IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.455 OF 2001

Joint Regional Director,
Sub Regional Office,
Employees State Insurance Corporation,
Panchdeep Bhavan, Ganeshpeth,
Nagpur - 18

...APPELLANT

VERSUS

M/s. Standard Cement Product,
Proprietary concern through
Proprietor Smt. Shailaja Wagh,
R/o. Suyog Building, Civil Line – 2,
Opp. Janata College,
Nagpur Road,
Chandrapur – 442 401

...RESPONDENT

Mrs. B.P. Maldhure, Advocate for the appellant.
Mrs. Ketki Jaltare, Advocate for the respondent.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : APRIL 18, 2023.
PRONOUNCED ON : JUNE 06, 2023

ORAL JUDGMENT :

Heard learned Counsel for the parties.

2. The Joint Regional Director, Employees State Insurance Corporation has challenged the judgment and order passed by E.S.I. Court, Chandrapur in E.S.I. Case No.1/92 dated 15/09/2001 by which it

is held that the respondent is not liable to pay any contribution and the appellant is directed to adjust the amount of compensation which is already paid by the respondent.

3. Brief facts in nutshell are as follows :

A] The respondent is the original applicant has filed the application under Section 75 of the Employee's State Insurance Act, 1948 (hereinafter referred to as 'the Act' for short) for declaration that the action taken by the Employees State Insurance Corporation (hereinafter referred to as 'the ESIC' for short) directing to pay the contribution is illegal and liable to be set aside. The respondent is a partnership firm deals with Cement pipes. The provisions of the Act made applicable to the applicant's factory from 26/05/1994 vide letter dated 21/03/1985. The appellant authority allotted the Code No.23-2124-46 for the sake of convenience. The Insurance Inspector vide letter dated 27/09/1986 informed the respondent that he had visited the factory on 19/09/1986 and ask the applicant to produce the record on 30/09/1986. The applicant replied the said letter and shown its inability to produce the record and requested for time till October, 1986. On 16/10/1986, the Inspector visited the factory and informed vide letter dated 16/10/1986 that ledger for the period from 01/07/1985 to 30/09/1986 is not ready and directed to keep it ready.

As per contention of the respondent that in view of provisions of Section 45-A of the Act, the Corporation has to determine the contribution in certain cases wherein it has been mentioned that normal procedure prescribed by the Act cannot be adhered to because the factory or establishment concerned had not submitted the returns. The provisions of Section 45-A of the Act has been made so as to enable the Corporation to determine the amount of contribution where the employer refused to determine the amount of contribution. The Employees State Insurance Authority determined the amount of contribution under Section 45-A of the Act for the period from 26/05/1984 to 26/01/1985 vide order dated 15/05/1986 of Rs.6770/-, from 27/01/1985 to 30/09/1985 vide order dated 15/05/1986 Rs.6770/-, for 01/10/1985 to 30/09/1986 vide order dated 26/12/1986 of Rs.16,843.70/- and from 01/02/1984 to 25/09/1984 vide order dated 14/07/1987 of Rs.3813/-. The E.S.I. Corporation has determined the amount without adhering to the principles of natural justice. The appellant has not informed on what basis they have determined the said amount. As per the contention of the respondents that in fact, in view of Notification exemption was granted from 02/06/1986 to 30/06/1986 by notification dated 13/01/1987. Period of exemption was from 01/07/1986 to 30/06/87. As per Notification dated 05/09/1988, the period of exemption from 01/07/1987 to 30/09/1988. Thus, the applicant was not liable to pay any contribution. The appellant has not considered the detail explanation and determined the amount without following the rule of natural justice. Thus, as per the contention of the respondent, it was not liable to pay any amount towards the contribution.

