

**BEFORE SHRI H.A.SHAH, JUDGE, EMPLOYEES
STATE INSURANCE COURT AT AHMEDABAD.**

Ex.

E.S.I. Application No.25/2021

Mr. Hasanali Rasulbhai Patel,
86,Jafri Tower, Behind Tagore Hall,
Kochrab, Ellis-bridge,
Ahmedabad.

... Applicant.

V E R S U S

1 Regional Director Shri,
Kamdar Rajya Vima Nigam,
Panchdeep Bhavan,
Ashram Road, Ahmedabad.

2 Recovery Officer,
Kamdar Rajya Vima Nigam,
Panchdeep Bhavan,
Ashram Road, Ahmedabad.

....Opponents

Appearances: - Learned Advocate Mr.V.S.Patil on
behalf of the Applicant.
- Learned Advocate Mr.A.J.Bhatt on behalf
of the opponent-Corporation.

Sub: **Application under Section 75 of the ESI
Act.**

Judgement:-

1 The applicant has preferred this application under section
75 of The Employees' State Insurance Act,1948. The Employees'

State Insurance Act,1948 would be referred hereinafter as a "E.S.I. Act" for the sake of brevity. The applicant's company is challenging the order passed under section 45-A dated 09/06/2017 demanding the amount of Rs.3,53,925/-,which is demanded by the opponent-corporation.

2 The facts in nutshell of the applicant's case are as under:-

The applicant in its present application at Exhibit-1 has stated that, the applicant is residing with his family in above mentioned address. It is stated that, the restaurant was running the business namely Chawlas situated at 38, Advet, Near Sandesh Press, Vastrapur, in which Mr.Mukundbhai Patel and other partners were the partners, and they were running this restaurant since 2008. The said unit was come in the restaurant industry, and the above partners had taken a code number under the E.S.I. Act bearing No.37000283050001102. According to him, the partners are paid the contribution amount regularly. It is further stated that, the applicant has taken the restaurant from the above mentioned partners in year October-2013, and also partner the applicant and his father. It is further stated that, after taken this unit, he is paying the contribution amount regularly on the aforesaid code number. The applicant has changed the name of Chawlas and given the new name is BENO Restaurant. So he has given the information about this through letter dated 16/05/2021.

The applicant has changed only name, but he does not change the product, business and workmen. He is paying the regular contribution amount on the allotment of the code number which is given by the corporation. His unit was running in July-2017, and thereafter, due to some business situation, his unit was closed. The applicant was not carried out the business, and he is not engaged the employees for the work.

2.1 It is further stated that, the opponent has called out to the applicant and also partners, for personal hearing and given the letter dated 18/05/2017, and in this letter it is informed that, to appear before the corporation for personal hearing. And there is code number is mentioned 37000267010001102. Hence, he has confused about the code number, which is not its unit code number. It is further stated that, after 18/05/2017 the opponent No.1 has given the letter dated 27/04/2021 and date of personal hearing was fixed on 08/06/2017, but at that time the business situation has become very bad, and due to month of Ramzan hence in these circumstances he could not appear before the personal hearing. Thereafter, the opponent has passed the order under section 45-A of the E.S.I. Act, dated 09/06/2017 amounting of Rs.3,53,925/- It is further stated that, the opponent has passed the order under section 45-A of the E.S.I. Act, and demanding the contribution amount for the period from May-2012 to December-2015. But in fact that, the applicant has paid the contribution amount. The

corporation has allotted the new code number, and the contribution amount has been demanded again for the same period, hence which can not be understood. It is further stated that, the order passed under section 45-A dated 09/06/2017, which is illegal, unjust and improper. Hence, it may be rejected. It is further stated that, the copy of order which was received in June-2017, hence as per the E.S.I. Act, the application was supposed to file in June-2020. But due to some technical reasons, and also prevailing global Covid -19 (Pandemic), the Hon'ble Supreme Court of India in Suo-moto Writ Petition (Civil) No.3/2020 has granted exemption from the Limitation Act, till further orders after 15/03/2020, and the said order has been extended thereafter also. Hence, he has prayed to reject the order under section 45-A of the E.S.I. Act passed by the opponent NO.1 be unreasonable and illegal. And also be declared that, the applicant is not liable to pay the said amount.

