

Ct. No. 652
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C.O. 3388 of 2018
Employees' State Insurance Corporation
-Versus-
M/s. Business Efficiency Services India Pvt. Ltd.

Mr. Shiv Chandra Prasad ...For the Petitioner

Opposite party is not represented.

Opposite party herein is an establishment, covered and registered under the Employees State Insurance Act 1948, (in short ESI Act 1948) and were required to pay the ESI contributions in accordance with section 40 of the Act. Being aggrieved with the demand notice in C-18 dated 12.11.1997, the employer filed an application before the learned Employees Insurance Court disputing the coverage of the factory and demand of contribution.

In the present petition the petitioner herein challenged the legality and validity of the order dated 16th January, 2018 passed by learned judge, Employees Insurance Court, Kolkata in respect of the tender case no. 16 of 2012. After hearing grounds of litigation the E.I. Court vide order dated 22.03.2012 was pleased to dispose of the tender case by setting aside order dated 10th August, 2011 and remanded the matter to the petitioner corporation for hearing denovo by observing all the legal formalities and after according opportunity of hearing to the opposite party.

The petitioners state that the finding of the learned judge is erroneous one as before adjudicating the case no

notice in form C-II can be issued, which can only be issued after adjudicating the coverage dispute and in the instant case the same has been rightly done by affording opportunities to the applicant and thereafter by issuing a reasoned order declaring the unit as a covered one. Accordingly the said order dated 10th August, 2011 which was passed after complying all formalities in terms of the order dated 12.02.2010 in ESI Case No. 30 of 1999 ought not to have been declared as an illegal one.

He further submits that in the instant case the corporation had issued due notice on 28.09.2010 to the applicant for personal hearing as per order no. 45 dated 15.02.2010 in case no. 30 of 1989 and the main object to issue notice was that the applicant can know the date of hearing on the point of coverage and that they can attend the hearing effectively and as such the opposite party herein/applicant was in no way prejudiced. Mr. Prasad submits that the ESI corporation has failed to understand as to why the order dated 10.08.2011 arising out of order no, 45 dated 15.09.2010 in case no. 30 of 1999 was set aside and as to why denovo hearing is required to be given by issuing further notice in form C-II.

However being aggrieved by said order dated 22.03.2012 of the EI Court, the petitioner corporation had

filed an application for recalling the said order and/or for necessary modification. Unfortunately the EI Court after hearing the parties, by the impugned order observed that EI court cannot recall its own order which was passed after contested hearing and he further observed if the opposite party/ ESI corporation has any grievance against the order, the same could have been ventilated to the higher forum.

Petitioner accordingly submits that the court below did not consider the fact nor had gone into legal aspect but had rejected the same on some irrelevant considerations, which makes the order perverse and liable to be struck down. He further contended that the court wrongly exercised his jurisdiction in not recalling the order, while the case warranted to do so and for the impugned order the petitioner's interest has been highly prejudiced.

Mr. Prasad, learned Counsel in this context referred the decision of the Hon'ble Apex Court in the case of *Mathura Prasad Bajoo Jaiswal & Ors. Vs. Dossibai N.B. Jeejeebhoy*, reported in 1970 (1) SCC 613.

Having considered the facts and circumstances of the case, the present application, being C.O. 3388 of 2018 is hereby disposed of giving liberty to the petitioner to make an application for review of the order No. 2 dated 22nd March, 2012 within a period of four weeks from the date of

communication of this order and in the event of filing such review application by the petitioner herein, the Court below will dispose of such application at the earliest preferably within a period of three months from the date of filing such review application after giving opportunity to both the parties to contest and without being influenced by any observation made herein.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)