

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: January 10, 2018

Judgment delivered on: July 02, 2018

+ W.P.(C) 2288/2015

TATA POWER DELHI DISTRIBUTION LTD.

..... Petitioner

Through: Mr. Manish Srivastava, Mr. Aditya
Gupta and Ms. Moulshree Shukla,
Advs.

versus

MIND SHAPER TECHNOLOGIES PVT. LTD.

..... Respondent

Through: Ms. Ayushi Kiran and Mr. Rupeshwar
Sandhu, Advs.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 30763/2017

This is an application seeking substitution of authorized representative on behalf of respondent under Section 151 of CPC.

For the reasons stated in the application, the same is allowed and disposed of.

W.P.(C) 2288/2015

1. The present petition has been filed by TATA Power Delhi Distribution Limited challenging the order dated July 10, 2014 passed by the Learned Addl. District Magistrate, District-New Delhi (ADM in short) in Appeal no. ADM(ND)/Appeal/ELEC CASES/2012/9841, M/s. Mind Shaper Technology Pvt. Ltd. v. Tata Power Delhi Distribution Limited and Anr. whereby the learned ADM has quashed the provisional assessment order dated May 31, 2012 as well as the final assessment order dated August 8, 2012 on the ground that the activity being carried out by the respondent in its premises is of industrial nature.

2. Some of the relevant facts necessary for the adjudication of the writ petition are, that on April 10, 2012, an inspection was conducted by the Enforcement Team of the petitioner company of the meter bearing no. K.NO.33200527865 which was installed at the respondent's premises vide a sanctioned load of 89 KW for small industrial power (SIP) purposes. It is the case of the petitioner that the representative of the respondent was present at the time of inspection and the observation made during the inspection was that the connection / meter is sanctioned for SIP purpose but it is being used for software training and distribution and office purpose which are commercial activities. It is the petitioner's case that one Mr. Santosh, an employee / representative of the respondent duly signed and received the

inspection report bearing no. 202986 and show cause notice bearing no. 170401 dated April 10, 2004. The respondent was given an opportunity of personal hearing on April 18, 2012. However, no reply was filed by the respondent to the show cause notice. It is averred that that on April 24, 2012 a written representation was submitted by one Mr. Deepak Kumar Tyagi, Vice President (Finance) of the respondent company in the office of the Enforcement Assessment Cell of the petitioner company. Thereafter, the matter was proceeded further and a provisional order dated May 31, 2012 under section 126 (1) of Electricity Act, 2003 (hereinafter referred to as 'Act') was passed against the respondent and the same was sent to the consumer on June 1, 2012. It is averred that no objections were filed against the said provisional order. Even the hearing was not attended to by the respondent on June 8, 2012. The assessment amount on account of unauthorized use of electricity to the tune of ₹6,69,738 for the period April 10, 2011 to August 10, 2012 was calculated as per the provisions of law. It is also stated that the bill amount was further raised to ₹10,60,450/-. The bill remains unpaid. Accordingly, on August 30, 2012, the respondent was served with a disconnection notice. On October 9, 2012, a final assessment bill with due date on October 26, 2012 was sent to the respondent. On November 14, 2012, an appeal was preferred on behalf of the respondent before the learned ADM

against the provisional assessment order dated May 31, 2012 under Section 126(1) of the Act. It is stated that for the reasons known to the respondent, the final order dated October 09, 2012 was not challenged and instead appeal was preferred against provisional assessment order dated May 31, 2012. On January 08, 2013, reply was filed to the appeal by the petitioner. On July 10, 2014, the impugned order was passed.

3. In the counter-affidavit it is stated that the respondent is a company which is in the business of providing technology aided teaching and e-learning solutions to schools by developing content software and hardware, i.e., digital equipments as per needs and requirements of the school. That it had its head office at A-1, Naraina Industrial Area, Phase-I, New Delhi which it had rented from M/s. Eternal Radio Corp. for running their industry and accordingly had a small industrial power connection for the said purpose. On April 10, 2012, the petitioner served a show cause notice on the respondent and conducted a surprise inspection on the premises in the presence of an office boy namely Santosh who was not authorized or aware of the activities undertaken by the company. It is stated, a detail reply to the show cause notice and inspection report dated April 10, 2012 was submitted vide letter dated April 24, 2012 to the petitioner explaining that the averments in the show cause notice are incorrect and the respondent is only providing curriculum based software to the students / schools.

