



IN HIGH COURT OF CHHATTISGARH, AT BILASPUR

IN THE MATTER OF MISC. APPEAL NO. 76 OF 2009

DB

APPELLANT/  
Non-Applicants

1. Employees State Insurance Corporation,  
18, South Avenue, Choube Colony, Raipur,  
Through its, The Regional Director,

Division Bench

2. Recovery Officer,  
Employees State Insurance Corporation,  
18, South Avenue, Choube Colony,  
Raipur.

VS.

RESPONDENT /  
Applicant.

Kanoi Paper & Industries Ltd now known as M/s  
AIGO Paper & Industries Ltd.,  
Situated at Village Dhenka, District Bilaspur,  
Through its Factory Manager,

Respondent/  
Non-Applicant  
No.3

Branch Manager,  
UTI Bank, Now Known as Axis Bank,  
Bilaspur.

APPEAL UNDER SECTION 82 OF THE EMPLOYEES STATE  
INSURANCE ACT 1948



respondents without remitting the matter to the authority below.

4. Brief facts of the case are that respondent No.1 is a company and was allotted ESI Code No.10168-81 which was changed on formation of new State of C.G. and now it is 59-10168-81. On the directions of the Regional Director, the Inspector inspected the premises of the respondent No.1-company on 22.8.2006 to assess the omitted contribution and wages for the period April, 1995 to March, 2006. On the basis of inspection report, ad-hoc assessment of omitted wages and contribution payable by the respondent company i.e. Rs.1,66,44,899/-, was prepared and thereafter a show-cause notice dated 13.9.2006 was issued to the respondent company calling upon them to appear on 9.10.2006 along with all relevant records. Thereafter, the Regional Director, ESIC, Raipur exercising the powers conferred on him by Section 45 (KA) of the Act, 1948 confirmed the omitted wages & contributions vide order dated 28.10.2006 and directed the respondent company to deposit Rs.1,66,44,899/- within 15 days, failing which recovery proceedings shall be initiated as per Section 45-C to 45-I of the Act, 1948. The respondent company failed to comply with the order dated 28.10.2006 and therefore recovery certificate was issued on 26.2.2007 to the Recovery Officer, who, in turn, issued a demand notice dated 27.2.2007 to the respondent company calling upon them to pay Rs.1,66,44,899/- with interest i.e. total Rs.1,77,32,909/-, within 15 days else recovery proceedings shall be initiated

In accordance with law. Despite issuance of demand notice the respondent did not pay any amount, therefore, the Recovery Officer issued the prohibitory orders on 16.3.2007.

5. The respondent company challenging the above orders filed an application before the ESI Court, Bilaspur and the learned Judge, ESI Court, Bilaspur quashed the order dated 20.10.2006, demand notice dated 27.2.2007 and prohibitory order dated 16.3.2007 passed by the appellants on the ground that opportunity of hearing has not been given to the respondent and directed to refund the amount recovered from the respondent company.

6. We have heard learned counsel for the parties and perused the records.

7. The court below had framed following three issues:-

- Whether the impugned orders passed by the appellants dated 20.10.2006, 27.2.2007 & 16.3.2007 were passed against the establishment without following the principles of natural justice i.e. without providing adequate opportunity to put their pleadings before the authority concerned?
- Whether the above orders are liable to be set aside?
- Reliefs & cost?

8. The court below, after answering all the three issues in favour of the respondent company and against the appellants, set aside the impugned orders holding the same as illegal and directed that the amount which has been recovered from the respondent company herein should be refunded within 30 days.

9. However, we are of the view that once the court has held that the decision for recovery has been taken by the authority without following the principles of natural justice, it was the duty of the court to remand the matter to the authority after setting aside its order, as it was the basic duty of the authority below to consider the pleadings of the respondent company herein before passing any order.

10. In view of the above, without going into the merits of the case, we are of the opinion that the matter requires reconsideration at the end of authority below. Accordingly, we set aside the order dated 12.06.2009 passed by the learned court below in Case No.35/ESIC/2007 as also the orders dated 20.10.2006, 27.2.2007 & 16.3.2007 passed by the authorities below and remit the matter to the authority below i.e. the Regional Director, ESIC, Raipur, who had passed the order dated 20.10.2006, for deciding the matter afresh after giving adequate opportunity of hearing to the parties to put their case before it. The parties may also lead additional evidence, if any, in support of their respective cases. Needless to mention that till the fresh order is passed, no further action shall be taken against the parties.

11. The appeal is allowed in part to the extent indicated above.

12. Certified copy as per rules.

Roshan/

Sd/-  
I.M. Quddusi  
Judge

Sd/-  
N. K. Agarwal  
Judge