salary would be below ₹6,500/- per month as per P2/2, the said plea cannot be accepted in the light of the fact that the notice and the demand for contribution raised by letter dated 16.05.2002 under Section 45A read with recovery letter dated 03.09.2002, was only restricted to 233 employees qua whom the respondent has been able to establish that their salary was beyond ₹6,500/- per month.

6. In view of the above, finding no merit in the present appeal, the same stands dismissed.

7. In any case, it may be added here that the Employees' Insurance Court has already granted liberty to the appellant to proceed against the respondent in accordance with law.

8. In the light of the dismissal of the appeal, the application for stay i.e. CM No.8406-CII of 2016, stands disposed of as infructuous.

April 25, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE