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IN THE HIGH COURT OF BOMBAY

Writ Petition No. 1173 of 1998

Decided On: 08.02.2001

Appellants: **Rainbow Industries**
Vs.
Respondent: **Regional Director, E.S.I. Corporation**

Hon'ble Judges/Coram:
R.J. Kochar, J.

Counsels:
For Appellant/Petitioner/Plaintiff: S.C. Naidu, Manoj Gujar and Manish Desai, Advs., i/b., C.R. Naidu & Co.

For Respondents/Defendant: H.V. Mehta, Adv.

Case Note:
Employees' State Insurance Act, 1948 - Section 82(2) - Constitution of India, 1950 - Article 226 - Appeal - Writ jurisdiction - A finding contrary to the evidence or material on record - Would be perverse - A substantial question of law - Party has to file an appeal and not a writ petition under Article 226.

Held:

The Legislature has created a forum known as Employees' Insurance Court to decide the question which arises in the matters provided in the Act. It is a Court of fact and is the final forum for findings of facts. Section 82(1), therefore, has positively enacted that no appeal shall lie from an order of E.I. Court. Section 82(2), however, permits an appeal to the High Court from an order of the E.I. Court if it involves a substantial question of law. Appeal filed by both the parties is totally barred.

If there is no substantial question of law in that case how even a writ petition would lie under the extra ordinary jurisdiction of Article 226 of the Constitution of India. If the Legislature has denied an ordinary remedy of appeal and has given a very limited or restricted right of appeal, a party aggrieved cannot get a right of appeal indirectly by filing a writ petition under Article 226.

In the present case, the main grievance of the petitioner is that no opportunity of hearing which is mandatory was given to the petitioner by Competent Authority before passing the impugned order Section 45(A) of the Act. It is also complained by the petitioners that the impugned order of the E.I. Court suffers from an infirmity of perversity as it has not considered the evidence on record. These two grievances do directly and substantially affect the rights of the petitioners and, therefore, it cannot be said that this question raised by the petitioners in the present petition is not a substantial question of law. The petitioners could have filed the appeal under Section 82(2) of the Act and could have raised this very substantial question of law but

instead it has adopted the course of knocking the doors of extra ordinary jurisdiction of this Court. It is difficult to understand how a perverse order or an order not passed on any evidence cannot become an appealable order involving a substantial question of law.

A finding contrary to the evidence or material on record would also be perverse. It is not open to any party to by-pass the statutory appeal provided under the E.S.I. Act and to rush to take resort the extra ordinary remedy under Article 226 of the Constitution of India.

The present writ petition is therefore not maintainable. The Petitioner ought to have filed an appeal as provided under Section 82 of the E.S.I. Act.

ORDER

R.J. Kochar, J.

1. The petitioner Company is aggrieved by the decision of the respondent to cover the petitioner Company under the provisions of the Employees' State Insurance Act, 1948 (E.S.I. Act). It is further aggrieved by an order passed by the Competent Authority under Section 45(A) of the E.S.I. Act determining the amount of contribution payable in respect of employees of the petitioner's factory and a further order passed by the Competent Authority under section 45(C) of the E.S.I. Act issued to the Recovery Officer for recovery of the arrears of the E.S.I. Contribution payable by the petitioner Company. Finally it has also challenged the order of Employees' Insurance Court (E.I. Court) passed on 20th January, 1998 in application (E.S.I.) No. 96 of 1986 filed by the petitioner Company to challenge the aforesaid orders passed by the Competent Authority under the Act. The E.I. Court has exercised its jurisdiction to decide the said application under section 75 of the Act holding that on the facts and circumstances of the case and oral and documentary evidence, the petitioner Company was rightly covered under the E.S.I. Act and was liable to pay the contribution determined by the Regional Director of the respondent Corporation under section 45(A) of the Act for the period from September, 1979 to March, 1984 with interest. The E.I. Court rejected the application of the petitioner Company and declared that it was rightly covered from September, 1979 and it was liable to pay the contribution determined by the corporation with statutory interest thereon till the date of payment.

