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

Judgment delivered on: 15th January, 2016

+ **CRL.M.C. No.3213/2013**

EMPLOYEE STATE INSURANCE
CORPORATION

..... Petitioner

Represented by: Mr.A.K.Verma, Adv

versus

BATRA HOSPITAL & MEDICAL
RESEARCH CENTRE & ORS

..... Respondents

Represented by: Mr.Manish Sharma,
Mr.Sumit Dubey, Mr.Pranay
Raj Singh, & Ms.Jigyasa
Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner/department has assailed the order dated 18.04.2013 passed by learned Trial Court whereby case filed by petitioner vide CC No.160/1 has been rejected. Consequently, respondent has been discharged from the case.

2. Undisputedly, vide notice dated 26.12.2007 it is stated by the petitioner that petitioner visited the establishment of the respondent for inspection of the records under Section 45 (2) of the Employees State Insurance Act, 1948, (herein after referred as the said Act); however not provided the records. Since, the respondent did not provide the record,

therefore, petitioner filed complaint under Section 85 (G) of the said Act against the respondent.

3. Learned counsel appearing on behalf of the petitioner submits that on a reasonable belief the petitioner-department is having power to visit the premises of any establishment whether covered under the Act or not and ask for the records and if the said establishment does not provide the said record, they are within the powers to prosecute the said establishment.

4. To strengthen the contentions, learned counsel for petitioner has relied upon the decisions of the Supreme Court in ***Srinivasa Rice Mills v ESI Corporation : (2007) 1 SCC 705*** as well as ***Employees State Insurance Corporation v Sir Ganga Ram Trust Society : 207(2014) DLT 159.***

5. Learned counsel appearing on behalf of respondent is not disputing that the petitioner-department has right to enter in any of the establishment on a reasonable belief and further action can be taken if there any violation of the provisions of the said Act and can be prosecuted thereafter provided said establishment is covered by the Act.

6. The Supreme Court in ***Srinivasa Rice Mills (supra)*** while dealing with identical issue observed as under:-

“17. Admittedly, the rice mills are situated within the Narsimhapuram area. The appointed day therefor was 1-8-2000. The factories of Appellants were inspected prior to that date. Prior to that date, therefore, Appellants were not bound to comply with the provisions of the Act. They could appoint employees at their own sweet will. But the period wherefor the

provisions of the Act would be applicable is 12 months preceding the said date, viz., from 1-8-1999 to 31-7-2000. Compliance of the requirements of the statutes on the part of the employer, however, would begin from the appointed day, viz., 1-8-2000.

20. The scheme of the Act does not suggest that all the employees would come within the purview of the said Act. Those employees who draw wages as is defined in Section 2(22) of the Act would be the employees who would be covered thereunder. As noticed hereinbefore, inspection of the factories was carried out prior to the date of coming into force of the Act. Such inspections, thus, could have been carried out only in terms of the provisions contained in Section 45 of the Act, which could mean that the Inspector would be appointed for the purpose of the Act. He is authorized under the Act to enquire into the correctness of any of the particulars stated in any return referred to in Section 44 or for the purpose of ascertaining whether any of the provisions has been complied with. It is, therefore, evident that any action taken prior to or in furtherance of a report made on an inspection, prior to coming into force of the Act, would be ultra virus Section 45(2) of the Act. Once the inspection is held to be illegal, Respondent could not have taken any statutory action for imposition of penalty.”

7. It is admitted fact that respondent establishment came under the provisions of the said Act only with effect from 01.04.2011 and before that the said establishment was not covered under the said Act. It is not in dispute the petitioner issued the notice on 26.12.2007 to the hospital and not to any particular department. Therefore, the respondent is not liable to be prosecuted under the provisions of the said Act. The petitioner itself is not clear whether the respondent hospital is maintaining equipment maintenance department or not and that the records sought to be produced by the official of the respondent pertained to such department only or with

respect to entire hospital.

8. Admittedly, respondent was not covered under the said Act in the year 2007, therefore, learned Trial Court has rightly rejected the case of the petitioner and discharged the respondent.

9. Keeping in view the facts of the present case and settled proposition of law, I am of the opinion that there is no merits in the present petition. Accordingly, petition is hereby dismissed with no order as to cost.

**SURESH KAIT
(JUDGE)**

JANUARY 15, 2016

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