



FAO-1338-1996 (O & M)  
FAO-1281-1999 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

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FAO-1338-1996 (O&M)

EMPLOYEES STATE INSURANCE CORPORATION  
THROUGH ITS REGIONAL DIRECTOR ... APPELLANT

Versus

M/S NARAIN AGRO EQUIPMENTS  
AND ANOTHER ... RESPONDENTS

FAO-1281-1999 (O&M)

M/S NARAIN AGRO EQUIPMENTS  
... APPELLANT

Versus

EMPLOYEES STATE INSURANCE CORPORATION  
THROUGH ITS REGIONAL DIRECTOR AND  
ANOTHER ... RESPONDENTS

DATE OF DECISION : 11.02.2025

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. H. S. Bhatia, Advocate for the appellant in  
FAO-1338-1996 and respondent No.1 in FAO-1281-1999.

Mr. Sudeep Mahajan, Advocate for the appellant in  
FAO-1281-1999 and respondent in FAO-1338-1996.

Mr. Ishan Kaushal, AAG, Punjab.

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**Pankaj Jain, J. (Oral)**

1. Appeals are directed against the order dated 29.01.1999 passed by the Additional Civil Judge (Senior Division)-cum-Employees State Insurance Court, Batala whereby the application filed under Section 75 of the Employees State Insurance Act, 1948 (for short – 'ESI Act') challenging the demand, stands allowed.



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2. The respondent-Establishment was served with demand for the period commencing from March, 1980 till December, 1984 by the appellant-Corporation for an amount of Rs.18,257/-. The same was resisted by filing the instant application under Section 75 of the ESI Act claiming that the establishment having less than 20 workers without the aid of power would not fall within the definition of factory as contemplated under ESI Act, 1948.

3. The application was contested by the Corporation. It was admitted that the establishment had less than 20 employees but it was denied that it was not being run with the aid of power. On the basis of pleadings, following issues were framed:-

*“Whether the impugned order dated 6.2.1987 and the subsequent order for the recovery for the period 3/80 to 12/84 amounting to Rs.18257/- along with interest thereof, is liable to be quashed as mentioned in the application? O.P.A.*

*2. Whether the factory in question is covered under the ESI Act O.P. R.*

*3. Relief.”*

4. ESI Court while returning finding on issues No.1 and 2 recorded the following finding:-

*“7. The bare reading of the definition given in the E.S.I. Act tells that the sole test to decide whether any premises is a factory under the Act depends on the finding whether any manufacturing process is being carried out with the aid of power or is ordinarily so carried on in the premises including the establishment thereof, whereon 20 or more persons are employed and were employed for wages on any day of preceding 12 months. The employment position as given in the survey report Ex. R.1 is that from the period*



*1980 to 1983 the applicant establishment has not employed more than 15 workers on any date of the preceding 12 months. The learned counsel for the respondent corporation frankly conceded that as per definition of factory the requirement is that there must have been employed 20 or more persons, whereas in the present case the employment position of the employees is that at no point of time in the preceding 12 months, the establishment had employed more than 15 workers. Therefore it is evident that establishment of the applicant was not covered under the definition of factory as given in section 2(12) of the ESI Act. The learned counsel for the respondent has conceded that the definition of factory was subsequently amended w. e. f. 20.10.89 and the amended provision cannot have any retrospective effect. Therefore, the definition of factory as it stood before 20.10.1989 has to be applied to the facts of the case. In view of the fact that the learned counsel for the respondent corporation has not disputed on the legal side, I do not feel the need to discuss the merits of the case on facts. Consequently, I decide Issue No.3 against the respondent and as a result, issue No.1 stands automatically decided in favour of the application.”*

5. Counsel for the appellant has assailed the findings recorded by the ESI Court claiming that in the absence of their being any challenge to the implementation order, the ESI Court ought not have quashed the demand. He further submits that the limitation for challenging the implementation order in terms of provisions as contained in Section 77 (1A) is 03 years. Implementation order was issued in 1982. The instant petition was filed on 01.08.1987 that is beyond the period of 03 years.



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6. I have heard learned counsel for the parties and carefully gone through the case file.

7. So far as finding of fact is concerned, there is no major dispute. The issue canvassed by the counsel for the appellant is only with respect to absence to the challenge to the implementation order.

8. In the considered opinion of this Court, implementation order itself does not entail any liability. Liability is attracted against assessee/establishment only after demand is raised. Thus once on the appraisal of the evidence, finding of fact has been recorded that the demand has been wrongly raised, absence of challenge to the implementation order will not preclude the ESI Court for quashing the demand.

9. In view of the fact that the finding has been returned that the assessee does not fall within the definition of factory as it stood prior to 20.10.1989 in FAO No.1338 of 1996, appeal filed by the assessee i.e. FAO No.1281 of 1999 deserves to be allowed. Appeal bearing FAO No.1338 of 1996 stands dismissed.

10. Ordered accordingly.

11. Pending application(s) shall stand disposed off accordingly.

12. A photocopy of this order be placed on the file of connected case.

**(PANKAJ JAIN)**  
**JUDGE**

**February 11, 2025**

*A.Kaundal/Pooja*

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|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether reportable        | : | Yes/No |