2. The petitioner Company has chosen to file the present writ petition under Article 226 of the Constitution of India invoking the extra ordinary Jurisdiction of the High Court to impugn the aforesaid orders of the Competent Authority and also the order of the E.I. Court at Mumbai, instead of filing a substantive appeal as provided under section 82 of the E.S.I. Act. Shri H. V. Mehta, the learned Counsel for the respondent has questioned the maintainability of the writ petition when the Act has provided substantive appeal against the orders of the E.I. Court passed under section 75 of the E.S.I. Act. According to the learned Counsel, the present writ petition would not lie and cannot be entertained and decided by the High Court in its extra ordinary jurisdiction under Article 226 of the Constitution of India when an appeal has been specifically provided by the said Act. Shri Mehta contended that the petitioner Company has not availed of the statutory remedy under the Act and has filed the present petition by by-passing the statutory remedy of appeal. Secondly, Shri Mehta has also submitted on merits that the E.I. Court established under the E.S.I. Act has considered the facts and circumstances, and the whole evidence on record,

documentary and oral, and has given its findings and has also given cogent reasons for its conclusions. The Court has considered the bare facts on record and therefore, this Court in its writ jurisdiction cannot enter into the controversy on the question of facts which have been finally concluded by the E.I. Court which is a Court of facts finding. According to Shri Mehta, the findings and conclusions arrived at by the Court are based on evidence and are not perverse, warranting any interference in the impugned judgment and order of the Court under Article 226 of the Constitution of India.

3. Shri S. C. Naidu, the learned Counsel for the petitioner Company has strenuously submitted that in the given circumstances of the case, the present petition is maintainable as the order of the Competent Authority to cover the petitioner's factory is in violation of the mandatory provisions of the Act and the principles of natural justice and the same is, therefore, null and void. Secondly, he has submitted that the exercise of power under section 45(A) by the Competent Authority is not legitimate as the conditions which are prescribed in the section were not complied with and there is no application of mind by the Competent Authority before passing the order of coverage of the factory of the petitioner Company. Shri Naidu has emphasised that it was not the case of the Corporation that the petitioner Company had not filed returns or had not submitted or furnished particulars, registers or records in accordance with the provisions of Section 44 or that the petitioner Company had not maintained accounts in accordance with the section 44 or that the Inspector or the Officer of the Corporation was prevented in any manner in exercise of his function or discharging his duties under section 45 of the Act. Shri Naidu has stressed the point that the petitioner Company has submitted returns, particulars, registers and all records and has not violated the provisions of section 44 or 45 for that matter in other provisions of the Act and therefore, the order passed by the Competent Authority under the extra ordinary provisions of Section 45(A) was void ab initio. He has also pointed out that before invoking Section 45(A) which according to the learned Counsel is all draconian, the petitioner Company was not given a reasonable opportunity of being heard. It was vehemently argued by Shri Naidu that the conditions prescribed in Section 45(A) are conditions precedent and are mandatory in nature which must be observed strictly by the Competent Authority exercising the said powers. He has further tried to point out from the evidence on record that the petitioner Company has maintained all the records as prescribed under the law and has submitted the returns as required and that there was no breach of any provisions of law, warranting resort to such a draconian section 45(A) of the Act. He has pointed out that the order to cover the petitioner is totally erroneous as from the report of the Inspector who visited the factory it was clear that only 8 employees were employed and, therefore. there was absolutely no reason or ground to apply the provisions of the Act to the factory of the petitioner. He has also pointed out that the determination and calculation of arrears of contribution and the recovery certificate are bad in law and that they also require to be quashed and set aside as a consequence. Shri Naidu also contended that before passing the order under section 45(A) the petitioner Company was not furnished with any documents which were relied upon by the Competent Authority and therefore, it has no reasonable opportunity to meet the case of the Corporation. The order passed by the Competent Authority under section 45(A) was an unreasoned order and was, therefore, amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. Shri Naidu has submitted that he has also challenged the aforesaid order of coverage and determination of arrears of contribution under Section 45(A) of the Act. Shri Naidu has criticised the exercise of power in the manner in which it was done as an abuse of process of section 45(A) as the contingencies which are narrated in the section were not present. Since Section

45(A) and all other further provisions upto 45(g) which follow orders under Section 45(A) of the Act are of draconian nature and any infraction of the provisions would attract penal provision, the Competent Authority must strictly comply with section 45(A) of the Act. Shri Naidu has also given emphasis that no hearing was given to the petitioner Company before passing the orders under section 45(A) of the Act. Shri Naidu has next contended that the E.I. Court has also not considered the aforesaid contentions raised by the petitioner Company and has not applied its mind to the facts and circumstances of the case and the entire material on record including oral and documentary evidence and therefore, the impugned order of the E. I. Court is perverse.