4. It is also stated that the industry is de-regulated as per the industrial policy of the Central and State Governments and do not required any form of registration with a licensing authority and can be operated from any premises other than a residential one. It is averred that the petitioner was further required to conduct an inspection of the premises again so that the concerned person can show the working of the company and satisfy the petitioner that no teaching centre is being run by the respondent. It also attached its Sales Tax and Service Tax registration documents which referred to the respondent as a company providing online information and data services and selling the digital equipments. It is also averred that its representative has been contacting the customer care of the petitioner and repeatedly meeting the representatives of the petitioner, who had assured that the matter would be resolved soon. The respondent also referred to a representation dated August 21, 2012 of the Industries Association. A reference is made to the representations made against the disconnection notice and non-consideration of the same and the filing of the appeal by the respondent. A reference in the counter-affidavit is also made to a Judgment of this court in the case of **M/s. Panacea Biotech Ltd. v. DDA and Anr. W.P.(C) 9937/2005** wherein the impugned provisional order issued by the petitioner was quashed.

5. The learned counsel for the petitioner submitted that the learned ADM has failed to appreciate that no appeal against a provisional order was

maintainable. According to him, admittedly the final order was not challenged and therefore, he should have dismissed the appeal as not being maintainable. He referred to a judgment of the Supreme Court in the case of ***Executive Engineer and Anr. v. Sri Seetaram Rice Mill MANU/SC/1334/2012*** to contend that the Supreme Court has interpreted the scope of Section 126 of the Act to mean, that no appeal can be preferred against a provisional assessment order issued under Section 126 (2) of the Act. According to him, under Section 126 (3) of the Act a person on whom an order under sub-section 2 has been served, shall be entitled to file objections if any against the provisional assessment order before the assessing authority, who shall after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within 30 days from the date of service of such order of provisional assessment of the electricity charges payable by such person. He also relied upon Section 127 (1) of the Act to contend that an appeal can be preferred against the final assessment order issued under Section 126 that too within 30 days of the said order. The respondent has grossly violated the requirement of the said section by impugning the provisional order. Therefore, the proceedings before the learned ADM were *non est* and *void ab initio*. He also stated, under Section 127 (2) of the Act there is a pre-requisite / condition, for entertaining the appeal before the Appellate Authority on deposit of amount equal to half of the assessed amount in cash or by way of

bank draft. He referred to a Judgment of the Supreme Court in the case of *Shyam Kishore and Ors. v. Municipal Corporation of Delhi* **Manu/SC/0440/1992** that the condition of deposit of tax amount under Section 170 (b) of the DMC Act is a condition precedent for hearing or determination of the appeal and the learned District Judge has no discretion to grant stay of the disputed amount or dispensed with the requirement of pre-deposit of the amount. On merit, it is his submission that the Delhi Electricity Supply Code and Performance Standard Regulations 2007 clearly segregate the three kinds of electricity connection, i.e., Domestic connection, Non-domestic Connection and Industrial connection. Regulation 5 clearly defines and characterizes the establishment which shall be covered under the Non-domestic connection. The sub-regulation (j) of the said regulation reads “*all other establishments, shops, chemists, tailors, washing, dying etc. which do not come under factories Act*”. Moreover, it is to be read with Section 2 (m) of the Factories Act, 1948 that defines the term “*Factory*”. A plain reading of the definition of the term factory makes it apparent that the activity of the Respondent, i.e., ‘software training, distribution and office’, can only be said to be a non-domestic activity under the purview of Regulation 5. The activity carried out by the Respondent cannot be said to be of industrial nature in any manner whatsoever. That the petitioner, being the licensee in terms of the Act, and the Respondent, being the user of the premises, where the disputed

electricity connection was sanctioned are covered and bound by these Regulations. Hence, reliance placed upon the Master Plan 2021 or Industrial Disputes Act by the Respondent to contend that it would override the provisions of Electricity Act is misconceived.

6. It is the submission of the learned counsel for the petitioner that the learned ADM has erred in observing that the petitioner wrongly concluded that the respondent is running the activity of '*software training, distribution and office*' merely on the basis of the Respondent Company's name and the Display Board affixed outside the said premises. The Display Board and the visiting cards read, "CLASS TEACHER" with a tagline, "LEARNING SYSTEMS", and accompanied by a description which says, "THINKING TECHNOLOGY IN YOUR SCHOOLS NOW", It is his submission that by merely contending that it is running an activity of a '*software development establishment*' and not of a '*software training, distribution and office*' without any substantive documentary evidence or any other proof is not sufficient. That the onus and burden of proof in this matter was on the Respondent and it has failed to carry out the same.