3 Per Contra, notice was issued to the Opponent-Corporation and it appeared through its learned advocate Mr.A.J.Bhatt and it has also filed reply vide Exhibit-16. It is stated that, applicant's application is misconceived, untenable and required to be rejected. It is further stated that, the application of the applicant is time barred and deserves to be dismissed, as the applicant has not filed his application within the prescribed time limit in the E.S.I. Act. It is further stated that, the applicant was running a Restaurant named M/s. Chawla's has been covered under the

E.S.I. Act w.e.f. 01/02/2008 and C-11 issued on 13/05/2008, hence the employer i.e. applicant required to pay contribution in accordance with Section 39 and 40 of the ESI Act, read with Regulation 29 and 31 framed under the Act, as the employer failed to pay contribution as required by law. A show Cause notice C-18 (Adhoc) dated 10/02/2016 for Rs.4,82,625/- for the period January-2011 to Dec.2015 was issued and call the applicant for the personal hearing on various dates by sending Register Ad letter and by Hand delivery through S.S.O of the opponent had handed over a letter of personal hearing dated 31/03/2017 to Mr. Balveersingh Manager, as the owner Sh. Nikul V. Patel and his nephew Sh. Hasanbhai Patel (to whom Sh.Nikulbhai had handed over the management of the restaurant) both were out of station. Hence, next date of personal hearing was given on 18/05/2017 by S.S.O. But on the date of personal hearing neither employer nor his representative attended for personal hearing. The applicant has neither submitted any documents or written reply against the show cause notice C-18 dated 10/02/2016 for Rs.4,82,625/- for the period from January-2011 to Dec-2015. It is further stated that, the Competent Authority after giving ample opportunities of personal hearing passed the Speaking Order under section 45-A of the Act dated 09/06/2017 stating that, the applicant is liable to pay the contribution of Rs.3,53,925/- for the period May-2012 to Dec.2015. The Competent Authority has assessed the contribution on ad-hoc basis as he was not having any documentary evidence from the applicant. So, the order passed

by the Competent Authority under section 45-A of the E.S.I. Act is legal and proper. It is further stated that, the E.S.I. Corporation has issued all the letters, and SO including Show Cause notice on the E.S.I. Code No.37000267010001102, and it so also facts that, the applicant has not paid any contribution for the period in question therefore, the applicant is liable to pay the contribution as demanded in S.O. under section 45-A. Further, after the issued of S.O. under section 45-A the applicant has not paid any contribution assessed, hence the opponent of the E.S.I. corporation has started the recovery proceedings by issuing C-19 dated 12/10/2017 amounting to Rs.5,30,864/- followed by CP-2 notice dated 21/11/2017 amounting to Rs.5,31,729/- Hence, the application of the applicant deserved to be rejected.

4 Both the parties have produced following documentary.

Applicant's Documentary Evidences

Sr. No.	Details	Date	Mark
1	Copy of letter dated 10/06/2015, which written by the applicant to the opponent	-	4/1
2	Copy of letter dated 16/04/2015, which written by the applicant to the opponent	-	4/2
3	Copy of letter dated 31/03/2017, which written by the opponent to the applicant	-	4/3
4	Copy of letter dated 27/04/2017, which written by the opponent to the		4/4

	applicant		
5	Copy of order under section 45-A dated 09/06/2017		4/5
6	Copy of E.S.I. CP-26 dated 15/11/2018		4/6
7	Copy of Challan dated 05/11/2018 of Rs.1,00,000/-	-	4/7
8	Copy of letter which written by the opponent No.1 to the Bank dated 01/01/2020	-	4/8
9	Copy of Challans	-	22/1 to 22/35

Oral Evidence:- Affidavit in lieu of oral evidence Mr. Hasanali Rasulbhai Patel Exhibit-25 and he has cross examined by the learned Advocate Mr.A.J.Bhatt appearing for the corporation.

Opponents Documentary Evidences

Sr. No.	Details	Date	Exhibit
1	C-18 Ad-hoc with AD Slip	10/02/2016	18
2	Visit Note	20/10/2016	19
3	Acknowledgement Note of SSO	-	20
4	Order under section 45-A with AD Slip	09/06/2017	21

5 The learned advocate Mr. V.S.Patil has vehemently argued that, previous the restaurant name was Chawlas and, it is a partnership restaurant, the present applicant was also partner the said restaurant. Thereafter, he has taken the said restaurant, and name is changed i.e. Beno Restaurant. But employees as well

as business activities are not changed. Hence, there was no point in taking the new code number, because the E.S.I. has also allotted the code No.37000283050001102. Hence, due to some business activities, he has not carried out the said business and he has never engaged the employees. He has further argued that, the applicant has submitted the Challans, and in these Challans it is crystal clear that, the applicant has already paid the contribution amount. But the applicant was very shocked and surprised that, the another code number i.e. 37000267010001102 was written. This code number is not the applicant's code number. He has further argued that, due to some personal reason he could not appear before the E.S.I. Officer. Hence, the order under section 45-A of the E.S. I. Act is passed. Hence, he has prayed to set-aside the order under section 45-A as well as CP-26 along with costs.