4. The appellant has resisted the application. As per the appellant, the Insurance Inspector verified the record of the applicant on 16/10/1986 for the period from 01/07/1985 to 30/09/1986. The applicant is bound to make payment and in case of failure the E.S.I. Corporation has an authority to demand the amount. As the respondent failed to pay in respect of the employees employed by the non-applicant. The order was passed under Section 45-A of the Act and prayed for dismissal of the application.

5. The E.S.I. Court has considered the evidence and observed that the application is within the limitation as initially applicant has filed the Special Civil Suit bearing No.1/89 and after seeking the permission from the Court withdrawn the said application. The exemption was granted to the applicant for the period from 02/06/1986 to 30/06/1986 vide Notification dated 02/06/1986, vide Notification dated 13/01/1987 period of exemption was granted from 01/07/1986 to 30/06/1987, vide Notification dated 05/09/1988 the period of exemption was from

01/07/1987 to 30/09/1988. The exemption was granted by the Government with retrospective period for the part period in questions. The only course left open before the employer to see the refund the amount paid by him. So far as the prospective exemption is concerned the employer is entitled to stop the compliance under the Act immediately after issuance of Notification. It is held by the E.S.I. Court that it is nowhere the case of the appellant that exemption was not granted. The factory of the applicant was inspected and accordingly the notices were issued for contribution of the amount towards E.S.I. Corporation from 01/02/1984. It is clear from the record that applicant was exempted from 01/07/86/ 30/06/86. For the earlier period the factory of the applicant was not exempted. It is further held by the E.S.I. Court that if any dispute in respect of claim by the employer for recovering contribution shall be made within three years. The applicant has filed the suit and obtained the liberty to file a fresh application, therefore, application is within time. The E.S.I. Court further held that the applicant has paid the contribution for exempted period and directed the authority to adjust the same. Admittedly, the employer has not produced any ledger document. The non-applicant had given notice to the applicant vide Exhibit 52 for making calculation of contribution. Exhibit 54 is the recovery certificate to recover the amount from the applicant. The E.S.I. Court further observed that from the evidence of witness that two letters were given to the applicant informing that ledger for the period from 01/07/1985 to 30/09/1986 was not produced. Exhibit 36 was issued by the applicant to the appellant. The applicant has also given an application vide Exhibit 85 by giving details, about actual dues of amount of contribution. As per the applicants only amount of Rs.12390.72/- is payable to the non-applicant. The calculation is paid on the basis of staff working with the applicant. The non-applicant has not challenged the calculation. The non-applicant calculated the amount of Rs.36,614/- on adhoc basis and it was not calculated on the basis of attendance register-wage register, ledger account and provident fund.

6. It is observed by the E.S.I. Court that as per the provision of Section 45-A of the Act where in respect of factory, establishment, no returns, particulars, registers or records be submitted, the Corporation may on the basis of information available to it by order determine the amount of contribution payable in respect of the employees. No such order shall be passed by the Corporation unless the principal or immediate employer of the person in-charge of the factory or establishment has been given a reasonable opportunity of being heard.

7. On the basis of above discussion, the E.S.I. Court held that the applicant is entitled to get the benefit of adjustment of Rs.11,791.45/- which was paid by the applicant for the exemption period. It is further held that applicant is liable to pay amount of Rs.1139.27/- to the appellant in respect of contribution amount from February 1984 to June, 1986. The liberty was granted to the appellant to make inspection of record.

8. After going through the observation of record of the E.S.I. Court, it is crystal clear that the applicant has calculated the amount without furnishing the details to the applicant. The appellant has not supplied the requisite material to the applicants in view of principles of natural justice. It is observed by the E.S.I. Court that no such order shall be passed by the Corporation unless the employer of the person has given a reasonable opportunity of being heard.

9. Being aggrieved with the same, present appeal is preferred on the ground that the applicants are liable to pay contribution. The E.S.I. Court ought to have been seen that the Corporation has a statutory body and it has to work within the framework of statute. The E.S.I. Court ought not to have directed to adjust the amount. It is further raised that

the E.S.I. Court has wrongfully directed the appellant to adjust the amount and refund the amount.

