

IN THE HIGH COURT OF JHARKHAND AT RANCHI**M. A. No.43 of 2025**

M/s Reena Enterprises, Jamshedpur, through its Proprietor, Murlidhar Sharma, S/o Shri Suresh Sharma, R/o 68-A, Ramjanam Nagar, Road No.5 (Near E.C.C. Flat), Kadma, PO & PS- Kadma, Town- Jamshedpur, District- East Singhbhum.

.... Appellant(s)

Versus

1. The Union of India, through the Director, Employees State Insurance Corporation having its Regional office at Namkum, ESI Hospital Campus, PO & PS- Namkum, District- Ranchi.
2. Director, Employees State Insurance Corporation having its Regional office at Namkum, ESI Hospital Campus, PO & PS- Namkum, District- Ranchi.
3. Regional Director, Employees State Insurance Corporation having its office at Namkum, ESI Hospital Campus, PO & PS- Namkum, District- Ranchi.
4. Deputy Director, Employees State Insurance Corporation having its office at Namkum, ESI Hospital Campus, PO & PS- Namkum, District- Ranchi.

.. Respondent(s)

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CORAM :HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

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For the Appellant (s) : M/s Manoj Tandon, Siddharth Ranjan,
Neha Bhardwaj, Karamjit S. Chhabra, Advocates

For the Resp./ESIC : Mr. Ashutosh Anand, Advocate

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08/ 18.09.2025. Heard, learned counsel for the parties.

1. The instant Misc. Appeal has been filed for setting aside the order dated 04.09.2024 (Annexure-4) passed by learned Labour Court cum Employees' Insurance Court, Jamshedpur, in E.S.I. Case No.04 of 2015 whereby the appellant has been directed to pay a sum of Rs.5,77,394/-.
2. Appellant is a proprietary business concerned involved in civil works. Appellant applied for ESI Code and PE Code to be enlisted as a Contractor in M/s JUSCO, Jamshedpur and was accordingly allotted ESI Code No.6016024101 in the Month of July, 2006.
3. Appellant has been saddled with liability for non-payment of ESI contributions from August 2009 to June, 2014.
4. It is not in dispute that Appellant was given ESI Code and P.F. Code in 2006, wherein in the application, it was claimed that 20 employees were in the employment of establishment.
5. It is argued on behalf of the Appellant that ESI code was taken under expectation of getting contract from JUSCO, but the expectation did not materialize, as it did not get any work order etc. from M/S JUSCO Ltd or any other local company, therefore it could not get licence under Contract Labour (Regulation and Abolition) Act, 1970 since for V was not issued by M/S JUSCO. However, the applicant somehow continued with minor civil, painting works. Under the circumstance vide letter dated 17.10.2008 informed the Branch Manager, ESIC, Adityapur, Jamshedpur that no work was done and no person was consequently

- engaged since 2006 till September 2008. Similar intimations were sent to the Director, ESIC Ranchi on 17.04.2014. It is further contended that appellant paid on 11.10.2014 a total contribution of Rs. 1962 as ESI contribution for the period from August, 2009 to June 2014 for engagement of 1 or 2 workers intermittently.
6. It is argued by learned counsel for the appellant- Company that contributions were regularly paid which will be evident from Ext.3 and the objections which have been adduced into evidence and marked as Ext.B for the period 2009-14 for the employees currently employed in the establishment.
 7. It is argued that the proceedings under Section 45A of the E.S.I. Act, 1948 suffers from serious infirmities by raising contribution for a sum of Rs.5,77,394/- without the actual verification of the employees in the establishment of the appellant- company. The returns were regularly filed by way of challan since the year 2009, therefore, if there was no discrepancy in the said challan, it was open to the authority concerned to have physically verified the number of persons employed under Section 44 of the said Act, 1948. Without such verification, only a presumption was drawn that since a return was filed and when the code was taken on the basis of the application stating therein 20 employees, the contribution has been raised.
 8. Learned counsel for the Respondent(s) -ESIC has opposed the prayer and he has argued that the present appeal is not maintainable as the appellant has stated that he is not the proprietor of the Firm on which ESIC's contributions have been fixed. It is further submitted that there is difference between an establishment which has not been brought under the cover of ESIC Act and those establishments which have not been duly brought under the cover and code has been allowed.
 9. Here, this is a case which has voluntarily submitted Form-I for issuance of code and on that basis, the code was allotted for the employees of the establishment. It has been admitted by APW-1 in paragraph-27 that the registration had been made for 20 persons. Therefore, there was no mandatory of requirement of inspection as it was a covered establishment.
 10. It is further argued that there is contradiction between oral and documentary evidence in so far as the evidence that the appellant states that establishment was not functional and none was employed and no work was done as stated in paragraphs-43, 45 and 46. However, it has been

admitted by him that the challans of contribution were filed showing two persons which have been adduced into evidence and marked as Ext. B series.

