

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

% *Date of Judgment: 30.11.2018*

+ **F.A.O. No.152/2017**

EMPLOYEE STATE INSURANCE CORPORATION

..... Appellant

Through: Mr. K.P. Mavi, Mr. Bhudev Prashad
Mishra & Mr. Vijay Kumar, Advts.

Versus

RADHA KRISHAN PRAKASHAN PVT LTD

....Respondent

Through: Mr. Pravin Sharma, Ms. Kanika
Sharma & Mr. Prannav Sharma, Advts.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

C.M. No.13293/2017 (for delay)

For the reasons justified in the application, the delay of 54 days
in filing the appeal is condoned.

The application is disposed of.

F.A.O. No.152/2017

1. The impugned order dated 08.12.2016 passed by the court of learned Senior Civil Judge, Central District, Tis Hazari Courts, New Delhi ('SCJ')/ESI court in old ESIC No.45/05 (new ESIC No.76/2016) allowing the petition of the respondent company under

Section 75 (1) (g) of Employees State Insurance Act, 1948 ('ESI Act') declaring the notice of demand dated 08.05.2003 issued by the appellant under Section 45A of ESI Act as null and void is the subject-matter of challenge in this appeal.

2. An inspection was carried out by the inspecting staff/surveyor of the appellant at the premises of the respondent company on 30.10.2000 by which they found 20 employees working there. A show cause notice dated 16.04.2002 was issued to the respondent. Eventually, by order dated 08.05.2003 under Section 45-A of ESI Act, the appellant determined the demand of contribution under ESI Act of Rs.2,82,034/- for the period from 08.12.1994 to 31.03.2001 against the respondent company. It is mentioned in this order that after the inspection was carried out, the respondent had deposited a sum of Rs.82,146/- for the period from January, 1995 to March, 2001 and demand was for payment of remaining amount of Rs.1,99,888/- against the respondent.

3. Having received this demand, the respondent filed a petition under Section 75 (1) (g) of the ESI Act before the ESI court/SCJ. While coming to the conclusion, the ESI court/SCJ found *'it is significant to note that respondent ESIC has not examined concerned officer/Inspector for proving veracity of survey report and order dated 08.05.2003 passed under Section 45-A of ESI Act in respect of 20 employees. Since survey report and list of employees of company as required under law could not be proved by respondent, so, order*

dated 08.05.2003 passed under Section 45-A demanding Rs.2,82,034/- as adhoc contribution and application dated 16.05.2005 forwarded to Recovery Officer for recovery of a sum of Rs.3,01,760/- are patently illegal which are liable to be quashed/set aside. Issue No.1 is therefore decided in favour of petitioner.’ While granting relief, the ESIC court/SCJ observed ‘Petition filed under Section 75 (1) (g) of ESI Act is accordingly allowed and order dated 08.05.2003 passed under Section 45-A of ESI Act and recovery proceedings vide application dated 16.05.2005 are declared null and void. Parties to bear their own costs.’

4. Learned counsel for the appellant contends that the respondent is carrying out the business of publication and sale of Hindi books. He further contends that in para 4 of their application, they admitted having employed more than 12-14 employees. He refers to definition of ‘factory’ as mentioned in Section 2 (12) of the ESI Act which reads as under :-

*“Factory” means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, **and in any part of which a manufacturing process is being carried on or is ordinarily so carried on,** but does not included a mine subject to the operation of the Mines Act, 1952.”*

5. He urges that since the respondent is in business of publication and sale of Hindi books, they are involved in

manufacture process which is contained in Section 2 (14 AA) of ESI Act and thus respondent is a Factory under Section 2 (12).

Section 2 (14AA) of ESI Act defines “‘Manufacturing process’ as having the meaning assigned to it in the Factories Act, 1948.”

6. Section 2 (k) of Factories Act, 1948 reads as under :-

“(k) “manufacturing process” means any process for—

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal,

[(ii) pumping oil, water, sewage or any other substance; or]

(iii) generating, transforming or transmitting power; or

[(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;]

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;

[(vi) preserving or storing any article in cold storage;]

7. He contends that it is respondent's own case that number of employees working with them were always more than 10 and not less than 12 to 14 but they have not deposited the ESI contribution with the appellant. He submits that the findings arrived by the ESI court/SCJ

are perverse in view of the admission by the respondent in their petition itself.

8. *Per contra*, learned counsel for the respondent submits that no appeal lie against an order of ESI Court except in a question of law. He refers to Section 82 of ESI Act which reads as under :-

“Appeal – (1) Save as expressly provided in this section , no appeal shall lie from an order of an Employees’ Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees’ Insurance Court if it involves a substantial question of law.

(3) The period of limitation for an appeal under this section shall be sixty days.

(4) The provisions of sections 5 and 12 of the Limitation Act, 1963 shall apply to appeals under this section.”

8. He contends that in their written statement, the appellant never took the plea that the respondent is a ‘factory’.

9. I have heard the learned counsel for the parties. I do not find any question of law included in the matter. Even on facts, there is no merit in the contention of learned counsel for the appellants. It is not disputed that the appellant has not examined the concerned officer/Inspector who carried out the survey on 30.10.2000 in the premises of the respondent. The surveyor/Inspector, who allegedly carried out the survey in the premises of the respondent, has not been examined by the appellant and as such the appellant has failed to

prove the survey report to the effect that the respondent had employed 20 employees. They have also failed to prove that during a period from 08.12.1994 to 31.03.2001 such number of employees were working which is only a guesswork, without any basis.

10. Therefore, I do not find any illegality or perversity in the impugned order. There is no merit in the appeal. The appeal is accordingly dismissed with no order as to costs.

NOVEMBER 30, 2018
‘AA’

(VINOD GOEL)
JUDGE



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