

**IN THE COURT OF THE DISTRICT JUDGE-CUM-
ESI COURT, KHURDA AT BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 21st Jan. '15.

E.S.I. Misc. Case No.04 of 2006.

M/s. Orissa Information Technology (P) Ltd., Alok Bharati Building, Saheed Nagar, Bhubaneswar, Represented through its signatory, Manager, Administration, Sri Chira Ranjan Patnaik, aged about 52 years, S/o. Late Gour Kishor Pattanayak.

... **Petitioner.**

-V e r s u s-

1. Regional Director, Employees State Insurance Corporation, Panchadeep Bhawan, Janpath, Unit-IX, At/P.O. - Bhubaneswar, Dist. - Khurda.
2. The Authorised Officer-cum-Dy. Regional Director (Revenue), Employees State Insurance Corporation, Panchadeep Bhawan, Janpath, Unit-IX, At/P.O. - Bhubaneswar, Dist. - Khurda.
3. The Insurance Inspector, Employees State Insurance Corporation, Panchadeep Bhawan, Janapath, Unit-IX, At/P.O. - Bhubaneswar, Dist. - Khurda.
4. The Recovery Officer, Employees State Insurance Corporation, Panchadeep Bhawan, Janapath, Unit-IX, At/P.O. - Bhubaneswar, Dist. - Khurda.
5. The Branch Manager, Oriental Bank of Commerce, Alok Bharati Building, Sahid Nagar, Bhubaneswar, Dist. - Khurda.

... **Opp. Parties.****Counsel :**

For Petitioner -- Shri S.N. Das & Associates.
 For O.P. Nos.1 to 4-- Shri S.N. Patnaik & Associates.
 For O.P. No.5 -- None.

Date of arguments : 02.01.2015.

Date of judgment : 21.01.2015.

J U D G M E N T

This is an application under section 75(1)(g) of the Employees' State Insurance Act, 1948 (hereinafter called "the Act") filed by the petitioner, challenging the contribution demanded by the Employees' State Insurance Corporation (in short, "ESI Corporation").

2. The factual matrix leading to the case of the petitioner is that the petitioner being engaged in imparting computer education is absolutely an educational institution having no iota of definition "factory" attached to it. On the other hand, the petitioner claims that it is not covered by the Act. It is alleged, inter alia, that the ESI Corporation suddenly gave notice dated 03.02.2003 demanding payment of contribution to which the petitioner protested stating that their establishment is not covered by the Act. Then, without hearing the petitioner, the ESI Corporation demanded contribution right from 01.12.2002 to 31.03.2003 amounting to Rs.92,950/-. The petitioner made representation before the

ESI Corporation praying to exempt him from payment of contribution, but the same was not received any response. All of a sudden, the petitioner received a notice of demand for recovery of the amount in question by attaching his Bank account. So, he filed the present petition, challenging the demand of contribution of the contesting opposite parties. Hence the petition.

3. Opposite party Nos.1 to 4 have filed written statement stating that the petitioner is not maintainable, there is no cause of action to file the case and the petitioner has suppressed the material facts. According to them, the petitioner is imparting computer education and utilising the services of computer expertise and, as such, doing business for which the petitioner-establishment is coming under the purview of the Act. It is further averred by the opposite parties that after getting information from Employees' Provident Fund Organization, they issued notice to the petitioner to register under the Act for coverage and to pay the contribution, but the petitioner did not cooperate them. On 29.09.2003 and, subsequently, on 07.11.2003, the Insurance Inspector made inspection of the petitioner-establishment; but the petitioner did not allow such inspection for which notice was issued to the petitioner. When the petitioner was afforded opportunity of

personal hearing, he did not avail the same. Instead, he applied to the opposite parties to defer the inspection as his establishment is not coming within the purview of the Act. It is the case of the opposite parties that the petitioner instead of coming with clean hands, knocked the door of the Court to get the relief by suppressing the material facts that inspection was made by the Insurance Inspector and personal hearing though was afforded to the petitioner, but he did not avail the same. So, the opposite parties claim that the order has been passed rightly and the petitioner is liable to pay the contribution amount since his establishment is a “factory” within the meaning of the provisions of law. Thus, the opposite parties claim that the petitioner has no good case for which the same should be dismissed with cost. Opposite party No.5 did not contest the proceeding.

4. On the aforesaid pleadings of the parties, the following issues have been framed :

I S S U E S

- i) Whether the case is maintainable ?
- ii) Whether the petitioner has any cause of action to file this case ?
- iii) Whether the petitioner-establishment is covered under the ESI Act ?
- iv) Whether the petitioner is liable to pay the contribution as per the notice issued by the ESI Corporation ?

v) To what other reliefs, the petitioner is entitled ?