6 The learned advocate Mr. A.J. Bhatt has resisted the arguments advanced by the learned advocate of the applicant. The applicant was running a Restaurant named M/s. Chawlas has been covered under the ESI Act, w.e.f. 01/02/2008. He has further argued that, so many opportunities have been given to the applicant to appear before the E.S.I. Authority, but the applicant has failed it. Hence the order under section 45-A was passed dated 09/06/2015, and demanding the amount of Rs. 3,53,925/- for the period from 05/12 to 12/15. The order under section 45-A of the E.S.I. Act passed by the E.S.I. Authority is just and

legal because the applicant has become the negligence to pay the contribution amount. Hence, he has prayed to reject this application alongwith heavy costs.

7 To determine this application, my learned predecessor has framed following issues vide Exhibit:-23.

Issues

૧. શું અરજદારની અરજી સમયમર્યાદામાં છે ?
૨. શું અરજદારની અરજી કાયદેસર ટકવાપાત્ર છે કે કેમ ?
૩. શું અરજદાર સંસ્થા પુરવાર કરે છે કે સામાવાળા ધ્વારા ઈ.એસ.આઈ. એક્ટની તા.૦૯/૦૬/૨૦૧૭ ના રોજ કલમ-૪૫(એ) મુજબનો હુકમ પસાર કરીને રૂા.૩,૫૩,૯૨૫/- ફાળાની રકમ જમા કરાવવાનો હુકમ પસાર કરેલ હુકમ ગેરકાયદેસર અને ગેરવ્યાજબી છે કે કેમ ?
૪. શું સામાવાળા પુરવાર કરે છે કે, તેમના ધ્વારા હાથ ધરવામાં આવેલ ઈ.એસ.આઈ. એક્ટની તા.૦૯/૦૬/૨૦૧૭ ના રોજ કલમ-૪૫(એ) મુજબ રકમ રૂા.૩,૫૩,૯૨૫/- ના ફાળા લગત કાર્યવાહી કાયદેસર તેમજ અરજદારને પર્સનલ હીયરીંગની પુરતી તક આપ્યા પછી તેમજ જરૂરી તમામ રૂલ્સ અને રેગ્યુલેશન્સ તથા સરકયુલર ધ્યાને લઈને પસાર કરેલ છે ?
૫. શું હુકમ ?

My answer to the above issues are as under:-

- 1 As discussed.

- 2 In the affirmative.
- 3 As discussed.
- 4 As discussed.
- 5 As per final order.

Joint discussions of Issue No. 1 to 5

8 That above issues are interlinked with each other and factual and legal prepositions are also common, hence above issues are discussed together for the sake of convenience and brevity accordingly.

9 So far as issue No.1 is concerned, this application is filed on 29/06/2021, wherein the applicant has challenged the order under section 45-A of the E.S.I. Act dated 09/06/2017. Thereafter, the opponent has issued CP-26 to the applicant dated 15/11/2018. Thereafter, the Recovery officer has issued CP-4 dated 01/01/2020. But due to Covid-19 (Pandemic) situations prevailed all over the country. Hence, there is the reason to file this application, hence my answer regarding issue No.1 as discussed.

10 So far as issue No.2 is concerned, herein this case, there is a dispute between the principal employer and corporation regarding the contribution. Such dispute is covered under section

75 E.S.I. Act, hence, the matter falls within the purview of section 75 of the E.S.I. Act, which runs as under:-

(G) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, 3 [or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act], such question or dispute [subject to the provisions of subsection (2A)] shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

Hence, this court has got jurisdiction to try and decide this application, and same is maintainable at law. Hence my answer regarding issue No.2 is in affirmative.

