

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 16019 of 2016

=====

M/s Pratibha China State Joint Venture (A Unit of Pratibha Industries Ltd.),
through its Manager Sri Dilip Kumar Mishra, S/o Sri Bindeshwar Mishra, R/o
Mohalla-C/o Manager Rai Professor Colony Shivpuri, P.S. Shastrinagar, District-
Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary of Labour Department, Bihar.
2. Deputy Director Regional Office Employees State Insurance Corporation
“Panchdeep Bhawan” Jawahar Lal Nehru Marg, Patna-1.
3. The Enforcement Officer Employees State Insurance Corporation “Panchdeep
Bhawan” Jawahar Lal Nehru Marg, Patna-1.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. D. K. Singh, Senior Advocate and Mr. Rajnish Chandra, Advocates
For the State	:	Mr. Ajay Kumar Rastogi, A.A.G. 10
For E.S.I.C.	:	Mr. Dr. Anshuman, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-01-2017

Heard Mr. Deepak Kumar Singh, learned senior
counsel assisted by Mr. Rajnish Chandra, learned counsel for the
petitioner, Dr. Anshuman, learned counsel for the Employees State
Insurance Corporation and Mr. Ajay Kumar Rastogi, learned A.A.G.
10 for the State.

The petitioner is aggrieved by the order dated
14.07.2016, passed by the respondent no. 2, by which he has been
called upon to pay Rs. 99,34,568/- on the basis of treating it to be the
period of default of 59 months i.e., from June, 2011 to April, 2016,
on the basis of inspection made and the authorities coming to the
finding that there were 314 employees. Learned counsel for the



petitioner submitted that they are not the principal employer from whom the authorities under the Employees State Insurance Act, 1948 (hereinafter referred to as the 'Act') can order for any recovery and secondly that the employees who may be covered under the said Act, as far as the petitioner is concerned, would be only with effect from August, 2015. Learned counsel submitted that they are the contractors for the 'principal employer' and thus, are 'intermediate employer' and the responsibility to pay rests with the 'principal employer' against whom the authorities under the Act can take action for recovery. It was submitted that the petitioner is a construction contractor and the employees are only engaged with regard to actual construction at the construction site and, thus, they cannot be saddled with the demand under the Act for the period prior to August, 2015. Learned counsel has taken a categorical stand that he shall pay for the employees at the construction site, who are working under him, with effect from August, 2015 when the Act has been made applicable to such employees. Learned counsel further submitted that even the order impugned suffers from violation of the principles of natural justice which would be ex-facie apparent from the fact that the show cause notice dated 30.06.2016 was issued calling upon the petitioner to show cause, within 15 days from the date of receipt of the letter, as to why they should not be prosecuted. Learned counsel submitted that



in view of such notice, 15 days time was required to be given from the date of receipt of the show cause notice, and in any view of the matter, even if it is assumed that the said show cause notice was served on the same day i.e., 30.06.2016, the 15 days period would have been over on 15.07.2016 and only thereafter any order could have been passed by the authorities under the Act.

Learned counsel for the State and the respondents no. 2 and 3 submitted that it is a matter of fact as to whether prior to August, 2015, the petitioner had an office establishment employing persons with regard to whom they would be liable under the Act. However, they are not in a position to defend the fact that the show cause notice dated 30.06.2016 granting 15 days time, the impugned order has been passed on the 14th day itself.

Considering the rival contentions, in the considered opinion of the Court, there has been infraction of the principles of natural justice. The petitioner has a right to be given a reasonable opportunity of hearing to meet out any allegation made and also has to be given a fair hearing before any order more so, when it visits him with penal and civil consequences, are passed. Thus, in the present case on the short point of there being violation of the principles of natural justice, the impugned order cannot be sustained and is set aside.



The petitioner is directed to appear before the authorities along with his show cause within one month from today. The authorities shall thereafter give an opportunity of hearing to the petitioner and then pass a reasoned order in accordance with law.

The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	
U	

