



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 22.05.2024

+ **CRL.M.C. 312/2023**
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CRL.M.C. 329/2023

M/S APEKSHA INTERNATIONAL & ANR

..... Petitioners

Through: Mr.Anuj Chauhan, Mr. Anand and Mr
Dilip Gupta, Advocates.

versus

EMPLOYEE STATE INSURANCE CORPORATION Respondent

Through: Mr.K.P. Mavi and Mr.A. Bansal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present petitions have been filed under Section 482 Cr.P.C. read with Article 227 of the Constitution of India seeking quashing of the Complaint Case Nos. 8447-8450/2022 and 5222-5223/2022 instituted under Section 85 (g) of the Employee State Insurance Act, 1948 ('ESI Act') as well as setting aside of the consequent summoning orders dated 12.10.2022 and 23.08.2022 passed by the learned MM-03, North West, Rohini Courts, Delhi in the said complaint cases.

2. As the parties are common and the subject complaints arise out of the same incident, the aforesaid petitions are taken up for consideration together, the same are disposed of vide this common judgment.

3. Succinctly put, the facts as discernible from the record, are that petitioner No.1 is a proprietorship concern of the petitioner No.2 and is



registered under the ESIC Scheme. The respondent has preferred the subject complaints stating therein that petitioner No.2 is the Director/Principal Employer of petitioner No.1 and is in-charge and responsible for the day-to-day conduct, supervision and control of the business. The aforesaid complaints pertain to an incident which statedly occurred on 21.06.2021, wherein six employees of petitioner no.1 firm suffered fatalities in a major fire accident that took place in the petitioners' godown/warehouse. The complaint alleges that though petitioner no.1 was registered under ESIC, it had failed to register its employees under the same. After the incident occurred on 21.06.2021, the petitioners registered all of the six deceased employees online by falsely mentioning their date of employment as 13.06.2021, in spite of the fact that they were working with the petitioners from a much prior period in time. It was alleged that the said act was done with intent to shift the liability of compensation on the respondent and as such an offence under Section 84 of the ESI Act is made out.

4. Learned counsel for the petitioners has contended that once the petitioner firm is registered under the ESI Act, no separate registration is required for its employees, as the definition of 'insured person' in Section 2(14) of the Act would cover not only the employer but also the employees. In this regard, he has placed reliance on the Supreme Court decision in Bharagath Engineering v. R. Ranganayaki & Anr.¹ Additionally, it is stated that the petitioners have entered into a settlement with the legal heirs of the deceased employees and as such no prosecution under Section 85(g) is maintainable.

5. The petitions are resisted by learned counsel for the respondent who

¹ (2003) 2 SCC 138



states that during the inquiry, statements of various family members were recorded, who have stated that the deceased employees were employed with the petitioners, much prior in time.

6. Before proceeding further, the Court deems it apposite to take note of the provisions which would govern the controversy in issue: Section 38 and Regulations 11,12 and 14 of the ESI Act. The same read as under:-

“Section 38. All employees to be insured- Subject to the provisions of this Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act.”

“Regulation 11. Declaration by persons in employment on appointed day – The employer in respect of a factory or an establishment shall require every employee in such factory or establishment to furnish and such employees shall on demand furnish to him either before or on the appointed day correct particulars for the purpose of Form I (hereinafter referred to as the Declaration Form). Such employer shall enter the particulars in the Declaration Form including the temporary Identification Certificate, and obtain the signature or the thumb impression of such employee and also complete the form as indicated thereon.

Regulation 12. Declaration by persons engaged after the appointed day - (1) The employer in respect of a factor or an establishment shall, before taking any person into employment in such factory or establishment after the appointed day, require such person (unless he can produce an Identity Card or other document in lieu thereof issued to him under these regulations) to furnish and such person shall on demand furnish to him correct particulars required for the Declaration Form including the Temporary Identification Certificate. Such employer shall enter the particulars in the Declaration Form including the Temporary Identification Certificate and obtain the signature or the thumb impression of such person and also complete the form as indicated thereon.