4 . As far as the main objection of the maintainability of the writ petition is concerned. Shri Naidu has submitted that the petitioners have chosen the writ forum under Article 226 of the Constitution of India for a writ of certiorari to quash and set aside the impugned order passed by the Competent Authority under section 45(A) of the Act as well as passed by the E.I. Court under section 75 of the E.S.I. Act, as there is no substantial question of law involved in the present matter. He has strenuously submitted that Section 82 of the Act confers a statutory right on the parry to file an appeal against the order of the E.S.I. Court only when it involves a substantial question of law. In the present case, according to the learned Counsel, since there was no substantial question of law involved, writ remedy under Article 226 of the Constitution of India is wide open for him and that the existence of "alternate remedy" is no bar to take recourse to Article 226 of the Constitution of India. Shri Naidu pointed out that for Article 226, the alternate remedy is not an absolute bar but is only a prudent rule or policy of convenience and discretion. Shri Naidu has relied upon a decision of the Division Bench of this Court in the case of Dainik Deshdoot & Ors. v. Employees' State Insurance Corporation and Ors. to spell out what is a substantive question of law. Paragraph 4 of the said judgment needs to be quoted below :-

> "Reference in this connection may be made to unanimous Five Judge Bench decision of the Supreme Court in Sir Chunilal V. Mehta and Sons Ltd. v. The Century Spinning and Manufacturing Co. Ltd. at page 1318, where construing the expression "substantial question of law" in Article 133 of the Constitution, as it stood then, it was held as under :-
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> > "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd, the question would not be a substantial question of law."
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> These observations is Sir Chunilal V. Mehta. (supra) have again been referred to and relied on in a unanimous Three Judge Bench decision of the Supreme Court in Mahindra and Mahindra Ltd. v. Union of India, at page 812 where it has been observed as under :-

> "What should be the test for determining whether a question of law raised in an appeal is substantial has been laid down by this Court in Srt Chunilal V. Mehta and Sons Ltd. v. The Century Spinning and Manufacturing Co. Ltd. and it has been held that the proper test would be whether the question of taw is of general public importance or whether it directly or substantially affects the rights of the parties, and if so, whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views."

We entertain no doubt that the same expression having been used in Section 82(2) of the Act, we cannot but govern ourselves by the observations quoted hereinabove.

According to the learned Counsel, the ingredients of what is a substantial question of law are not present in the present case, and therefore, according to the learned counsel, the petitioners could not file an appeal under section 82 of the E.S.I. Act. Shri Naidu has, therefore, justified filing of the above writ petition under Article 226 of the Constitution of India for a writ of certiorari to quash and set aside the Impugned judgment and order of the E.I. Court. The question, therefore, is whether a writ petition can be said to be an alternative remedy to a substantive appeal provided under the Act.

According to me, in the present case, there is no question of exhausting alternative remedy first before invoking the writ jurisdiction of the High Court. Ordinarily, the Writ Court, always enquires from the petitioner whether any alternative remedy was available and whether such alternative remedy has been exhausted. In the present, case, there is no question of alternative remedy having been exhausted. The Act has provided an appeal under section 82(2) against an order of the E.I. Court provided there is a substantial question of law involved in the matter. Shri Naidu has candidly and conveniently also admitted that there is no substantial question of law involved in the matter and therefore, he has filed the present writ petition and that it was open for him to file such a petition when there is no substantial question of law involved in the matter under the E.S.I. Act. It is, therefore, not necessary for me to get into the question of what is a substantial question of law. Admittedly, there is no substantial question of law involved in the present matter and that is the reason given by the learned Counsel that no appeal could be filed under section 82(2) of the Act and therefore, the present petition is filed and the same is maintainable, according to the learned Counsel. I am afraid the writ petition is no alternative remedy for an appeal against the order of the E.I. Court. It is very significant to note that in fact, there is no appeal provided from an order of E.I. Court. Section 82 of the E.I. Act is very clear and the same is reproduced hereinbelow :-

> "Appeal (1) : Save as expressly provided in this section, no appeal shall lie from an order of ah Employees' Insurance Court.
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> (2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

(3) The period of limitation of an appeal under this section shall be sixty days.

