

Ct.
No.
652

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2024

C.O. 3873 of 2018
Employees' State Insurance Corporation & Anr.
-Versus-
M/s. Ahuja Builders

Mr. Shiv Chandra Prasad ...For the Petitioner

Mr. Balai Chandra Paul
Ms. Sumouli Dey ...For the Opposite Party

The opposite party herein is a civil contractor and is required to pay the ESI contributions in accordance with Section 40 of the Employees' State Insurance Act, 1948 (in short ESI Act). The case of the opposite party hereiun is that opposite party runs it's business at 65/27, Jyotish Roy Road, Bank Colony, New Alipore, Kolkata 70 053. It has worked upto February, 2014 and at present the business is closed. From April, 2012 to February, 2014, the opposite party worked in Orissa as per work order received there and paid contribution in Orissa Division. From February, 2012 to March, 2012, the opposite party deposited contribution in West Region. All on a sudden the opposite party received notice dated 20th February, 2017 from the Chief Manager of the opposite party's Bank and came to learn that the petitioner/ Employees' State Insurance Corporation by order dated 17th February, 2017, asked that bank to transfer Rs. 3,61,656/- plus further interest from the bank account of the opposite party.

It is further submitted on behalf of the opposite

party that petitioner did not serve such order to them directly, nor any notice of proceeding or notice of demand was ever received by them. According to the opposite party the order has been passed by the Corporation behind it's back and no opportunity of being heard was afforded to them.

The opposite party establishment approached before the Employees' Insurance Court under Section 75(I)(g) of the ESI Act challenging the order dated 17th February, 2017 and by a separate application has also prayed for injunction. Opposite party also filed another application for exemption under Section 75(2B) of the Act. The said Tender Case being No. 16 of 2017 came up for hearing before the learned Judge, Employees' Insurance Court on 18th September, 2018 and the Court below has passed the order impugned.

Being aggrieved by that order the petitioner herein submits that it would appear from letter dated 4th September, 2012 that the address of the establishment has been given in the said letter at 56, Jyotish Roy Road, New Alipore. Kolkata – 53. Accordingly, the notice has not been sent in an incorrect address, rather the opposite party herein intentionally did not participate the said proceeding. Moreover the communications were also made by sending e-

mail address to the opposite party, including using their phone number, which are on record. He further submits that the opposite party herein has not preferred any appeal under Section 45(AA) of the Act against the order. Accordingly, the petitioner had no other option but to take action for realization of the said amount. Accordingly the petitioner has prayed for setting aside the order impugned.

In reply, learned Counsel appearing on behalf of the opposite party refers that the notice was admittedly sent at the address at 56, Jyotish Roy Road, New Alipore, Kolkata 700 053. But from the document it appears that the establishment runs its business from 65/27, Jyotish Roy Road. In this context, he refers certificate of enrolment which is marked as 'Annexure A/1' and the order dated 24th February, 2017 wherein the address of the Establishment has been duly mentioned as 65/27, Jyotish Roy Road. In this context he also refers the letter dated 24th November, 2012 made by the Establishment with the Regional Commissioner, Employees State Insurance Corporation. Accordingly, he submits that the notice was not received by the opposite party and the opposite party came to learn about the deposit only from the correspondence made by the Branch Manager of the Bank. He further submits that since the notice was not issued to the opposite party herein, the question of initiating

proceeding under Section 45A does not arise. Accordingly he submits that the order impugned is legal and justified and does not call for any interference.

I have considered the submissions made on behalf of both the parties and also perused the order impugned. Learned Court below made specific observation that he finds from the various documents that the address of the Establishment is at 65/27, Jyotish Roy Road, Bank Colony, 3rd Floor and the petitioner/Authority has also used such address for making correspondences and he finds only one document wherein the address of the Establishment appears as 65/27, Jyotish Roy Road. Accordingly Court below came to a conclusion that opposite party herein has able to prove that notices of the Corporation were sent to a different address and the principle of natural justice demands that the opposite party herein should be given a proper opportunity of being heard before ascertainment of the alleged due contribution.

In such view of the matter, I find that the spirit of the order impugned does not call for any interference by this Court invoking jurisdiction under Article 227 of the Constitution of India since it does not suffer from any impropriety or perversity. However, considering the facts and circumstances of the case the direction of the Court

below to return the recovered amount to the applicant is hereby set aside.

The Court below is directed to make every endeavour for expeditious disposal of the proceeding and to conclude the entire proceeding preferably within a period of four months from the date of communication of this order without granting any unnecessary adjournment to either of the parties, since the issue is pending for a considerable period of time.

Be it also mentioned that the deposited amount of the opposite party along with the accrued interest on such amount shall abide by the ultimate decision over the issue.

C.O. 3873 of 2018 is accordingly disposed of.

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.)