FINDINGS

5. It is well settled law that when both parties have adduced evidence, burden of proof loses its importance as the parties have to prove their respective cases. In the present case, both parties have led evidence for which they are to prove their respective plea. In order to prove his case, the petitioner has examined one witness, whereas to disprove the case of the petitioner, the contesting opposite parties have examined two witnesses. Both parties have also adduced documentary evidence.

Issue No.(iii) :

6. It is revealed from the evidence of P.W.1 that he is the Director of the petitioner-establishment. According to him, the total strength of employees of his institution was 19. Their institution was not initially assessed by the contesting opposite parties for contribution towards employees since the same was not coming within the purview of the Act. But, all of a sudden, they got notice on 03.02.2003 issued by the ESI Corporation stating that their institution is coming under the Act. Thereafter, they made correspondence with the ESI Corporation. But, without any personal hearing, they got notice for recovery of dues of contribution for an amount of

Rs.1,21,831/-. He has proved the letter of the ESI Corporation vide Ext.2, which states that their institution is coming under the purview of the Act. He has also proved Ext.3 where it was informed to the ESI Corporation that since their institution is carrying on educational activities and is purely established for imparting computer education and training, the same is not coming under the Act. He has proved the letter dated 26.05.2004 to the effect that they have got NIIT Licence Agreement. P.W.1 has also proved Ext.5, which shows that notice under section 45A of the Act has been issued. Ext.6 being proved by him reveals that certificate for recovery of Rs.1,21,831/- was issued against the petitioner-establishment. In cross-examination, he has admitted that from 2005, they have been paying the ESI contribution, as they got licence under the ESI from that day. Thus, he has admitted that their organization is coming under the Act, which fact is demanded by the contesting opposite parties since 2003.

7. Not only this, but also the evidence of O.P.W.1, who is the Social Security Officer of the contesting opposite parties, clearly discloses that under section 2A of the Act read with Regulation 10B of Employees' State Insurance (General) Regulations, 1950, the petitioner is coming under the provisions of the Act from 01.12.2002. According to O.P.W.1,

the ESI Inspector visited the petitioner-establishment on 29.09.2003, 07.11.2003 & 16.04.2004. According to him, in spite of notice for personal hearing, the petitioner did not attend the same. He has proved the notices in Form C-11 vide Ext.A and in Form C-18 vide Ext.B. On going through both the letters, it appears that on 02.05.2003 the ESI Corporation issued notice to pay the contribution as the petitioner-establishment is coming under the Act since 01.12.2002 and the said notice was received by them. Ext.B shows that similar notice was issued claiming contribution of Rs.92,950/- and asked the petitioner to attend personal hearing on 09.12.2003. In cross-examination, he has clearly stated that the petitioner-establishment is coming within the purview of the Act from 01.12.2002. He has admitted that before 01.12.2002, no Muster Roll or any document of the petitioner-establishment was verified. But, in cross-examination, he has stated that on 29.09.2003, the Inspector visited the petitioner-establishment and, on that day, the Muster Roll was not produced by the petitioner. On going through the evidence of O.P.W.1 read with the documents exhibited by him, it appears that on 29.09.2003, the Inspector visited the petitioner-establishment, but no cooperation was extended by the petitioner and personal hearing was also

offered.

8. O.P.W.2 has clearly stated that he being the Inspector visited the petitioner-establishment on 29.09.2003, but the petitioner did not produce any record for inspection on the ground that the Act was not applicable to them. He also visited the petitioner-establishment on 07.11.2003 & 16.04.2004, but the petitioner did not produce any document. In support of his evidence, he has produced necessary inspection reports vide Exts.H & K, which show that on both the dates, he visited the petitioner-establishment and submitted reports to the ESI Corporation. He has produced the letter issued by the ESI Corporation vide Ext.G, which shows that computer training centres are all covered under the Act as per section 1(5) of the Act. There is no challenge to such document or the testimony of O.P.W.2 on this score. So, the unrebutted evidence of O.P.W.2 shows that he made due inspection and by virtue of letter dated 22.11.2012, the petitioner-establishment is coming under the purview of the Act and for that he inspected the said institution. He has also proved the letter of the petitioner vide Ext.M where the petitioner-establishment requested to defer the inspection to a future date. In cross-examination, he has admitted to have not inspected the petitioner-establishment before 2002 and