(4) The provisions of sections 5 and 12 of the (Limitation Act, 1963) shall apply to appeals under this Section."

The Legislature is very conscious about the purpose of this Act. It is a beneficial legislation enacted to provide for certain benefits to employees in case of sickness, maternity and employment Injury. The Legislature did not Intend to create any appellate ladders under this enactment. The Legislature positively did not intend that sick persons or the female employees who are conferred with maternity benefits or the employees who suffer employment Injuries should be dragged in the endless litigation. The Legislature has created a forum known as Employees* Insurance Court to decide the question which arises in the matters provided in the Act. It is a Court of fact and is the final forum for findings of facts. Section 82(1), therefore, has positively enacted that no appeal shall lie from an order of E.I. Court. Section 82(2), however, permits an appeal to the High Court from an order of the E.I. Court if it involves a substantial question of law. Appeal filed by both the parties is totally barred. If an employee fails to get the relief prayed for by him in the E.I. Court also, has no right to appeal against the said order. Similarly neither the employer nor the Corporation is given a statutory right to appeal against the order of E.I. Court. Appeal is permitted only when there is a substantial question of law involved in the matter. Can it be so said that when the Legislature itself has denied a right of substantive appeal by specific prohibition, a writ petition under Article 226 of the Constitution of India would lie as an alternative remedy to appeal, even when there is no substantial question of law involved? To construe the Act in that matter would be to negate the provisions of the Act and to foil or abort the legislative intention. What is directly prohibited cannot be assumed indirectly. According to me, therefore, the writ will not be maintainable and the same will have be to be dismissed.

5. If there is no substantial question of law in that case how even a writ petition would lie under the extra ordinary jurisdiction of Article 226 of the Constitution of India. If the Legislature has denied an ordinary remedy of appeal and has given a very limited or restricted right of appeal, a party aggrieved cannot get a right of appeal Indirectly by filing a writ petition under Article 226. The Legislature in its wisdom has made the decisions of the E.I. Court conclusive and we cannot undermine the legislative wisdom by allowing a party to adopt a backdoor method of giving challenge to such decisions through Article 226 of the Constitution of India, which is an extra ordinary remedy and which cannot be reduced or converted as an optional or alternative remedy for a substantive appeal which is legislatively denied, except where there is a substantial question of law Involved. I agree with Shri Naidu that the present case will not satisfy the tests prescribed by the Supreme Court and followed by our Division Bench in the case of Daintk; Deshdoot (supra). A question of law, if it directly and substantially affects the rights of the parties also falls in the prescribed tests. In the present case, the main grievance of; the petitioner is that no opportunity of hearing which is mandatory was given to the petitioner by Competent Authority before passing the impugned order section 45(A) of the Act. It is also complained by the petitioners that the impugned order of the E.I. Court suffers from an infirmity of perversity as it has not considered the evidence on record. According to me, these two grievances do directly and substantially affect the rights of the

petitioners and, therefore, it cannot be said that this question raised by the petitioners in the present petition is not a substantial question of law. The petitioners could have filed the appeal under section 82(2) of the Act and could have raised this very substantial question of law but instead it has adopted the course of knocking the doors of extra ordinary jurisdiction of this Court. I fail to understand how a perverse order or an order not passed on any evidence cannot become an appealable order involving a substantial question of law. There is a similar provision under section 30 of the Workmen's Compensation Act which also permits an appeal only when there is a substantial, question of law involved. While dealing with the very same question in the case of Forbes Forbes Campbell & Co., Ltd., v. Mahanand Sharma, the learned Single Judge of this Court (Y. V. Chandrachud, J. as he then was) under Section 30 of the Workmen's Compensation Act has held that "the order passed by the commissioner sioner for workmen compensation was based on no evidence and hence must be set aside. Where there is total absence of evidence and a finding is recorded without any evidence whatsoever, the appeal against such order would involve substantial question of law."

