

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9046 of 2022

***M/s. Sahoo & Brothers,
Jagatsinghpur***

....

Petitioner

***Mr. G.S. Das,
Advocate***

-versus-

***Employees State Insurance
Corporation, Bhubaneswar &
others***

....

Opposite Parties

***Mr. A.P. Ray,
Advocate for the ESIC***

**CORAM:
JUSTICE BISWAJIT MOHANTY**

ORDER

20.10.2022

Order No.

- 12.
1. At the outset, learned counsel for the petitioner files an affidavit after serving a copy of the same on Mr. A.P. Ray, learned counsel for the Opposite Parties 1 to 3. The same is taken on record.
 2. Heard learned counsel for the petitioner and Mr. A.P. Ray, learned counsel representing the Employees State Insurance Corporation.
 3. Learned counsel for the petitioner submits that the petitioner is a partnership concern and usually deals with the job works of cleaning of debris from roads, berms, backup space and dredging materials of the Paradeep Port Trust from time to time pursuant to various work orders issued for the said purpose. The petitioner concerned is covered under the provisions of E.S.I. Act, 1948 since

01.04.2013 and has been paying E.S.I. contribution to the E.S.I- Corporation regularly. Due to pandemic, the business of the petitioner came to a stand still for a considerable period and its office remained closed for a long period of time causing the petitioner huge loss. While so, when the Managing Partner visited his office during March, 2022, he came to know from the adjoining house owner about the order under Annexure-1 passed under Section-45-A of the E.S.I. Act, 1948 determining the contribution of Rs.1,62,162/- per month per employee for the period from 5/2017 to 10/2017 and the direction contained therein to pay the amount within 60 days. Though the said order under Annexure-1 referred to notices dated 01.02.2018, 26.12.2019 and 03.08.2021 giving opportunity to the petitioner to file Show Cause and produce relevant records, however such notices were never served on petitioner. Thus there has been gross violation of principles of natural justice in issuing order under Annexure-1 which according to him is liable to be set aside. Accordingly he prayed for setting aside consequential order under Annexure-2 and prayed that amount recovered pursuant to Annexure-2 be refunded.

4. Mr. Ray, learned counsel representing the ESI Corporation fairly submits that vis-à-vis the notice dated 01.02.2018 fixing the date of hearing on 06.03.2018 under Annexure-A and notice dated 26.12.2019 under Annexure-B Series fixing the date of personal hearing to 24.01.2020, there exists no record to show that those were duly served on the petitioner. With regard to the last notice dated 03.08.2021 under Annexure-B Series fixing the date of personal hearing to 02.09.2021, he submits that the same was received by Mr. Abinash Jena as per Annexure-D/1 enclosed to the affidavit dated 19.10.2020. He further submits that the order under

Annexure-2 is not consequential to Annexure-1 only as it cover six certificates and accordingly the same may not be quashed.

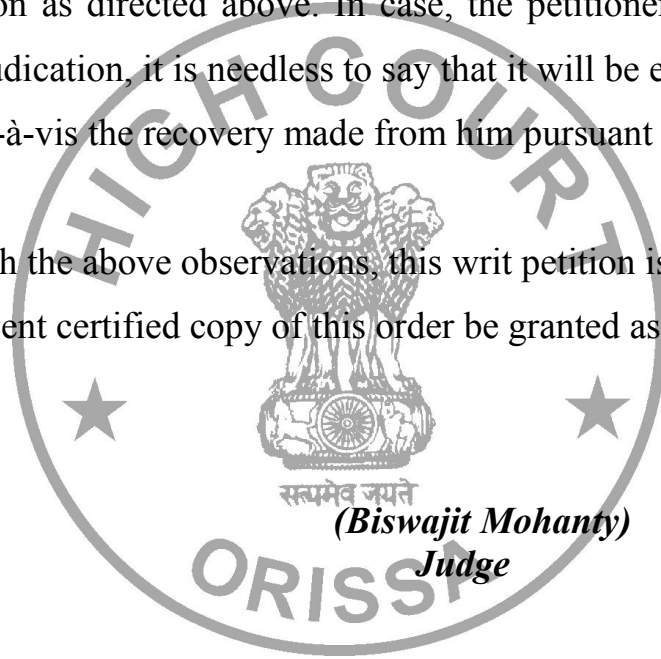
5. In reply, learned counsel for the petitioner relying on the affidavits dated 17.10.2022 and 20.10.2022 submitted that Mr. Jena is neither an employee of the petitioner nor the petitioner has got any business relation with him and Sri Jena had only handed over final ex parte order under Annexure-1 and the order under Annexure-2 to the petitioner and reiterated that the petitioner has never received any notices from the Opposite Party-ESI Corporation, which have been filed by the Corporation under Annexures-A and B Series. Accordingly, he submitted that since the impugned order under Annexure-1 has been passed ex-parte and in violation of principles of natural justice, the same ought to be set aside and one more opportunity should be given to the petitioner in tune with the above noted principles.

6. When queried by the Court, Mr. Ray could not link Mr. Abinash Jena with the petitioner and also could not dispute the averments made by the petitioner in its affidavits dated 17.10.2022 and 20.10.2022 that Abinash Jena is neither an employee of the petitioner nor the petitioner was in the business transaction with him. In such background, this Court is of the opinion that service of notice dated 03.08.2021 on one Mr. Abinash Jena, who is in no way connected with the petitioner's firm cannot be treated to be sufficient service on the petitioner. In such background, the impugned order under Annexure-1 can be safely treated to be an order passed ex parte without giving an opportunity to the petitioner. Accordingly, the impugned order under Annexure-1 is set aside and the matter is remitted back to the Deputy Director (Revenue-II) Employees' State Insurance Corporation, Regional

Office, Odisha (Opposite Party No.2) for re-adjudication. The matter shall be re-adjudicated within a period of four weeks from the date of appearance of the petitioner and the petitioner is directed to appear before the Opposite Party No.2 on 4th November, 2022 and file their Show Cause and produce all the relevant records as directed by Show Cause Notice dated 01.02.2018 under Annexure-A. Since the order under Annexure-1 has been set aside, this Court would have quashed the consequential order but since the order under Annexure-2 covers six certificates, the same is not quashed but the operation of said order shall be subject to the result of re-adjudication as directed above. In case, the petitioner succeeds in the re-adjudication, it is needless to say that it will be entitled to full refund vis-à-vis the recovery made from him pursuant to Annexure-2.

7. With the above observations, this writ petition is disposed of.

8. Urgent certified copy of this order be granted as per rules.



Balaram