7. Learned counsel for the petitioner also submitted that the learned ADM has erred in observing that the activities of the Respondent come within the definition of the "*Industry*" and thus the usage is for industrial purpose. He refers to a judgment of the Supreme Court in the case **Bangalore Water**

Supply and Sewerage Board v. A. Rajappa and Anrs. MANU/SC/0257/1978, wherein the Supreme Court has laid down the triple test, which will enable an activity to fall under the definition of “*Industry*” as envisaged by Section 2 (j) of the Industrial Disputes Act, 1947. The triple test in the Bangalore case forms the quintessential part of the amended definition of “*Industry*” in 1982. The triple test provides that a) systematic activities b) organized by cooperation between employer and employees c) for the production of goods and services calculated to satisfy human wants and wishes would constitute industry. However, this test was subjected to exceptions, namely industry does not include spiritual or religious services; absence of profit motive or gainful objective is irrelevant (although an organization will not cease to be a trade or business because of philanthropy animating the undertaking). The main test is the nature of activity with emphasis of employer – employee relationship therefore all organized activities that satisfy the triple test will constitute industry including undertakings, callings and services adventures’ analogous to the carrying on of trade or business. It is submitted that when Electricity Act, 2003 read with provisions of Supply Code, 2007 clearly categorizes the type of connection, definition adopted by other statute in any event cannot be read into Electricity Act, 2003 to interpret the provisions of Electricity Act, 2003. It is strongly argued by the learned counsel for the petitioner that the Respondent provides training and distribution of software

for purely commercial purposes and nowhere has the Respondent been able to prove that it develops software per se.

8. Learned counsel for the petitioner would submit that the requirement to record reasons emanates from the broad doctrine of fairness in decision making and such reasons should be cogent, clear and succinct. It is well settled principle of law that the Appellate Authority is supposed to decide the appeal both on facts and law; it is also required to address all issues before concluding. A pretense of reasons is not to be equated with a valid decision – making process. The impugned order passed by the Id. ADM is non-speaking and cryptic because it fails to convince the petitioner to accept the Respondent’s contentions about it running a so-called, ‘*software development establishment*’.

9. It is the submission of the learned counsel for the petitioner that it is a well-settled principle of law that equity aids the vigilant and not the indolent, for *vigilantibus non dormientibus* *jur or subventiunt*. He also submitted that the period of limitation for preferring an appeal before the appellate authority as provided under Section 127 (1) of the Act is 30 days of the final assessment order passed by the assessing officer under Section 126 of the Act. The Respondent filed the appeal on November 14, 2012 against the provisional assessment order dated May 31, 2012 which was duly sent to the Respondent on June 1, 2012. According to him, even the final assessment order was

passed on August 8, 2012 and the disconnection notice pursuant to the final assessment order was dispatched to the Respondent on August 30, 2012. The appeal in question against the provisional assessment order dated May 31, 2012 was filed only on November 14, 2012, which evidently amounts to more than five months (i.e., clearly beyond the period of 30 days) from the date of the provisional assessment order and 3 months after the final assessment order dated August 8, 2012. The appeal filed by the Respondent was therefore hopelessly barred by limitation and ought not to have been entertained.

10. On the maintainability of the petition, it is the submission of the learned counsel for the petitioner that only those authorities or tribunals, who in law are required to defend the orders passed by them are to be made necessary parties. It is his submission that in the present case Ld. ADM, New Delhi is not a necessary party to the writ petition because the orders passed by the Ld. ADM are not required to be defended by it. Thus, the writ petition of the petitioner is maintainable. He placed reliance on the recent judgment of the Supreme Court in the case of ***Jogendrasinji Vijaysinghji v. State of Gujarat and Ors.*** MANU/SC/0719/2015, wherein it has held as under:

“There are many authorities under many a statute. Therefore, the proposition that can safely be culled out is that the authorities or the tribunals, who in law are entitled to defend the orders passed by them, are necessary parties and if they are not arrayed as parties, the writ petition can be treated to be not maintainable or the court may grant liberty to implead them as parties in exercise of its discretion. There

are tribunals which are not at all required to defend their own order, and in that case such tribunals need not be arrayed as parties. To give another example; in certain enactments, the District Judges function as Election Tribunals from whose orders a revision or a writ may lie depending upon the provisions in the Act. In such a situation, the superior court, that is the High Court, even if required to call for the records, the District Judge need not be a party. Thus, in essence, when a tribunal or authority is required to defend its own order, it is to be made a party failing which the proceeding before the High Court would be regarded as not maintainable.(Relevant Paragraphs 27 to 34)