11 In the first instance, the opponent has produced visit note vide Exhibit 19, dated 20/10/2016, and in this visit note it is mentioned that:- visited the unit to know the status of M/s. Chawla's Restaurant (N2R Enterprises) ESI Code 37000267010001102 & contacted Shri Hasan Ali R. Patel. I asked him about M/s. Chawla Restaurant (N2R Enterprise). The person contacted informed me that M/s. N2R Enterprise is closed and now M/s. Beno Restaurant is functioning under the brand name of Chawla 2. Then I asked the employer about the Chawla Restaurant which was situated at 7-10 Shubam Complex. The employer informed that, earlier the restaurant was situated there and then shifted to this location. After shifting to this address the

previous employer probably obtained new E.S.I. Code No. 37000283050001102 hence, he is paying ESI contribution on this code number. Now, the employer Shri Hasan Ali partner is running this restaurant by using its brand name Chawlas 2 from October 2013 and the firm name is now M/s Beno Restaurant. The present employer is making compliance on code number 37000283050001102. The employer is not making compliance and advise to pay all the ESI dues. Further, communication if any will be followed from ESIC Regional office, Ahmedabad.

12 In this connection in visit vide Exhibit-19 it is mentioned that:- M/s. N2R Enterprise is closed and now M/s. Beno Restaurant is functioning under the brand name of Chawla 2. After shifting to this address the previous employer probably obtained new E.S.I. Code No. 37000283050001102 hence, he is paying ESI contribution on this code number. Hence, in this connection the applicant has produced list of document vide Mark 4. Mark 4/2 is letter dated 16/04/2015 and in this letter it is mentioned that, there is change of establishment and new name is BENO Restaurant, and code number 37000283050001102 which is mentioned. Hence in this letter it seems that, the applicant has given the information to change the unit from Chawlas Restaurant to Beno Restaurant to the Regional Director of E.S.I. Corporation and code number is also mentioned 37000283050001102.

13 This Court would like to go through the order passed by the Assistant Director, who happens to be authorized officer under section 45-A of the E.S.I Act- 1948 dated 09/006/2017, which is produced on record at Exhibit-21. Upon going through the said order it appears that, firstly the unit name is M./s, Chawla's (A unit of N2R Enterprises) Code No.37000267010001102 is mentioned, and notice was issued to the Principal Employer vide this office letter C-18 (Ad-hoc) of even No. dated 10/02/2016 for Rs.4,82,625/- for the period 01/11 to 12/15. Further it is mentioned that, M/s. Chawla's is covered under the E.S.I. Act, with effect from 01/02/2008 and continues to be covered under the Act. As the employer failed to pay the contribution for the period 1/11 to 12/15, a show cause notice in form of C-18 ad hoc of even no dated 10/02/2016 was issued to the employer to show cause as to why contributions as per details of calculation furnished in para-4 of the notice should not be assessed as provided under section 45-A of the E.S.I. Act-1948. The employer was afforded an opportunity to represent his case in person or through authorized representative at the time of personal hearing on 15/03/2016, and /or to submit a statement of contribution due actually as per their records. Another date of hearing was fixed on 13/04/16, 22/08/16, 18/04/17, 18/05/17, & 08/06/17, but neither the employer nor his representative attended the P.H. afforded on 15/03/2016 13/04/16, 22/08/16, 18/04/17. Hence, P.H. letter dated 31/03/17, had been sent

through their S.S.O to handover the same to employer. As the owner Shri Nikul V.Patel & his nephew Shri Hasanbhai Patel (to whom Shri Nikulbhai had handed over the management of he restaurant), both are out of station. The P.H. letter was handed over by S.S.O. to Shri Balvirsinh, the manager. Hence, the next date for PH was given on 18/0/2017, by S.S.O. but neither the employer nor his representative attended the P.H. nor submitted any records. Again the P.H. was granted on 08/06/2017, but no one attended the P.H. The employer failed to submit records, contribution is determined on the basis of information available as per the provisions of section 45-A of the E.S.I. Act and amount of Rs. 3,53,925/-.

