

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***MAT 1191 of 2024
CAN 1 of 2024***

**Sanju Ghosh
Vs.
Employee's State Insurance Corporation**

For the Appellant : Mr. Sanjib Dawn

Heard on : 19.09.2024

Judgment on : 19.09.2024

Joymalya Bagchi, J.:-

1. Appellant contends order dated 15th January 2024 of the Deputy Director, Employee's State Insurance Corporation was passed in violation of principles of natural justice and ought to have been interfered in writ jurisdiction by the Hon'ble Single Judge.

2. Factual matrix giving rise to the appeal is as follows :-

Appellant company was registered under the Employee's State Insurance Corporation Act and was required to pay contribution in terms of section 40 of the said Act read with Regulation 31 of ESI (General) Regulations 1950. But the company failed to contribute

for the wage period from August, 2018 to March, 2022. Accordingly, show cause notice was issued upon the company under section 45A of the ESI Act calling upon it to show cause why a sum of Rs. 493589/- be not determined as payable under the said provision and be recovered if not paid by the company.

3. Pursuant to notice the company appeared before the Deputy Director and submitted the land on which the manufacturing activity was undertaken had been taken over by the official liquidator, High Court, Calcutta in terms of the direction of the Hon'ble Supreme Court. In view of such submission the company was called upon to submit the following documents :

- i) Detailed records relating to vacating of factory premises
- ii) Balance sheet, profit & loss accounts, ITR acknowledgment with computation of income, salary records, ledger, cash book, vouchers, EPFO ECR copies, profession tax registration/return copies for the C-18 (ad hoc) period.

4. In response, the company submitted copy of the order of the Hon'ble Supreme Court in civil appeal no. 6564-6567 of 2016, letter date 22.6.2017 sent by the office of the official liquidator, High Court, Calcutta and possession certificate issued by the said official liquidator dated 28.6.2017. In addition the company contended since closure of the factory in 2018-2019 they have not filed ITR, balance sheet, profit/loss account, salary records, books of account etc.

5. Under such circumstances, the adjudicating authority called upon the company to submit bank account statement of the firm, Form 26AS, EPFO ECR copies, GST return for the said period. Date was fixed to submit the said document on 7.12.2023 but the company failed to appear and submit the returns.
6. After considering the materials on record the authority concerned determined the contribution due and payable at Rs. 430527/-and directed the company to pay the said amount within 60 days of the order failing which recovery proceedings were to be initiated.
7. The order came to be challenged before the Hon'ble Single Judge who dismissed the writ petition in view of existence of statutory appellate remedy.
8. Mr. Dawn for the appellant contends while hearing was given by the erstwhile officer, impugned order came to be passed by his successor. He further contends no opportunity was given to his client to submit relevant documents to show no one was employed to carry on manufacturing activity during the relevant period. It is also contended that the contributions due and payable are barred as per the second proviso to section 45A of the ESI Act.
9. We have given anxious consideration to Mr. Dawn's submissions. With regard to the plea that the hearing was given by the erstwhile officer and the order was passed by his successor, we note no prejudice was suffered by his client. Records of the proceeding as well as impugned order graphically sets out the manner in which the appellant was given an opportunity to submit documents in the

course of hearing. Officer who passed the order noted though some documents were submitted on behalf of the appellant, he inspite of opportunity had failed to submit relevant documents like bank account statements, Form 26AS, EPFO ECR, copy GST return etc.

10. Principles of natural justice do not constitute a strait jacket formula. They are well established principles which would ensure fairness in an adjudicatory exercise. Perusal of the records shows the appellant was given repeated opportunities to produce documents during hearing. He had failed to produce relevant documents to probabalise his case and rebut the proposed liability. On the other hand, pursuant to survey conducted by the social security officer, appellant had been intimated in Form C-1 that his establishment was covered under the ESI Act. Nothing is placed on record to show the appellant had sought for cancellation of the said coverage due to change in circumstances. Taking note of the aforesaid facts and other materials on record the authority concerned made the determination vis a vis ESI liability

11. As the impugned order was based on documents and not on oral depositions during hearing, no prejudice can be said to have been suffered by the appellant on the premise the said documents were submitted before the erstwhile officer while order was passed by his successor. It is also relevant on the last date of hearing, the appellant inspite of opportunity had failed and/or neglected to submit relevant documents. From the records it appears ample opportunity had been given to the appellant to submit documents

on a number of dates and there is no breach of principles of natural justice in the facts of the case.

12. Finally with regard to plea of limitation we note the entire period between February 2018 to March 2019 and July 2019 to March 2022 is not barred by limitation. Even then such issue does not pertain to patent lack of jurisdiction but would tantamount to mere error of law amenable to appellate remedy.

13. In light of the aforesaid discussion we are of the view no exceptional case falling within the time tested parameters, namely, breach of natural justice, patent lack of jurisdiction or challenge to vires of the statute have been made out necessitating interference in writ jurisdiction in the face of existence of statutory appellate remedy.

14. Appeal is accordingly dismissed.

15. There shall be no order as to costs.

16. Urgent Photostat certified copy of judgment, order if applied for be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)