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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-6519-2023

Date of decision: 08.12.2023

The Employees State Insurance Corporation and others

...Appellants

Versus

Shri Hari Health and Education Foundation M.K. Hospital Bhiwani

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Ashwani Talwar, Advocate for the appellants.

KARAMJIT SINGH, J. (ORAL)

1. The present appeal is filed by the appellants against the judgment dated 22.08.2023 passed by ESI Court of Civil Judge (Senior Division), Bhiwani whereby the petition filed by respondent under Section 75 of the Employees State Insurance Act has been allowed.

2. The brief facts of the case of the respondent are that respondent's hospital i.e. M.K. Hospital, Bhiwani was being run by Shri Hari Health and Education Foundation, New Delhi and is a charitable hospital. The said hospital came under ESI Act w.e.f. 07.05.2013 and its started complying with the provisions of ESI Act. The hospital prepared the list of employees. That appellant No.2 passed order dated 06.07.2016 to the effect that employer has failed to pay the contribution in respect of the employees who were employed by house keeping company i.e. M/s Krishna

Facility Management Services which was hired by respondent hospital. As per order dated 06.07.2016 team of SSO reported about the coverable employees on 17.05.2013. The team also mentioned the name of Dinesh Pahuja head of marketing. The SSO team forced Dinesh Pahuja to sign certain statement, which he was not authorized to do. The team did not obtain copies of identity cards and attendance sheet. The balance sheet submitted by respondent shows that no payment was made to M/s Krishna Facility Management Services as the alleged employees were not on pay roll of the respondent and were not employed by it at any point of time. The team led by SSO did not follow the proper procedure and had not obtained signatures of employees who were present in the hospital at that time. Petitioners also violated principals of natural justice as no opportunity of hearing was provided to the respondent through its representative. That actually, at the time of aforesaid checking respondent hospital was virtually closed due to acute shortage of staff including house keeping services. That order dated 06.07.2016 is illegal being passed without application of mind and in contravention to the provisions of ESI Act and notifications. Hence, petition under Section 75 of ESI Act was filed by respondent.

3. The petition was contested by the appellants who filed written statement taking preliminary objections regarding maintainability and *locus standi*. On merits, it was pleaded that respondent failed to deposit the ESI contribution of its entire employees and also failed to pay the contribution amount as per order dated 06.07.2016. That appellants raised demand of contribution amount as per inspection and in accordance with provisions of ESI Act. It was further pleaded that SSO inspected the premises of the

hospital on 17.05.2013 and found 10 employees employed through Gajraj Security Guards Limited and 5 employees through M/s Neelkanth Drugs Private Limited and accordingly site inspection report was prepared which was countersigned by Dinesh Pahuja marketing and admn, incharge of the respondent hospital and during the said inspection team led by SSO followed proper procedure. At that time 27 employees were working under outsourcing scheme and they were covered under the employment of respondent hospital it being principal employer and thus, was liable to deposit the payment of ESI contribution. The other averments of the petition were denied and it was pleaded that the petition be dismissed.

4. From the pleadings of the party, the following issues were framed by ESI Court:-

1. Whether the order for recovery of Rs.1,68,833/- from the petitioner is illegal on the grounds as mentioned in the petition? OPP
2. Whether the petition of the petitioner is not maintainable? OPR
3. Whether the petitioner has no cause of action to file this petition? OPR
4. Relief.

5. The counsel for the petitioner examined PW-1 Balraj Kumar and PW-2 Dr. Divya, Kirti Ahuja, General Physician who was competent and authorized person appointed on behalf of respondent. The respondent also produced documents Ex.P-1 to Ex.P-31 which also includes lists of employees, copy of visit note. On the other hand, the petitioners examined DW-1 M.K. Garg, Assistant Director Regional Office, ESIC, Faridabad (since retired) and DW-2 Harinder Kumar Sethi, Helper and also produced documents Ex.R-1 to Ex.R-14 which also includes preliminary inspection

report and inspection cum observation report.

6. After hearing the counsel for the parties, the ESI Court allowed the petition while holding that the visiting team of ESIC, Bhiwani failed to comply with the guidelines/instructions Ex.P-30 issued by the department for survey of coverage under ESI scheme.

7. The petitioners being aggrieved by the impugned judgment passed by ESI Court dated 22.08.2023 have filed the present appeal.

8. I have heard the counsel for the petitioners.

9. The counsel for the petitioners *inter alia* contends that evidence available on the record shows that the team of ESIC visited the respondent hospital and at the time of said inspection the workers M/s Krishna Facility Management Services were found working there and Dinesh Pahuja the concerned officer admitted this fact. It is further contended that Dinesh Pahuja admitted the list of employees Ex.R-4 and signed the same. It is further contended that the inspection team during its visit followed the proper guidelines and instructions and the demand raised by the petitioners vide order dated 06.07.2016 is valid and legal. It is further contended that the impugned judgment is liable to be set aside.

10. I have considered the submissions made by counsel for the petitioners.

11. The ESI Court while taking into consideration the guidelines/instructions Ex.P-30 regarding survey for coverage under ESI scheme, rightly pointed out that the visiting team of ESIC, Bhiwani did not mention the name, father's name and native place of employees, length of their service and further did not take signatures/thumb impressions of the

alleged 10 employees as shown in Ex.R-4 and thus, violated the aforesaid guidelines/instructions which requires the inspection team of ESIC to note down the complete details of the concerned employee including their parentage, designation, date of appointment, monthly wages and average monthly days of work etc. with the signatures of the concerned employees and authentication of the employer. Further, the ESI Court rightly observed that Dinesh Pahuja was not authorized person appointed by the respondent and rather PW-2 Dr. Divya Kirti Ahuja was the competent person authorized on behalf of respondent vide power of attorney Ex.PW-2/B and her signatures were not taken on any of the inspection documents prepared by the inspection team. Further the ESI Court rightly concluded that Dinesh Pahuja, appointed as Manager Marketing vide appointment letter Ex.P-2 was not authorized to make any statement or put any signatures on behalf of the respondent and thus, rightly disbelieved the alleged admission made by him on behalf of the respondent regarding number of employees available at the time of the inspection by team of ESIC as he was having no authority to make any such statement.

12. In light of the above, this Court is of the view that there is no illegality or infirmity in the impugned judgment of the ESI Court. So no ground for interference is made out in the matter.

13. Consequently, the present appeal is hereby dismissed in limine, being devoid of merits.

08.12.2023

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No