(Emphasissupplied)

6. In my humble opinion, the Supreme Court has broadly indicated what could be considered a substantial question of law and it has never intended to lay down a final and stringent test or definition of the phrase substantial question of law. At the most it can be said that broadly all such ingredients must be presented to fit the term substantial question of law. The tests are illustrative and not exhaustive. I am in respectful agreement with the learned Single Judge that a perverse order would involve a substantial question of law and would be appealable under Section 82(2) of the E.S.I. Act. To construe that an order passed by the E.I. Court which suffers from such serious infirmity of perversity and palpable absence of evidence is not an appealable order, would create havoc to say the least. Such an order would certainly affect the basic rights of the parties to get a decision on the basis of the evidence adduced by them before the Court and it is the fundamental duty of any adjudicating Court to consider such evidence and record its findings after giving cogent reasons for its decision or conclusion. If such adjudicating authority fails to record reasons in its order for its conclusions it would certainly be a perverse order. If such an adjudicating authority has no evidence of any nature at all and still it records a finding one way or the other which is not supported by any evidence, it would also be a perverse order and can be challenged in an appeal on the ground of substantial question of law. A finding contrary to the evidence or material on record would also be perverse. It is not open to any party to by-pass the statutory appeal provided under the E.S.I. Act and to rush to take resort the extra ordinary remedy under Article 226 of the Constitution of India.

7. The E.S.I. Act is a complete Code in itself and it provides for each and every contingency to enhance welfare of the working class. It is an exhaustive piece of legislation and has also provided remedy against the orders of the competent authorities under section 75 of the Act and also for an appeal against the order of the E.I. Court. In the interest of the weaker section in the contingencies of their sickness, employment injuries and for females occasions of maternity the Competent Authorities under the Act are empowered to decide quickly the grant of benefits to the aggrieved beneficiaries. They are also denied an ordinary right of appeal unless there is a substantial question of law involved. This is a legislative wisdom and policy, it cannot be easily and lightly departed from by allowing a clever and ingenuous party to approach under Article 226 by reducing the writ jurisdiction to an

alternate remedy to an appeal under section 82(2) of the E.S.I. Act. The Supreme Court has in the case of C. A. Abraham v. Income Tax Officer, Kottayam and Anr. in para 3 has held in this context as under :-

> "In our view the petition filed by the appellant should not have been entertained. The Income Tax Act provides a complete machinery for assessment of tax and Imposition of penalty and for obtaining relief in respect of any Improper orders passed by the Income Tax Authorities, and the appellant could not be permitted to abandon resort to that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Tribunal."

8. The aforesaid decision was followed in the case of Shivram Poddar v. The Income Tax Officer, Central Circle II, Calcutta and Anr. The Supreme Court in para 11 of the said decision has observed thus :-

> "We may, observe that we have proceeded to decide this case on the footing that the business of the firm was discontinued on dissolution of the firm. It is however necessary once more to observe, as we did in C. A. Abraham's case MANU/SC/0124/1960 : [1961]41ITR425(SC) that the Income Tax Act provides a complete machinery for assessment of tax, and for relief in respect of improper or erroneous orders made by the Revenue Authorities. It is for the Revenue Authorities to ascertain the facts applicable to a particular situation, and to grant appropriate relief in the matter of assessment of tax. Resort to the High Court in exercise of its extra ordinary jurisdiction conferred or recognised by the Constitution in matters relating to assessment levy and collection of income tax may be permitted only when question of infringement of fundamental rights arise, or where on undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess. In attempting to bypass the provisions of the Income Tax Act by inviting the High Court to decide questions which are primarily within the jurisdiction of the Revenue Authorities, the party approaching the Court has often to ask the Court to make assumptions of facts which remain to be investigated by the Revenue Authorities."

9. I am, therefore, not able to accept the submissions of Shri Naidu that the present writ petition is maintainable. He ought to have filed an appeal as provided under Section 82 of the E.S.I. Act.

10. Though I have held that the above writ petition is not maintainable, since it was admitted, it would not be proper for me to dismiss it without considering the merits of the case. I must indeed observe that both the learned Counsel have taken me through the whole evidence on record, as If I was hearing an appeal.

