

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
121/3**

**C.M. Nos. 25250-51-CII of 2016
& FAO No. 7365 of 2016 (O&M)**

Date of decision: 12.12.2016

Dakshin Haryana Bijli Vitran Nigam

...APPELLANT

VS.

Employees' State Insurance Corporation and another

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vishal Garg, Advocate,
for the applicant/appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 25250-CII of 2016

Prayer in this application is for condonation of delay of 33 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by the affidavit of the counsel for the applicant/appellant, the same is allowed. Delay of 33 days in filing the appeal stands condoned.

FAO No. 7365 of 2016

Challenge in this appeal is to the order dated 30.07.2016 passed by the Employees Insurance Court, Faridabad, on an application under Section 75 (2) (b) read with Section 151 of the Code of Civil Procedure for rejection of the petition for non-deposit of 50% amount, as assessed by the authorities, before filing of the petition.

there is no liability on the part of the appellant when it has been disputed and asserted that it is not even a factory within the definition of Factories Act and, therefore, would not be covered by the Employees State Insurance Act, 1948 (hereinafter referred to as ESI Act'). Since there is no liability and there is no manufacturing process undertaken, as is required under the Factories Act, by the appellant being carried out as it is merely engaged in the process of transmission of the electricity, the said requirement is to be waived in the case of the appellant. He, thus, contends that the order impugned cannot sustain and deserves to be set aside.

I have considered the submissions made by the learned counsel for the appellant and have gone through the order impugned as also the records.

It is not in dispute that the Hon'ble Supreme Court, in its judgment in **Workmen of Delhi Electric Supply Undertaking vs. Management of Delhi Electric Supply Undertaking**, AIR 1973 SC 365, had held that a Company, which is not involved in the generation of power but is engaged in the transmission of energy, would fall within the definition of 'factory' as it cannot be disputed and denied that even if the said process is not involving the generation of electricity but the persons employed thereof are in connection with the factory where electricity is generated, transformed and transmitted by serving as intermediary station for distribution of electricity and maintaining of supply lines, it is enough to bring it within the nexus and ambit of E.S.I. Act. The order dated 30.07.2016 , as passed by the Employees Insurance Court Faridabad, thus, being in consonance with law is upheld.

The appeal stands dismissed.

C.M. No. 25251-CII of 2016

In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

December 12, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No