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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 180/2016 & C.M. Nos. 9838-9840/2016

EMPLOYEE STATE INSURANCE CORPORATION..... Appellant
Through Mr. K P Mavi, Advocate

versus

M/S HOTEL VASUNDHARA INN (SINCE CLOSED) & ORS... Respondents
Through Mr. Tarun Sharma with Ms. Boudh
Prabha & Ms. Meenu Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **13.05.2016**

Issue notice.

Mr. Tarun Sharma, Advocate accepts notice.

With the consent of the parties, we have heard the appeal.

The limited ground on which the present appeal is preferred by the Employee State Insurance Corporation (ESIC) is that the observations of the Single Judge with respect to the lack of jurisdiction of Assistant Director to pass orders under Section 45 A of the ESI Act ('the Act') is contrary to the express provisions.

The respondent-establishment was issued a notice under Form C-18 on 30.05.2013 by an Assistant Director of the Corporation (ESIC), asking it to show cause why amounts towards contributions should not be determined with interest and penalty.

It is not in dispute that the respondent-establishment answered the show cause notice. Consequently, an order under Section 45 A was made which determined the sum of Rs. 2,52,038/- as payable. The Establishment appealed the Regional Director under Section 45 AA. There was some controversy as to whether it deposited the monthly 25% pre deposit as to entitle the hearing of the

appeal. The appeal was in fact not heard. The establishment therefore directly approached this Court under Article 226 of the Constitution of India.

The learned Single Judge by the impugned order directed the hearing of the appeal and the effect of which is not the subject matter of the dispute. However, the ESIC further contends the observations as to the lack of jurisdiction of the Assistant Director make the order under Section 45A is unwarranted. It relies upon its delegation of power vide circular/letter dated 21.06.1999, which is in turn based upon regulations and a circular dated 19.03.1999.

It is contended that these instructions are based upon the notification published by the ESIC under Regulation 31 of the ESI Act which delegated the power under Section 45 A.

It is also submitted that this delegation was in fact notified in the Official Gazette. Counsel for the respondent-establishment argues that the impugned order does not confer upon. He moved the Form C-18 which proposes the determination was issued by the same officer who ultimately made the final order under Section 45 AA.

This Court is of the opinion that the observations of the Single Judge as to the lack of authority of the Assistant Director to make the order under Section 45 A was unwarranted at all. Section 94 A enacts that the general power vests with the corporation and the power to conduct its functions has specified in notification of 1991 which was published in the official gazette read with the instructions dated 01.03.1999 and the circular dated 21.06.1999 which clarify that the Assistant Director would be entitled to issue orders under Section 45A. The issuance of C-18 Form indicating the proposed amounts cannot be construed as an order under Section 45 A and in fact, the tenor of the form itself indicates that it is a show cause notice.

Further more, it is not in dispute that the respondent-establishment did reply to the show cause notice and made its submissions. In these circumstances, there cannot be any dispute that a determination under Section 45 A could have been made by the Assistant Director as in the present case, the observations to the

contrary by the leaned Single Judge are accordingly set aside.

The respondent-establishment submitted in the course of the hearing that it had furnished the 25% pre deposit with interest etc. required for the hearing of this appeal. If so, the appellate authority under Section 45 A i.e, the Regional Director shall verify the accuracy of the statement and thereafter, process it in accordance with law and decide the appeal on its merits.

The appeal is partly allowed.

The parties shall appear before the concerned Regional Director on 23.05.2016 at 11.00 A.M. for further proceedings.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MAY 13, 2016
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