they got all information from the Provident Fund organization that the petitioner-establishment is coming under the Act. He has categorically stated in cross-examination that the petitioner did not show any document for verification and noted the said fact in his report. So, the evidence of O.P.W.2, after proper scrutiny, is found to be positive and transparent to show that he has visited the petitioner-establishment on 29.09.2003, 07.11.2003 & 16.04.2004. Even the evidence of O.P.W.2 read with the documentary evidence adduced by him show that the petitioner always tried to escape from the clutches of the Act by praying to defer the inspection. Ext.P, which has been proved by O.P.W.2, shows that NIIT organization has made agreement with the present petitioner to continue business. Undertaking of business would necessarily mean that it is for commercial purpose. It is also reiterated that the ESI Corporation has issued notification by bringing the petitioner-establishment within its purview. So, the evidence of O.P.W.2 read with the documents exhibited by him would go to show that he visited the petitioner-establishment from time to time and found 100 people working there. Thus, as per the definition of the Act and the letter of the ESI Corporation vide Ext.H, O.P.Ws.1 & 2 have proved by consistent, clear and cogent evidence that the petitioner-establishment is coming

under the purview of the Act.

9. From the aforesaid discussions, it is proved by the contesting opposite parties that the petitioner-establishment is coming under the purview of the Act and the same has already been admitted by P.W.1, as indicated above. So, it must be held that the petitioner-establishment is covered under the Act. Hence, this issue is answered in favour of the opposite parties.

Issue No.(iv) :

10. Since issue No.(iii) has been answered in favour of the opposite parties, the petitioner-establishment, which is coming under the purview of the Act, is liable to pay the contribution as per the notice issued by the ESI Corporation. As such, this issue is also answered in favour of the opposite parties.

Issue Nos.(i & ii) :

11. Since it is already held in issue Nos.(iii) & (iv) that the petitioner-establishment is covered under the Act and they are liable to pay the contribution as per the notice issued by the ESI Corporation, there is no cause of action to file the case and, as such, the case is not maintainable in the present form. Thus, both the issues are answered accordingly.

Issue No.(v) :

12. Since nothing is buttressed by the petitioners to give relief, there is no cause of action to file this case and the petition is not maintainable in its present form, the petitioner is not entitled to any relief. This issue is answered accordingly. Hence ordered :

O R D E R

The E.S.I. Misc. Case being devoid of merit stands dismissed on contest against opposite party Nos.1 to 4 and ex parte against opposite party No.5, but in the circumstances without cost.

**District Judge, Khurda
at Bhubaneswar.
21.01.2015.**

Dictated, corrected by me and pronounced in the open Court this day the 21st January, 2015.

**District Judge, Khurda
at Bhubaneswar.
21.01.2015.**

List of witnesses examined for petitioner.

P.W.1 -- Adit Jena.

List of witnesses examined for contesting opposite parties.

O.P.W.1 -- Sudhakar Das &

O.P.W.2 -- Sukadev Guru.

List of documents admitted in evidence for petitioner.

Ext.1 -- Certificate of Incorporation,

Ext.2 -- Letter of the ESI to petitioner-organization,

Ext.3 -- Reply of petitioner to ESI,

- Ext.4 -- Reply to the ESI,
 Ext.5 -- Order under section 45 of ESI Act,
 Ext.6 -- Letter of Recovery Officer, &
 Ext.7 -- Order of attachment dated 27.12.2005.

List of documents admitted in evidence for contesting opposite parties.

- Ext.A -- Notice in C-11 dated 02.05.2003,
 Ext.A/1 -- Postal A.D.,
 Ext.B -- Notice in Form No.C-18, dated 28.11.2003,
 Ext.B/1 -- Postal A.D.,
 Ext.C -- Order under section 45 of ESI Act dated
 27.09.2004,
 Ext.C/1 -- Postal A.D.,
 Ext.D -- Notice in Form No.19,
 Ext.E -- Form in CP-2 dated 16.05.2005,
 Ext.F -- Bank attachment order dated 27.12.2005,
 Ext.G -- Letter dated 22.11.2012,
 Ext.H -- Letter of the Inspector,
 Ext.H/1 -- Carbon copy of Notice dated 29.09.2003,
 Ext.J -- Letter of the petitioner,
 Ext.K -- Letter of Inspector and Notice dated
 07.11.2003,
 Ext.K/1 -- Letter dated 07.11.2003,
 Ext.L -- Letter dated 16.04.2004,
 Ext.M -- Letter dated 16.04.2004,
 Ext.N -- Letter dated 26.05.2004 &
 Ext.P -- Copy of Licence Agreement.

**District Judge, Khurda
 at Bhubaneswar.**

21.01.2015.

