

In the High Court of Punjab and Haryana at Chandigarh

**FAO-2984 of 2018(O&M)
Date of Decision: 26.11.2018**

Employee State Insurance Corporation

---Appellant

versus

M/s Islamia Senior Secondary School

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. H.S.Bhatia, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against order dated 13.12.2017 passed by the Employees' Insurance Court, Chandigarh (hereinafter to be referred to as "the Court") whereby application under Section 75 of the Employees' State Insurance Act, 1948 (in short "the ESI Act") against order dated 29.12.2014 demanding a sum of Rs. 11,31,369/-, i.e. Rs. 7,78,517/- as contribution and Rs.3,52,852/- towards interest was allowed.

The Court has accepted plea of the respondent/applicant primarily on the ground that the impugned order has been passed without following principles of natural justice, applying judicious mind and in contravention of legal provisions without considering the objections/contentions of the respondent-applicant, by relying upon judgment of the Madras High Court **Hafeez Motor Transport, Pudukottai vs. Deputy**

Regional Director, Employees' State Insurance Corporation, Madras

2001 (1) LLJ 1454 and of this court A.K.Industries, Rohtak vs.

Employees' State Insurance Corporation and others, 2011 LLR 1248.

Indisputably, the appellant-corporation issued letter dated 17.7.2012 vide which the respondent was informed that its establishment falls within the purview of Section 1(5) of the Act with effect from 1.4.2012 provisionally/finally and in pursuance thereof, the respondent has made payment to the appellant-corporation. The disputed payment pertains to the period from June 2009 to March 2012 on the basis of some report purported to be submitted by Sh. Subeg Singh, Social Security Officer of the appellant-corporation.

Counsel for the appellant would argue that letter dated 10.11.2014 was issued by the corporation in view of the provisions of Sections 44 and 45 of the ESI Act, therefore, no such plea of the respondent can be accepted that the alleged demand cannot sustain without reasonable opportunity of being heard is given to the respondent, as envisaged under Section 45-A of the ESI Act. In the alternative, it is argued that if findings of the Court are sustained that the alleged payment can not hold the field for want of reasonable opportunity of being heard, the appellant-corporation may be left at liberty to pass a fresh order after affording the respondent a reasonable hearing. For this purpose, he has relied upon judgment of the Patna High Court **M/s Electronic Net Through its partner-Sanjev Kumar vs. the Union of India and others Civil Writ Jurisdiction Case No. 6882 of 2014 decided on 12.10.2017.**

I have gone through the records particularly the documents marked as exhibits.

Perusal of documentary as well as oral evidence does not show that the impugned letter/order was issued by the appellant-corporation in exercise of power under Sections 44 and 45 of the ESI Act. By way of documents issued in November and December, 2014, the corporation sought to cover establishment of the respondent within the purview of ESI Act from June 2009 and on the basis thereof, a demand was made for payment of Rs.11,31,369/-, i.e. Rs. 7,78,517/- as contribution and Rs.3,52,852/- towards interest.

Counsel has failed to point out any materials on record that before calling upon the respondent to pay the aforesaid amount by holding that the respondent establishment came under the purview of ESI Act from June 2009 onwards, any opportunity of being heard was allowed to the respondent in compliance with the statutory provisions or principles of natural justice. In this view of the matter, the Court has rightly held that letter dated 19.12.2014 has been issued by the Corporation without following the principles of natural justice and in contravention of legal provisions and without taking into consideration the objections/contentions of the respondent establishment. That being so, no error much less illegality can be found in findings of the Court on issue No. 1 and accordingly, the same are affirmed.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. However, the appellant-corporation would at liberty to take recourse to appropriate proceedings, if so permitted in law, for making any demand towards contribution etc. As the appeal has been decided on merits, applications for

condonation of delay in refiling and filing the appeal are of academic
relevance.

(Rekha Mittal)
Judge

26.11.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No