11. The respondents had passed an order under Section 45(A) of the E.S.I. Act on 29th May, 1986 requiring the petitioners to make payment of contribution for the period specified therein. The petitioners behind aggrieved by the said order approached the E.I. Court under Section 75 of the E.S.I. Act to challenge the order on the grounds, inter alia, that they were not liable to be covered under the Act and that the respondents had not complied with the ingredients prescribed, as conditions precedent to exercise of the power under section 45(A) of the E.S.I. Act. It was mainly contended by the petitioner that the number of employees were only 8 in the

factory and that though they were using power for their manufacturing activities they did not attract the provisions of the E.S.I. Act and, therefore, they were wrongly covered by the respondents. It is also, their grievance that before passing the order under section 45(A) of the E.S.I. Act, the respondents did not hear the petitioners and there was, thus, violation of the principles of natural justice. According to Shri Naidu, the conditions prescribed in Section 45(A) are mandatory and any order passed in contravention of the aforesaid provisions would be null and void. Shri Naidu has also argued that the petitioners had maintained and produced all the documents before the Inspector and also before the Competent Authority as required. Shri Naidu has pointed out that what was not produced was some vouchers on which over time wages were paid to the very same employees on vouchers and that payment was not made to any other outsider. According to the learned Counsel, those vouchers were not available at that time and therefore could not be produced. He has also submitted that the order passed under section 45(A) should have been a reasoned order and the same is not based on documents on record and is also contrary to the inspection report. Shri Naidu has submitted that the petitioners had submitted returns and had furnished all the particulars and that they had maintained required registers and had not obstructed the Inspector from her duty and that there was no violation of Section 44 or 45 of the E.S.I. Act. Shri Naidu has condemned the order to be an abuse of the process of Section 45(A) of the E.S.I: Act. Shri Naidu has also attacked the impugned order passed by the E.I. Court behind baseless and perverse, as the E.I. Court had not considered the material on record. He has, therefore, prayed for quashing and setting aside the order passed by the authority under section 45(A) of the E.S.I. Act and the order passed by the E.I. Court under Section 75 of the Act. 12. On the contrary, Shri Mehta has also vehemently submitted that the E.S.I. Act is a beneficial legislation and Its application is automatic and the respondent Corporation was not obliged to send any notice or give advice to any employer that he was covered under the Act and he should comply with the provisions of the Act. In the present case, Shri Mehta has pointed out that the Inspector has visited the factory and seen the working inside the factory. She had prepared her report after noting down all the names of the employees who were found working and whose names were in the muster roll. She had also paid her second visit after intimation directing the petitioners to produce the records. According to Shri Mehta for counting the number of persons employed and working the entire set of accounts was required. There is no dispute that some account books, ledgers, cash book etc. were produced and from the cash book itself, the Inspector noticed that the petitioners were making payment under the head of Chhutak Mazuri (Sundry wages). She, therefore, called upon the petitioners to produce those vouchers on which the aforesaid alleged sundry wages were paid. It appears that she also found that the wages were paid not to the regular employees as alleged by Shri Naidu, but the payment of wages of vouchers was made to other persons who had worked or who were working for the petitioners. Since the petitioners did not produce those vouchers, the Inspector concluded that there were more than 10 persons employed by the petitioners and she submitted her report accordingly. She has given the names and she has also given other required details in her report. Based on the Inspector's report an open enquiry was held wherein, the petitioners were heard. Before section 45(A) enquiry was held, a letter dated 3rd June, 1985 was sent to the petitioners but there was no reply thereto. Thereafter, a show cause notice dated 7th January, 1986 was also Issued and the same was received by the petitioners on 2.7.1986. The petitioners did not produce the relevant vouchers which form part of the account books. Shri Mehta has, therefore, pointed out that before passing the impugned order under section 45(A), the petitioners were given an

opportunity of hearing and they were also heard in the matter personally. Shri Mehta has, therefore, refuted the allegations of the petitioners that there was infraction of Section 45(A) of the Act. He submitted that coverage of the petitioners was legal and the calculations were in no way Illegal or Incorrect. Shri Mehta has also pointed out that the E.I. Court has thoroughly gone into the whole matter and has recorded its findings on facts. The E.I. Court has considered the material on record and also considered the oral evidence adduced by both the parties. Shri Mehta has, therefore, concluded that there is no reason for this Court to exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India to interfere with the impugned order passed by the E.I. Court.

