THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 26435 of 2019

ORDER:

In this Writ Petition, petitioner challenges order dated 30.09.2019 passed by the second respondent – Deputy Director, Employees State Insurance (ESI) Corporation, Hyderabad.

At the outset, it is to be noted that though the petitioner had raised number of grounds, this Writ Petition is to be allowed simply on the ground of violation of principles of natural justice.

Sri B.G. Ravinder Reddy, learned Standing Counsel for Employees State Insurance Corporation, appearing for the second respondent, vehemently submits that the petitioner can avail the remedy of appeal.

Inasmuch as violation of the principles of natural justice is apparent on the face of the record and in view of the law laid down by the Apex Court in **State of U.P. v. Mohammad Nooh**[1], this Court is not inclined to accept the aforesaid submission of the learned Standing Counsel.

As can be seen from the record, initially, a notice came to be issued to the petitioner on 05.07.2019 alleging that it had not

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[1] AIR 1958 SC 86

paid contributions for the period from 01.06.2014 to 30.04.2019 and thereby, demanded a sum of Rs.41,40,923/-. However, the petitioner was given an opportunity to appear before the second respondent on 29.07.2019. Thereafter, a reply was furnished by the petitioner on 30.07.2019 specifically asserting that it had given a request letter on 16.12.2014 seeking exemption from the coverage of ESI with effect from May, 2014. However, enquiry did not complete, as is evident from the notice dated 21.08.2019 issued by the second respondent fixing the date of hearing as 09.09.2019 at 11.00 a.m. Further, vide letter dated 09.09.2019, the petitioner had submitted Profit and Loss Account, Auditor reports, Balance sheet and Income-tax Returns for 2014-15, 2015-16, 2016-17 and 2017-18 and specifically requested to verify the same and update the records. Thereafter, yet another notice dated 09.09.2019 was issued directing the petitioner to appear on 30.09.2019 and to produce various documents including remittance of TDS, Professional Tax, VAT returns and any other documents. In the interregnum, on 21.08.2019, the respondents appear to have informed the petitioner that it cannot be exempted from ESI as the number of employees have not gone down and hence demanded it to pay the contributions, as claimed. In the letter dated 30.09.2019, the petitioner had once again reiterated that all the documents were submitted on 29.07.2019 and 09.09.2019, and requested to verify the records including the enclosed documents and do the needful.

A perusal of the impugned order discloses that without reference to any of the correspondence and without adverting to the specific plea of the petitioner, the second respondent observed that the petitioner had failed to avail the opportunity of personal hearing.

It is to be noted that even assuming that the petitioner had failed to avail the opportunity of personal hearing, there is a duty cast on the second respondent to deal with the material placed before him as the demand was made only based on the facts.

From the above, it is evident that the second respondent passed the impugned order in gross violation of the principles of natural justice.

Accordingly, this Writ Petition is allowed setting aside the impugned order. However, the second respondent shall pass appropriate order in accordance with law, after giving fair opportunity to the petitioner and specifically dealing with various contentions raised by it.

That apart, this Court is required to caution the responden authorities to take into consideration the realities of the business worth of today and cannot mulct any enterprise with unreasonable or astronomical demand as survival of enterprise is required to be the paramount consideration as it is the enterprise which pays the taxes and which is also the source of income and source of salaries for the respondent authorities.

Miscellaneous Petitions, if any pending, shall stand disposed of. There shall be no order as to costs.

CHALLA KODANDA RAM, J

29th NOVEMBER, 2019.

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