11. Without prejudice to the submissions as stated above, learned counsel for the petitioner submitted that if the court deems necessary, in exercise of its jurisdiction under Article 226 and 227, the petitioner may be granted liberty to implead the adjudicating authority as party. In the last it is his submission, that respondent is not entitled to the relief sought for in the appeal, which is misconceived, frivolous, wrong and hence the impugned order deserves to be set aside. In support of his submissions, learned counsel for the petitioner has relied ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (South Co.) and Anr. v. Sri Seeetaram Rice Mill reported as (2012) 2 SCC 108.***

12. On the other hand, it is the submission of the learned counsel for the respondent that the writ petition is squarely covered by the Judgment of this court in the case of ***M/s. Panacea Biotech Ltd. (supra)*** wherein this court has

unequivocally held that the activities of a computer hardware or software Company are industrial in nature as per the Master Plan of Delhi, 2021 and thus the respondent was correct in having an industrial connection and ought not to have been assessed on the ground of commercial connection.

13. It is the submission of the learned counsel for the respondent that the learned counsel for the petitioner is wrong to contend that the appeal was preferred only against the provisional assessment order dated May 31, 2012. According to her, the ADM had considered both the provisional assessment order dated May 31, 2012 and the final order dated August 8, 2012 and quashed the both and held *“it is found that the employees of the appellant are covered under ESI and further ordered in the light of judgment of Hon’ble High Court of Delhi in Case No. 9937 of 2005, Panacea Biotec Ltd. v. DDA and Ors. in Para 17.1, that the appeal of the appellant is allowed quashing the provisional assessment order dated May 31, 2012 and also the final order passes on the basis of the provisional order. As this is not the case of of misuse of electricity for which respondent are directed to restore the connection as per sanction.”*

14. The petitioner has failed to produce before the ADM as well as before this Court even an iota of proof that the work of the respondent is commercial in nature as opposed to industrial in nature.

15. The respondent is a company which is in the business of providing

technology aided teaching and e-learning solutions to schools by developing content software and hardware, i.e., digital equipment as per needs and requirements of the school. Activities of the respondent comes within the definition of “industry” under S. 2 (j) of the Industrial Disputes Act, 1947 and the respondent’s computer industry is covered under Employees’ State Insurance Act, 1948 and the same has been affirmed by the High Court of Bombay in the case of *Employees State Insurance Corporation v. M/s. Western Outdoor Interactive Pvt. Ltd. First Appeal No. 143 of 2012* vide judgment dated July 11, 2012.

16. The petitioner did not even considered the averments in the representation of the respondent company to the show cause notice and without application of mind, issued the provisional assessment order on May 31, 2012. The petitioner instead of rectifying the matter, issued a notice of disconnection dated August 30, 2012 to the Respondent Company. Thus, when no reply was forthcoming from the petitioner, respondent made another representation to the petitioner vide letter dated October 16, 2012. But petitioner did not consider the same and instead sent a highly inflated bill dated October 26, 2012 for the alleged unauthorized misuse of the connection. Thereafter on November 10, 2012, they sent some officials who threatened to disconnect the connection, which left the respondent company with no option but to file an appeal before the ADM on November 14, 2012. The petitioner

filed its reply to the appeal on January 8, 2013 referring to the final order dated August 8, 2012 passed under Section 126 of the Electricity Act, 2003 which was never served upon the respondent company under the provisions of Section 126 read with Section 171 of the Electricity Act, 2003 or in terms of delivery of notice, Order or Document Rules, 2004. The said final order came to the knowledge of the Respondent Company only at the time of hearing of the appeal which till date remains unserved as per due procedure and the petitioner has till date failed to provide any proof of service of the final order.

17. It is the submission of the learned counsel for the respondent company that the ADM quashed both the provisional assessment order dated May 31, 2012 and the final assessment order dated August 8, 2012 vide the impugned final order dated July 10, 2014 and relied upon the judgment of this court in *M/s. Panacea Biotech Pvt. Ltd. (supra)*.