(2) Where an Identity Card is produced under such sub regulation (1) the employer shall make, relevant entries thereon.



Regulation 14. Declaration Form to be sent to appropriate office - *The employer shall send to the appropriate office by registered post or messenger, all Declaration Forms without detaching the temporary identification certificate prepared under these regulations together with a return in duplicate in Form 3 [within 10 days of the date] on which the particulars for the Declaration Forms were furnished.”*

7. A reading of the aforesaid provisions would show that under Section 38, an employer is mandatorily required to insure all its employees. The endeavour is to identify the beneficiaries or the employees for the purpose of insurance².
8. Under Section 39, both employer and employee are liable to pay their contribution to the Corporation at the rates governed by the Central Government.
9. Further under Regulation 14, the employer is duty bound to send to the appropriate office, all the declaration forms within ten days. Section 85 provides for punishments for failure to pay contribution etc. The Scheme of the Act would show that contravention of or non-compliance with any of the requirements of the Act or the Rules or the Regulations has been made punishable.
10. During the course of hearing, it has been informed on behalf of the respondent that statements of various family members were recorded in which it has come on the record that the deceased were employed much prior in time with the petitioners. For example, in CRL. M.C. 312/2023, the complaint relates to the deceased-Vikram Kumar, who as per the prosecution case was employed since the year 2019. Similarly, the other deceased were employed from different time period ranging from the year 2017 to 2020.

² Transport Corporation of India v. Employees State Insurance Corporation & Anr., AIR 2000 SC 238



The petitioners' contention that the deceased employees were employed only ten days prior to the incident is a question of fact, which stands disputed by the respondent, and thus, would need to be tested in the trial.

11. On the aspect as to whether the decision in Bharagath Engineering (Supra) would be applicable, it is pertinent to note that in the said case, the question that arose before the Court was as to who could be treated as an 'insured person' under Section 2(14) of the Act. In the said case, the legal heirs of the deceased-workman had filed an application for compensation before the Commissioner for Workmen's Compensation under the Workmen's Compensation Act, 1923. The employer questioned the maintainability of the proceedings by contending that the same were barred under Section 53 of the Act. While the Commissioner held that the deceased was an insured person under Section 2 (14) of the Act, the High Court held that the registration for the purpose of insurance was submitted and the same was granted subsequent to the death of the employee. While considering the said controversy, the Supreme Court observed as under:

“xxx

12. When considered in the background of statutory provisions, noted above, the payment or non-payment of contributions and action or non-action prior to or subsequent to the date of accident is really inconsequential. The deceased employee was clearly an 'insured person', as defined in the Act. As the deceased employee has suffered an employment injury as defined under Section 2(8) of the Act and there is no dispute that he was in employment of the employer, by operation of Section 53 of the Act, proceedings under the Compensation Act were excluded statutorily. The High Court was not justified in holding otherwise...

xxx”

12. A reading of the aforesaid extract of the judgment would show that



the same was rendered in the context of an application filed seeking compensation and the definition of “insured person” in Section 2(14) of the Act was held to include the deceased employee, keeping in view the beneficial scope of registration. Petitioner’s reliance on the said decision is clearly misconceived inasmuch as the present case pertains to the criminal liability imposable upon the petitioners for its failure to send the declaration forms of its employees to the appropriate office, as required under the ESI Act/Regulations.

13. As noted above, in the facts of this case, whether the registration done by the petitioners was within 10 days of the employment of all the deceased employees is a disputed question of fact, which can only be tested in trial, on evidence being adduced by both the parties and certainly cannot be appreciated by this Court in the present proceedings.

14. Consequently, the petitions merit dismissal alongwith pending applications.

MANOJ KUMAR OHRI
(JUDGE)

MAY 22, 2024/rd