



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-1189-2017
Reserved on 15.10.2024
Date of decision: 06.11.2024

Vijay Singh Jakhar ...Petitioner

Versus

Haryana Employees State Insurance Corporation and others ...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Jitender Dhanda, Advocate for the petitioner.

Mr. Adarsh Malik, Advocate for respondent No.1.

Mr. Raman Chawla, Advocate for respondents No.2 and 3.

KARAMJIT SINGH, J. (ORAL)

1. The instant petition has been filed by the petitioner under Section 482 Cr.P.C seeking quashing of criminal complaint No.31-II dated 18.01.2016 titled as Employees State Insurance Corporation Vs. Vijay Singh Jakhar and another (Annexure P-1) filed under Section 85 (a) of the Employees State Insurance Act 1948 (in short, 'Act of 1948') and summoning order dated 18.01.2016 (Annexure P-2) passed by the Court of Chief Judicial Magistrate, Hisar and all the consequential proceedings arising thereof.

2. The brief facts of the case are that Employees State Insurance Corporation (in short 'ESIC') filed criminal complaint Annexure P-1 against the petitioner and M/s Jaat Senior Secondary School, Hisar under Section 85 (a) of the Act of 1948 wherein it was alleged that petitioner is



proprietor and principal employer of M/s Jaat Senior Secondary School, Hisar in terms of Sections 2(17) and 86-A of the Act 1948. The accused failed to pay any contribution as required under Sections 39, 40 (1), 43 and 44 of the Act of 1948 read with Regulation 26 of the Employees State Insurance (General) Regulation 1950, for the contribution period ending 04/2011 to 03/2013 and thus, the accused have committed offence punishable under Section 85 (a) of the Act of 1948. The necessary sanction for prosecution required under Section 86 (1) of the Act of 1948 is taken from the competent authority before filing the complaint Annexure P-1, which was filed through S.S.O, ESIC, Hisar. On presentation of the complaint, the Court of Chief Judicial Magistrate, Hisar took cognizance and as the complaint was filed by the complainant in his capacity as a public servant, recording of preliminary evidence was dispensed with and petitioner and M/s Jaat Senior Secondary School, Hisar were summoned under Section 85(a) of the Act of 1948 vide order Annexure P-2 dated 18.01.2016.

3. The counsel appearing on behalf of the petitioner while assailing the impugned complaint Annexure P-1 and summoning order Annexure P-2 has submitted that the petitioner remained working as principal of Jaat Senior Secondary School, Hisar from 04.04.2008 and resigned from the said post on 13.05.2010. The said school was owned and managed by respondent No.2 Jaat Educational Society (Registered), Hisar. The petitioner was employee of the school and was getting monthly salary and thus, cannot be termed as principal employer in any manner and is not liable to pay dues if any of the contribution and submit return required by



the regulations. Only the management of the school was liable to pay the contribution. The counsel for the petitioner has further argued that there is nothing on the record to establish that the petitioner being principal of the school was having control over the affairs of the school or was responsible to the management for the conduct of the business of the school.

4. The counsel appearing on behalf of respondent No.1 submits that the petitioner being principal of the school was managing all its affairs and thus, is covered under the definition of principal employer. The principal employer failed to deposit contribution for the period from January 2010 to April 2010 and also failed to submit the return required by the regulations and accordingly, permission was taken to prosecute him under Section 85 (a) of the Act of 1948. That on presentation of the complaint Annexure P-1, the trial Court rightly passed summoning order Annexure P-2.

5. Counsel appearing on behalf of respondent No.2 has submitted that the due amount of contribution for the period from January 2010 to April 2010 was already paid, as is evident from certificate Annexure P-4 submitted by principal of the school and this fact is not disputed by respondent No.1 in any manner.

6. Faced with this situation, the counsel for respondent No.1 has argued that in case of delayed payment, the petitioner was liable to paid damages as per Regulation 31C. That in the present case, no such damages were paid to ESIC by the petitioner. It is further submitted that the present petition deserves to be dismissed being devoid of merits.

7. I have considered the submissions made by counsel for the



parties.

8. The relevant provisions of the Act of 1948 which are applicable in the instant case are hereby reproduced:-

“(4) “contribution” means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act;

(9) “employee” means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and

—
(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment ; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment; or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), and includes such person engaged as apprentice whose training period is extended to any length of time but does not include —

(a) any member of the Indian naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;

(17) “principal employer” means —

(i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named ;

(ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the department;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment.”



9. Under Section 40 of the Act of 1948, the obligation to pay contribution in the Employees State Insurance Fund has been cast on the principal employer. The provisions of Section 40 are as follows:-

“40. principal employer to pay contribution in the first instance.

(1)The principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employers contribution and the employee's contribution.