18. In the last, it is her submission that the writ petition is maintainable only against a State, defined under Article 12 of the Constitution of India and the respondent herein is admittedly not a State and seeks the dismissal of the petition due to non-joinder of necessary parties. They also seek the refund of the excess payment of electricity consumption charges worth ₹6,51,139/- along with interest as deemed fit by this court. In support of her submissions, counsel for the respondent has placed reliance on the following judgments:

1. ***Rakhee Gupta v. State of Maharashtra and Ors. decided on October 18, 2016 by High Court of Judicature at Bombay.***
2. ***The Assistant Director Employees' State Insurance Corporation, Mumbai v. M/s. Western Outdoor Interactive Pvt. Ltd., Mumbai AND M/s. Reliable Software Systems Pvt. Ltd., Mumbai v. Employees' State Insurance Corporation, Mumbai reported as 2012 Vol. 114 (4) Bom. L.R. 2520.***
3. ***Panacea Biotec Ltd. v. DDA & Ors. reported as 2008 (103) DRJ 213.***

19. Having heard the learned counsel for the parties, the first and foremost issue which needs to be decided is whether the appeal filed under Section 127 of the Electricity Act, 2003 by the respondent challenging the provisional order of assessment under Section 126 (1) of the Electricity Act, 2003 was maintainable.

20. There is no dispute that the respondent had received copy of the provisional order of assessment dated May 31, 2012. The last paragraph of the said order clearly stipulates the respondent to submit written objections within 7 days of the receipt of the order. It is a conceded case that no objections were filed by the respondent. Naturally, the petitioner in the absence of objections from the respondent proceeded to issue a final assessment order dated August 8, 2012. The appeal was filed by the respondent challenging the provisional assessment order on November 14, 2012, which is admittedly beyond a period of 30 days of limitation prescribed under Section 127 of the Electricity Act, 2003. The order dated August 8,

2012 has not been challenged. On a reading of Sections 126 and 127 of the Act of 2003, it is clear that against the provisional assessment order a consumer is required to file objections under Section 126(3). He is also required to pay provisional assessment amount as required under Section 126 (4). Once the objections are filed under Section 126(3), an opportunity is given to the consumer of hearing on the objections if any filed and an order of final assessment is passed under Section 126(5) of the Act of 2003. If aggrieved from such an order, he prefers an appeal under Section 127 of the Act of 2003. It is clear that an appeal is filed within 30 days of the said order. So an appeal does not lie against a provisional order of assessment. It is the case of the respondent in the written submissions that the final order dated August 8, 2012 was never served upon it. I may only state that no such stand was ever taken by the respondent in its appeal. Be that as it may, if a final assessment order is not received by the respondent, there was no occasion for the respondent to file an appeal. Having filed an appeal against a provisional assessment order, which was not maintainable, the learned ADM should have only dismissed the appeal as not maintainable, more so when a specific objection has been taken by the petitioner in its reply to the appeal. I find, the respondent has not even cared to amend the appeal filed by it by incorporating a prayer challenging the final assessment order dated August 8, 2012. That apart, even the challenge to the order dated May 31, 2012 was

beyond the period of 30 days. It appears there was no application seeking condonation of delay in filing the appeal belatedly. Surprisingly, the learned ADM entertained the appeal and allows the same by quashing even the final assessment order (though not challenged) without adverting to the objection taken by the petitioner herein on the maintainability of the appeal per se. The order is clearly erroneous where the learned ADM exceeded his jurisdiction, which was not vested in him by law.

21. In so far as the merit of the case is concerned, it is the case of the petitioner and also accepted by the respondent that an inspection was carried out on the premises of the respondent on April 10, 2012, when it was found by the inspection team that an industrial connection is being used for commercial purposes (software training + distribution + office). Based on the inspection carried out by the petitioner on April 10, 2012, a show cause notice was issued to the respondent on April 10, 2012 itself calling upon the respondent to appear before the enforcement assessment cell for a personal hearing along with the relevant records. A representation was submitted by the respondent on April 24, 2012 wherein it was stated that the respondent is not involved in the business of providing software training. It is a company engaged in the business of developing software and content for schools to be used for digital learning by their students. It is also stated, it can operate from any locality except the residential places. On that reply, the petitioner passed

a final provisional assessment order dated May 31, 2012 of which reference has already been made above and dispatched to the respondent on June 1, 2012. The provisional assessment order, though received, went unchallenged by the respondent as despite calling for objections, the same were not filed. Resultantly, a final assessment order was passed.