10. Heard Mrs. Maldhure, learned Counsel for the appellant. She submitted that notices are not quashed by the judgment by the E.S.I. Court thus, the judgment of the E.S.I. Court is wrong and illegal.

11. It is well settled that the appeal before this Court against the order of E.S.I. Court is only maintainable when substantial question of law is involved in the appeal from such findings.

12. Though Mrs. Maldhure, learned counsel vehemently submitted that the order passed by the E.S.I. Court is wrong and illegal but she could not point out the substantial question of law which is involved in the appeal. The facts giving rise to the present proceeding shows that in view of Exhibit 38 the State of Maharashtra has given exemption to the applicant from 01/07/1986 to 30/06/1987. As per Exhibit 39 further exemption was granted to the factory located in M.I.D.C. area District Chandrapur from 01/07/1987 to 30/06/1988. Said exemption was granted as per the provision of Section 87 of the Act. From the documents and the evidence it appears that State of Maharashtra exempted the factories situated in M.I.D.C. area of

Chandrapur for the period from 01/07/1986 to 30/06/1987 and from 01/07/1987 to 30/06/1988. Prior to that the factory of the applicant was not exempted. The provisions of the E.S.I.C. Act are made applicable from 01/02/1984. The applicant has paid the amount of Rs.11791.45/- for the exemption period. The Inspector visited the factory and issued the notices for contribution of amount from 01/02/1984. It is clear from the evidence that exemption was granted from 01/07/1986 to 30/6/1988 so during that period the applicant was not liable to pay any contribution. The evidence of the non-applicant vide Exhibit 49 shows that the applicant has not produced attendance cum wages register, and therefore, he calculated on adhoc basis. He further stated that Exhibits 30 and 31 - notices are not issued on the basis of his report. He further admits that Exhibits 30 and 31 - notices are sent on the basis of own assessment of the E.S.I.C. authority. He further admits that assessment of the dues are made on adhoc basis. The report of inspection is at Exhibit 49. Admittedly, the applicant has not produced any ledger document, provident fund etc. The employer has not produced the register attendance-cum-wage register at the time of inspection from April, 1984 to June, 1984 and May 84 onwards. The appellant has issued the notices on 24/12/1985 which is at Exhibit 51 stating that unit of the applicant is covered. Admittedly, the ledger, cash book and payment voucher were not produced for inspection. Notice was given to the applicant vide Exhibit 52 dated 14/07/1987 by making calculation of contribution for the period 01/02/1984 to 25/05/1984. The document Exhibit 53 is issued by the Assistant Regional Manager for the recovery of amount of Rs.3813.20/- for the period from 01/02/1984 to 25/05/1984. Exhibit 54 is the recovery certificate. Exhibit 30 is the notice. Calculation of the contribution of amount of Rs.6776/- for the period from 26/05/1984 to 26/01/1985. Thus, Exhibits 30 and 31 notices are issued on the basis of their own assessment and not issued on the basis of own inspection. The applicant has also applied about the details of the actual dues which were not furnished to the applicant. As per the statement, amount is calculated for the period from February, 1984 to June, 1986. In fact, the applicant was liable to pay contribution of Rs.12930.72/-. Admittedly, the said statement is not challenged by the non-applicant. The non-applicant has not challenged the calculation of schedule filed on record vide Exhibit 36. The non-applicant calculated the amount on adhoc basis and without giving any reasonable opportunity to the applicant. Therefore, E.S.I. Court held that the applicant has not produced the attendance-cum-wage register, cash book, ledger book, provident fund account at the time of inspection. There is no material on record to make calculation of contribution of Rs.36,614/- which was calculated on adhoc basis. As per the evidence of the appellant the amount is calculated on the basis of ledger. The ledger account was not produced. Therefore, the observation of the E.S.I. Court that the calculation on the basis of ledger is not acceptable. The notices Exhibit 30 and 31 are not sent on the basis of inspection but they were sent on their own account, therefore, the applicant has not accepted the calculation and given the letter for the details. It is not in dispute that applicant had paid the amount of Rs.4794/- for the period 01/07/1986 to 30/06/1987, Rs.6997.40/- for the period from 01/07/1987 to 30/06/1988 total amount of Rs.11,791.45/-. Thus, the amount of Rs.11,791/- was paid for the exemption period. The applicant was only liable to pay contribution for the period from 26/05/1984 to 26/01/1985 of Rs.6770/- from 27/01/1985 to 30/09/1985, Rs.9187/- and for the period from 01/10/1985 to 30/09/1986 Rs.16,843.70/- and from 01/02/1984 to 25/09/1984 Rs. 3813.20/- total amount of Rs.36,613.90/-. This amount is calculated on adhoc basis without furnishing any details and without giving any opportunity to the applicant, therefore, the directions given that said amount is to be adjusted. The Hon'ble Apex Court in ***Royal Talkies, Hyderabad and ors. Vs. Employees State Insurance Corporation, 1978 AIR 1478*** held that while passing the order under Section 45-A of the Act the details of such information to be provided to the applicants. Non-supply of requisite material amount to non-compliance with principle of natural justice.