(2)Notwithstanding anything contained in any other enactment but subject to the provision of this Act and the regulations, if any, made thereunder, the principal employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employees contribution by deduction from his wages and not otherwise:Provided that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable, or in excess of the sum representing the employees contribution for the period.

(3)Notwithstanding any contract to the contrary, neither the principal employer nor the immediate employer shall be entitled to deduct the employers contribution from any wages payable to an employee or otherwise to recover it from him.

(4)Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

(5)The principal employer shall bear the expenses of remitting the contributions to the Corporation.”

10. The Hon'ble Supreme Court in ***Employees State Insurance Corporation Vs. Gurdial Singh and others AIR 1991 Supreme Court 1741***, held that directors of private limited company were not personally liable to pay contributions under the Act of 1948.

11. In ***Employee State Insurance Corporation Vs. Apex Engineering Private Limited 1998 (1) SCC 86***, the Hon'ble Apex Court while reversing the judgment passed by the Division Bench of the High Court held that Shri Dhanwate, Managing Director of the company was an employee of the company within the meaning of Section 2 (9) of the Act of 1948.

12. In ***Employee State Insurance Corporation Vs. S.K. Aggarwal***



and others 1998 (6) SCC 288, the Hon'ble Supreme Court while upholding the decision of Calcutta High Court held that the directors of a company M/s Indo Japan Steel Limited cannot be considered as employers within the meaning of Explanation 2 Section 406 read with Section 406 of IPC. Hence they were not liable for prosecution under Section 406 IPC.

13. The Kerala High Court in Ins. App. No.35 of 2012 titled **Devamatha CMI Public School, Patturaikkal, Thrissur, represented by its Manager Vs. Employee State Insurance Corporation and other**, decided on 11.07.2014 while dealing with issue regarding notification dated 08.10.2007 issued by the Government of Kerala extending the provisions of Employee State Insurance Act, 1948 to educational institution, observed as follows:-

“37. Apart from all the above, it is evident that the effect of the impugned notification which results in contribution from the teachers as well as the management of such schools, being the employers, do not have any direct impact on the administration or management of such educational institutions. Of course, it has a secondary impact which is indirect that the parents of the students of such institutions will be saddled with the liability to meet further expenses in the matter, which is purely secondary in nature. As there is no direct impact on the management and administration, the impugned notification does not take away or abridges the fundamental right guaranteed under [Article 30\(1\)](#) on the minorities. Matters being so, it has to be held that the impugned notification does not violate the Ins.Appl.35/2012 & connected cases fundamental right guaranteed under [Article 30\(1\)](#) of the Constitution. It does not abridge [Article 30\(1\)](#) within the meaning of [Article 13\(2\)](#) of the Constitution.

14. The moot point involved in the present case is as to whether principal of Jaat Senior Secondary School, Hisar is to be considered principal employer of the said school as per provision of Section 2(17) of the Act of 1948.

15. The principal of a school, usually gets monthly salary. Admittedly, principal of a school cannot be termed as its owner. A person holding the post of principal in a school cannot be said to be responsible for the supervision and control of the establishment. It is the management of the school, which is responsible for the supervision and control over the school. This fact is also established from perusal of the judgment passed by Kerala High Court in **Devamatha CMI Public School, Patturaikkal, Thrissur's**

case (supra) wherein it was specifically observed that the contribution is to be made by the teachers as well as the management of the school, being the employer.

16. The Act of 1948 does not define the term ‘employer’ although under Sections 85-B and 85-C of the Act of 1948, the term ‘employer’ is used.

17. In backdrop of the above settled position of law and factual matrix, it is the management of Jaat Senior Secondary School, Hisar, which is to be termed as principal employer, in the present case. It being so, the petitioner who at the relevant time was working as a principal of the school is not responsible to pay contribution as per the provisions of Section 40 of the Act of 1948. Resultantly, the petitioner is not liable to face prosecution under Sections 85 (a) of the Act of 1948, even if the school had failed to pay contribution as required under Section 40 of the Act of 1948.

18. In view of the above, allowing the proceedings to continue against the present petitioner in the impugned criminal complaint (Annexure P-1) would be an abuse of the process of Court and further amounts to miscarriage of justice. Such proceeding deserves to be quashed to secure ends of justice.

19. For the foregoing reasons, the present petition is allowed and criminal complaint No.31-II dated 18.01.2016 titled as Employees State Insurance Corporation Vs. Vijay Singh Jakhar and another (Annexure P-1) filed under Section 85 (a) of the Employees State Insurance Act 1948 and summoning order dated 18.01.2016 (Annexure P-2) passed by the Court of Chief Judicial Magistrate, Hisar and all the consequential proceedings arising thereof are quashed qua the petitioner herein.

20. Any observations made herein above are limited to the petitioner herein, with no bearing on the trial of the other accused persons.

06.11.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No