I-5
09.09.2025
Court No. 12
Sayan

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 440 of 2025
With
CAN 1 of 2025

M/s Apa Transport Agency
Vs.
Employees State Ins Corporation & Ors.

Mr. Chandrachur Chatterjee
Mr. Rubab Fatma
... for the Appellant.

Mr. Rajib Roy
...for the Respondent

Mr. Tapas Singh Roy,
Mr. Parag Mitra

... for the Respondent No. 2

1. By dint of the order dated February 6, 2025, the Hon'ble Single Judge has dismissed the writ petition No. WPA 28431 of 2024. Hence this appeal.

2. The appellant/writ petitioner contends that the order dated December 1, 2023 issued by the Assistant Director, Employees' State Insurance Corporation, thereby imposing a penalty upon the appellant/writ petitioner to the tune of Rs. 1,01,762/- has been not in conformity with the law as well as the principles of natural justice. That, excepting that, the appellant/writ petitioner has failed to appear before the respondent Authority for a hearing in spite of being served with notices. Learned Advocate representing the appellant/writ petitioner has submitted that non-consideration of the appellants' version by the respondent /Corporation before issuance of the order of penalty as above, has caused immense prejudice to his client. He says that the appellant being the employer, initially employed seven persons and started contributing with the respondent/ Corporation, for them. He has stated that, subsequently all employees have left the appellant firm (sole proprietorship) and, therefore, the appellant was no further required, in terms of the statutory provision, to submit any contribution with the Corporation. This aspect allegedly has not been considered by the Corporation while directing against the appellant for payment of statutory penal amount.

3. Learned advocate for the appellant has submitted that the appellant/writ petitioner was registered with the Employees' State Insurance Corporation with effect from June 23, 2020. He submits that liability as per the relevant statute with effect from that date has been duly complied with by the appellant/writ petitioner. He says further that there would not be any question for any liability with the appellant, from September, 2020 to March, 2023 as claimed, since during that period of time, the appellant had no employees working in the firm. Since all these facts were not considered by the respondent authority, the impugned order suffers from non-consideration of the material facts as well as illegality in so far as for the period under claim, the appellant would not have been obliged to comply with terms of the relevant statute, Mr. Chatterjee, learned Advocate has submitted.

4. Serious objections have been raised on behalf of the respondent/Corporation for the reason that the facts stated by the appellant, are unsubstantiated by any document particularly, the statutory 'FORM' which the appellant was obliged to submit before the Corporation. Mr. Rajib Roy while representing the respondent/Corporation has submitted that a 'NIL' return has to be submitted by an entity, which once was liable under the statute but later on, has ceased to become so liable any further. That would have been the only declaration by the appellant before the Corporation in support of its contention that it would not further be liable under the provisions of the Employees' State Insurance Act. According to Mr. Roy, in absence of such statutory compliance and also due to his deliberate absence before the Authority, in spite of being served with notices, the respondent/Corporation would not have any other option than to proceed against the appellant on the basis of the facts and records available with it. According to the facts and records available with the respondent /Corporation, the appellant was duly liable to fulfill the statutory compliances which the appellant has not done within the stipulated period of time. Hence, Mr. Roy has stated that neither there is any error in the order passed by the respondent/Corporation dated April 19, 2024 nor it is there in the order of the Hon'ble Single Judge dated February 6, 2025 in Writ

Petition No. WPA 28431 of 2024 in which the order of the Authority dated April 19, 2024 was challenged. Hence, he has insisted that the instant appeal be dismissed.

5. Neither the appellant disputes the fact that it has not filed any 'NIL' return for the disputed period and has not responded to the notices of hearing sent to it nor the respondent/Corporation has denied its own declaration in the website of the Corporation regarding leaving of service by all the employees of the appellant (Annexure P-3 to CAN 1 of 2025).

6. The appellant has also not denied the fact that notices of hearing were received by him, though he has failed to attend the hearing. According to the appellant, the reason therefor was compelling, unavoidable and justified.

7. As a matter of fact, the appellant who once employed seven employees and thus was liable for due compliance of the Employees' State Insurance Act, 1948, no further remains to be so liable, as all the employees subsequently have left their job with the appellant. This submission of the appellant finds support from the website declaration of the respondent/Corporation, where all the employees of the appellant are shown as "left service", in the month of August, 2020. In that view of the matter, though once contributed for its employees, the appellant would not be any further liable for rendering any such contribution towards the respondent/Corporation, after the employees having left their service.

8. However, the appellant as the employer appears to be ignorant and indolent with respect to its legal duties as per the relevant statutory provisions. Hence, neither any 'NIL' return was filed by it after leaving of job by the respective employees nor it has responded to the notices of hearing issued by the respondent/Authority. Since in view of the facts and circumstances as pleaded in this appeal, the appellant would not be actually liable for compliance or punitive action as per the terms of the Employees' State Insurance Act, 1948, this Court finds it necessary that the appellant be heard by the respondent/Corporation before any punitive action is taken against it.

9. So far as the order dated February 6, 2025 of the Hon'ble Single Judge in Writ Petition No. WPA 28431 of 2024 is concerned, which is assailed in the instant appeal, the Court though finds no substantial infirmity therein but since it is found expedient for the ends of justice, the Court sets aside the same as well as the order of the respondent/Corporation dated April 19, 2024 and directs as follows:-

i) The appeal is allowed.

ii) The order of the Hon'ble Single Judge dated February 6, 2025 in Writ Petition No. WPA 28431 of 2024 is modified/varied and the order of the respondent/Corporation dated April 19, 2024 is set aside.

iii) Let the respondent/Corporation afford reasonable opportunity of hearing to the appellant and issue a fresh order after consideration of his contentions and documents relied on by him.

iv) Let this exercise by the respondent/Corporation be concluded within a period of eight weeks from the date of communication of copy of this order.

v) Since both the parties are present in this appeal, the requirement of communication of formal notice of hearing, is waived.

10. Appeal No. FMA 440 of 2025 is disposed of.

11. Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Lanusungkum Jamir, J.)

(Rai Chattopadhyay, J.)