11. This appeal was admitted to be heard on the following substantial questions of law:

- I. Whether the order impugned is perverse for not considering the deposition of the officers of the ESIC while passing the said order?
- II. Before passing the said order the non-determination of number of employees vitiated the said order?

12. Admittedly ESI code was allotted on a voluntary declaration of 20 employees in 2006 to the Appellant Concern. But from this by itself a presumption cannot be drawn that for all time establishment remained in business with same employee strength. Ext B series are returns for the period 2009 to 2014, wherein the employees strength has been shown much below the number for which the code had been taken. It was incumbent upon the Corporation to have verified this, but no step was taken. Director (Finance), ESIC, Sri Rajendra Tuddu has been examined as O.P.W.1 and he has admitted in Paras 19, 20, 22, 23, 26, 28 and 29 of the cross-examination that only a notice was sent with regard to ad-hoc assessment, but no inspection was made. It has also been admitted that in the event of default in contribution, inspections are done, and it was lapse on the part of the establishment to have not conducted the inspection on default in payment of contribution.

13. It has also been stated that in the event of any increase or reduction of number of employees, it was not incumbent on the part of the employer to inform the ESIC about it. Further in Para-33, it has been admitted that in the letter dated 01.08.2024, the applicant had informed that since the year, 2006, they had no work. The deposition of Hitendra Kumar (O.P.W.-2), Deputy Director of ESIC is also to the same effect.

14. The undisputed fact that emerges from the pleadings and evidence as discussed above is that, appellant concerned continued to submit ESI contribution far less than the number of employees, for which the Code was allotted. This continued from 2009 to 2014, but the authorities did not stir into action, to inspect the establishment. Even a letter was sent by the appellant concern that it was out of work and was not employing the number of persons as earlier declared. Despite this, no inspection was

conducted at any point of time. There is no contrary evidence from which an inference can be drawn that number of employees, as disclosed at the time of allotment continued in employment. Liability appears to have been saddled on the appellant concern in a mechanical manner and in utter violation of provisions of sections 45 of the Act 1948, which provides as under,

45. [Social Security Officers], their functions and duties.-(1) *The Corporation may appoint such persons as [Social Security Officers], as it thinks fit, for the purposes of this Act, within such local limits as it may assign to them.*

(2) Any (Social Security Officer] appointed by the Corporation under sub-section (1) (hereinafter referred to as [Social Security Officer]), or other official of the Corporation authorised in this behalf by it, may for the purposes of enquiring into the correctness of any of the particulars stated in any return referred to in Section 44 or for the purpose of ascertaining whether any of the provisions of this Act has been complied with-

(a) require any principal or immediate employer to furnish to him such information as he may consider necessary for the purposes of this Act, or

(b) at any reasonable time enter any office, establishment, factory or other premises occupied by such principal or immediate employer and require any person found in charge thereof to produce to such [Social Security Officer] or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine with respect to any matter relevant to the purposes aforesaid, the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises, or any person whom the said (Social Security Officer) or other official has reasonable cause to believe to be or to have been an employee;

(d) make copies of, or take extracts from, any register, account book or other document maintained in such factory, establishment, office or other premises;

(e) exercise such other powers as may be prescribed.]

(3) A (Social Security Officer] shall exercise such functions and perform such duties as may be authorised by the Corporation or as may be specified in the regulations.

[(4) Any officer of the Corporation authorised in this behalf by it may, carry out re-inspection or test inspection of the records and returns submitted under Section 44 for the purpose of verifying the correctness and quality of the inspection carried out by a Social Security Officer.]

15. From the aforesaid provision, it is clear that when a default occurs and/or intimation is given regarding the reduction in the number of employees, an

establishment cannot be fastened with liability to pay contribution on the basis of the original strength of employees, unless an inspection is carried out in terms of Section 45 of the ESI Act. To hold otherwise would result in an anomalous situation where the establishment would remain perpetually liable to make contributions on the basis of its original workforce, notwithstanding any reduction of employees due to business downturn.

16. ESI Court's order has not taken into consideration the evidence on record with regard to intimation being given to the ESI Corporation that the establishment was out of work and the employees were not continuing in the establishment. Non-consideration of these evidence renders the judgement as perverse. Further, on failure of the Corporation to hold inspection, the demand of contribution raised is without any evidence, that the Appellant committed default despite keeping the employees employed in the establishment. Both the substantial questions of law are accordingly answered in favour of the Appellant.
17. Accordingly, the impugned order is set aside.
18. Miscellaneous Appeal is allowed. Interlocutory application is accordingly disposed of.

(Gautam Kumar Choudhary, J.)

Sandeep/-