14 In this connection, this Court would like go through the Affidavit in lieu of oral evidence vide Exhibit-25. Upon going through the same it appears that, the applicant's namely Mr. Hasanali Rasulbhai Patel has reiterated the contents on the application in the affidavit. In this connection upon going through the cross-examination of this applicant taken by the learned Advocate Mr. A.J.Batt appearing on behalf of the opponent corporation it appears that, the E.S.I. Act is applicable at that time to its unit and at that time he has got the employees attendance register and salary register from the previous owner. He has acquired this unit, and after he has not proceeded to get new code number. He is admitted that, C-18 notice was issued for

demanding the contribution amount of Rs.3,53,925/- for the period from May-2012 to December-2015. He is also admitted that, he could not appear for personal hearing. The applicant has stated that, he is submitted the challans before the Hon'ble Court. But he has denied that, he has submitted the challan, which is different unit. It is true that, on the basis of C-18 notice, the corporation has passed the order under section 45-A dated 09/06/2017, and which was received it. He is admitted that, there is a different code number is mentioned in order under section 45-A as well as the applicant's has submitted the Challan. He has admitted that, he has not submitted the documentary evidence about the contribution amount for the period from May-2012 to December-2020, which is mentioned in order 45-A.

15 The applicant has submitted the Challan, which is produced vide Exhibit 22 at mark 22/1 to 22/35, and all the Challan the Party Code number is 37000283050001102, and Name of Chawla Restaurant is mentioned. But the order passed by the E.S.I. Corporation under section 45-A of the E.S.I. Act, it is mentioned the code No. is 37000267010001102 as well as unit name is M/s. Chawla's. The applicant has stated that, he has deposited all the amount with the corporation in code number 37000283050001102. If the applicant has objected the another code number i.e., 37000267010001102, he has to

appear before the E.S.I. Authority after the C-18 notice as well as order under section 45-A of the E.S.I. Act and it may be settled it. The applicant has also stated in his plaint that, at that time the business situation has become very bad and due to month of Ramzan hence in these circumstances he could not appear before the personal hearing. Moreover, applicant has produced list of document vide Mark 4. Mark 4/2 letter dated 16/04/2015 and in this letter it is mentioned that, there is change of establishment and new name is BENO Restaurant, and code number is 37000283050001102. But as per the order under section 45-A of the E.S.I. Act the name of unit M/s. Chawlas (A unit of N2R) Code number is 37000267010001102 mentioned. Further, as per the visit note at Exhibit 19, by making the signature of Sandeep Kumar S.S.O. E.S.I.C, Ahmedabd in letter pad, it is BENO Restaurant name is mentioned. Hence, it is need to remand back the matter.

16 This court would like rely upon the judgment in case of Khadi Gramodhyog Versus Regional Director reported in 2015 (0) AIJEL-HC 234149, in FIRST APPEAL No. 1070 of 2015, Date of Judgment: SEPTEMBER-30-2015, before the Hon'ble High Court of Gujarat. The Hon'ble High Court has held and observed that:

The Competent Court can remanded the matter back to the corp with reasoned order. Then competent authority under

the statute has to reconsider the issue and shall pass appropriate order under S. 45A of the ESI Act after extending reasonable opportunity of hearing to both the sides wherein competent Court shall also consider the issue regarding applicability of the Act.

Hence, this ESI Court has got empower to remand-back the matter to the authority for reconsideration. So, herein this case, there is a peculiar circumstances, which is need to minutely scrutinization and comparison of record.

17 The demand of contribution of amount is their, and consider the E.S.I.Act is social welfare legislation. Moreover, the applicant has stated in his plaint that:- due to some circumstances mentioned in above, he could not appear before the authority. Hence, there is need of minutely scrutinization and also need to give ample opportunities to the applicant to proceed their submissions. So, herein this case, it is fit circumstances to remand back the matter to the competent authority for reconsideration the case of the applicant, hence my answer regarding issue no. 3 and 4 are as discussed.

18 As discussed above, the order passed by the learned authority under section 45-A is hereby set-aside. The matter is order to remand back to the authority by following final order for issue No.5:-

ORDER

1 This application No.25 of 2021 is hereby partly allowed.

- 2 The order passed under section 45-A is hereby set-aside.
But it is ordered to remand back the matter to the E.S.I
Authority to re-decide the matter.
- 3 The opponent is hereby directed to hear the issue under
section 45-A by giving the ample opportunities to the
applicant and to produce relevant records and by giving
opportunities of fully arguments and fully submission, oral
as well written and it is hereby directed to decide the
matter on merits.
- 4 No order as to costs.

Pronounced in open Court to-day i.e. 30/04/2026

Date:30/04/2026
Place: Ahmedabad.

(H.A.Shah)
JUDGE
Employees State Insurance Court,
Ahmedabad, GJ00550