13. The provisions of Section 45A of the Act require submission or furnishing of records as per provisions of Section 45 of the said Act. The Corporation on the basis of information available to it can pass an order demanding the amount of contribution payable in respect of the employees of the establishment. This is, however, to be done after giving a reasonable opportunity of being heard to the principal or immediate employer or person incharge as the case may be. In *Employees State Insurance Corporation, Bhopal* referred by this Court in ***M/s. N.J. Nayudu and Company Vs. Employees State Insurance Corporation and ors., 2017(1) ALL MR 783*** held that the Hon'ble Supreme Court observed that where there is an omission on the part of the employer to maintain records as per Section 44 of the said Act, it has to determine the amount of contribution on the strength of such information as it may collect. In ***Bharat Heavy Electricals Ltd. Vs ESI Corporation 2008 ALL SCR 1204*** it was observed that in proceedings initiated under Section 45A of the said Act an immediate employer or principal employer may show that it is not liable to pay any contribution on behalf of the employees as the establishment did not come under the purview of the said Act.

14. From the aforesaid observation it is clear that the Corporation can demand the amount of contribution acting on the information

available with it and after giving a reasonable opportunity to the person from whom such contribution is demanded.

15. The facts of the present case indicate that the E.S.I. Court has observed on the basis of record that the applicant has already paid an amount for the exemption period, and therefore, directed to adjust the amount. The applicant was also directed to pay amount of Rs.1139.27/-. After going through the detailed reasoning given by the E.S.I. Court, no illegality is committed. As observed by me that the learned Counsel for the appellant could not point out any substantial question of law involved in the appeal. From the finding of the E.S.I. Court as no substantial question of law is involved the Corporation cannot challenge the judgment and order.

16. Learned Counsel Mrs. Jaltare rightly submitted by placing reliance on ***E.S.I. Corporation, Indore Vs. Smt. Dhanni Bai and anr. In M.A. No.96/1978*** wherein Madhya Pradesh High Court has held that even if the finding of the Insurance Court be an erroneous finding arrived at on facts based on mis-appreciation of evidence, it could not be said that any substantial question of law is involved in appeal from such finding.

17. Learned counsel for the original applicant further placed reliance on the observation of this Court in ***Dainik Deshdoot and anr. Vs. Employees State Insurance Corporation and anr., 1996 BCI 45*** wherein also held that an appeal would lie to the High court from an order of an Employees Insurance Court only when it involves a substantial question of law. As no substantial question of law involved in the present appeal the appeal deserves to be dismissed.

18. Hence, the appeal is accordingly dismissed. No costs.

(URMILA JOSHI-PHALKE, J.)

**Divya*