22. From the above it is noticed that the stand of the respondent to the show cause notice dated April 10, 2012 in its representation dated April 24, 2012 is as under:

- *This is w.r.t the notice and the visit by you yesterday in connection thereto being alleged for the misuse / unauthorized use of electricity and have also been stated of running a software training centre at the given premise.*
- *You are not in business of providing software training at all. We may check your records and can inspect the place as well & will appreciate that there is no commercial software training is conducted here.*
- *You are a company engaged in the business of developing software and content of schools to be used for digital learning by their students. This is your head office and development centre. The services of the company are provided to the schools and students by various means, mainly by internet.*
- *Development of software is a deregulated industry and do not require any registration with any licensing authority. As per the regulations and guidelines of industrial policy of central and Delhi Government, it can be operated from any locality, except the residential places.*

- *You are registered with service tax department, the copy of the registration certificate attached. The department has registered you for providing the service under the category of online information and data.*
- *Based on the above facts, you stated and pray that the notice was issued without gathering sufficient and proper information by the visiting officer and in the light of facts provided above, the notice be quashed. You shall be more than happy to provide any other information we may require.*

The conclusion of the assessing officer on those objections is as under:

“In reply to your above contentions, it is pertinent to mention here that you have failed to substantiate your claim only on the basis of mere declaration as you unable to file any substantial document to prove that services provided by you come under the ambit of industrial activity and not under non-domestic activity. The connection was sanctioned to Eternal Radio Corpn. for industrial activity, but you are unauthorizedly using the power supply for non-domestic activities, i.e., (Software Training + Distribution + Office) as such no rebate can be granted to you on the basis of your request and mere declaration in view of the prevalent rules and regulations established by law as it comes under the purview of unauthorized use of electricity.

In the given circumstances, the company is left with no option than to proceed ahead with your case considering all the documents and facts on record.

It is relevant to mention here that for any request regarding change of category / withdrawal of penal tariff of unauthorized use of electricity further, you have to approach to our help line NO. 011-66111912 or consumer care of district concerned which is Moti Nagar in your case.

Conclusion:

In view of above, the case of unauthorized use of electricity is established against you.”

23. From the above it is clear that the assessing officer has come to a conclusion that the respondent was using power supply for non-domestic

activities, i.e., software training + distribution + office. I may note here that in its reply dated April 24, 2012 to the show cause notice April 10, 2012, the respondent has categorically stated “*this is our head office and development centre*”. This conclusion remained unchallenged by the respondent before the authorities in accordance with the procedure contemplated under the Act of 2003 till the filing of the Appeal on November 14, 2012.

24. The plea of the respondent before the learned ADM is that it is developing software and content for schools to be used for digital learning by their students. It denied the case of the petitioner that it is in the business of providing software training. The petitioner in support of its case that the respondent was running a software training institute had primarily relied on the photograph of the name board at the premises where the respondent was located. The same reads as “CLASS TEACHER – LEARNING SYSTEMS”. The said name does not necessarily mean that the respondent was running a software training institute. It can also mean, as being projected by the respondent, that it is engaged in the activity of developing software for schools. But still that would not have any effect on the usage of premises as “*an office*”. This aspect was not projected before the learned ADM by any of the parties. The assessing officer could not have concluded that the respondent is running a software training institute solely based on the photographs. I also find that the respondent had relied upon the judgment of

this Court in *M/s. Panacea Biotech Ltd. (supra)* and upon Section 2 (j) of the Industrial Disputes Act which defines “Industry” and the fact the employees of the respondent are covered under the ESI Act. I note, there is no finding on these two aspects that is the effect thereof on the issue whether the activity which the respondent is carrying out is an industrial activity or commercial activity.

25. In view of the above discussion, I deem it appropriate to set aside the order dated July 10, 2014 passed by the learned ADM and remand the matter back to the said authority directing the respondent to file an application for amendment of the appeal along with an application for condonation of delay in filing the appeal on November 14, 2012 which shall be considered by the learned ADM in accordance with law and pass appropriate orders. If the learned ADM proceeds to hear the appeal on merit, same shall be confined to the aspect whether the respondent having admitted that they are running the Head Office from the premises in question shall amount to carrying out an activity, which is commercial in nature; the effect of the judgment of this Court in *M/s. Panacea Biotech Ltd. (supra)*; Section 2(j) of the Industrial Disputes Act and the respondent being covered under the provisions of ESI Act. The parties herein shall rely upon such material as was available on record at the time of passing of the final assessment order. It is expected that the learned ADM shall pass a reasoned order dealing with all the submissions

advanced before him by the parties, as expeditiously as possible, but not beyond a period of six months from the date of receipt of the order.

The petition stands disposed of.

CM Nos. 4094/2015 & 29656/2017

In view of the order passed in the petition, the applications have become infructuous.

JULY 02, 2018/jg

V. KAMESWAR RAO, J