13. I have carefully gone through the impugned judgment and order of the E.I. Court and I have also gone through the oral and documentary evidence. The learned Judge has framed issues on the basis of the pleadings and has answered the same against the petitioners by giving his own reasons. He has considered the evidence of the Inspector as also the evidence adduced by the petitioners. He has accepted the report of the Inspector as correct on the basis of the material that there was in all 11 employees who were employed by the petitioners, has also recorded his conclusions that reasonable and adequate opportunity of being heard was given to the petitioners. The Insurance Inspector has clearly stated that all the relevant documents were verified by her on her visit on 14.10.1983 but the crucial and relevant vouchers were missing and they were not produced. Merely saying that all the documents were produced is not sufficient. What was required to compute the number of persons employed was not produced. From the muster the inspector found that there were 9 employees employed and wages as shown in the cash book included the wages paid on vouchers. It appears that under the head of wages, the petitioners had shown wages paid to the employees on muster roll and wages paid to others on vouchers. It was, therefore, clear that in addition to the wages paid to the regular employees, the petitioners were making payment to others who were not shown in the muster roll but were paid wages for the work done on the basis of vouchers. The Inspector, therefore, insisted and it was but natural to know how many other persons were paid wages on vouchers for the work done. It is elementary that to compute the number of persons employed those vouchers were also crucial and most relevant. The Inspector was certainly not interested to know the other details in the account books. The petitioners had kept back from the Inspector the crucial material in the form of the vouchers which carried the payment of wages paid under the head "sundry wages". It, therefore, cannot be said that the petitioners have produced all the required material or account books or registers. The relevant and crucial material was not produced. The Inspector, therefore, computed from the cash book that there were others who were paid wages and on the basis of the said material, she prepared the report that there were 11 employees employed by the petitioners. The E.I. Court has considered this crucial fact and has accepted the version of the Corporation. On the basis of the said material, the Competent Authority has passed what is called "best assessment judgment", to arrive at an estimated figure of contribution which the petitioners were liable to pay under the E.S.I. Act. There is no Illegality or infirmity in its conclusions that the Competent Authority had rightly passed the order under section 45(A) of the E.S.I. Act. He has also rightly concluded that there was no violation of the principles of natural justice as it was an admitted fact in the evidence that personal hearing was given to the petitioners. The learned Judge has also observed the demeanour of the witnesses examined by the petitioners. He has mentioned that the managing partner of the petitioners firm Shri Kishore Shah who was examined before the Court was giving evasive answers in cross-examination and was avoiding to admit the factual position. I do not find any infirmity in the

conclusion drawn by the E.I. Court that there were 11 employees working in the petitioners Company with the use of power and therefore, they were rightly covered under the E.I. Act. The learned Judge has also commented upon the production of vouchers for labour charges in the Court on 12th July, 1991. The learned Judge, has therefore, rightly commented that the petitioners ought to have produced its vouchers before the Insurance Inspector or atleast before the Competent Authority. It is, further pertinent to note that the petitioners' witness Kishore Shah had admitted in his cross-examination that those vouchers did not disclose that the payment was made for the extra work done by the employees of the factory and that there were no particulars in the vouchers. The learned Judge has rightly disbelieved the vouchers as there were no other evidence for payment of the wages to the very same employees of the factory for extra work done by them. The learned Judge has had opportunity to notice the payment made in the vouchers which reflected huge payment made by the petitioners on the vouchers and he was not inclined to believe the fact that such huge payment might have been made to the very same 9 workers of the factory as contended by the petitioners. The learned Judge has given his findings entirely based on the evidence, documentary and oral, produced before him. This conclusion is validly drawn on the basis of material before him. According to me, it cannot be said that the impugned judgment suffers from any infirmity or perversity. It is a well reasoned judgment which needs no interference by this Court under Article 226 of the Constitution of India. It may be mentioned here that the petitioners quarrel is restricted to the period upto 1984 and thereafter, the petitioners have accepted the coverage and has been making payment of contribution in accordance with the provisions of the E.S.I. Act.

14. There is no merit and no substance in the writ petition which, therefore, deserves to be dismissed and the same is hereby dismissed with no orders as to costs.

15. I may mention here that both the learned Counsel have referred to a number of decisions. I have not referred to all those judgments, as 1 have considered the facts of this case and have come to my own conclusion. I have not taken a view which is contrary to the ratios laid down in the binding precedents.