

PETITIONER:
EMPLOYEES STATE INSURANCE CORPORATION

Vs.

RESPONDENT:
M/S OVERSEAS METAL

DATE OF JUDGMENT 26/03/1993

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
YOGESHWAR DAYAL (J)

CITATION:
1994 SCC Supl. (2) 510

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. Special leave granted.
2. Respondents 1 to 4 defaulted, as employers, in the payment of employees' State Insurance Corporation dues. Acting under Section 45-B of the Employees' State Insurance Act, the appellant-Corporation initiated recovery proceedings under the Revenue Recovery Act, 1890 (Central Act). In the proceedings before the Certificate Officer, an objection was raised that the necessary court fee was not paid by the Corporation and proper verification of the claim was not made. Faced with the objections, the Corporation requested the Certificate Officer to allow the recovery to be made under the Bengal Public Demands Recovery Act, 1913 (State Act). The Certificate Officer disallowed the request of the Corporation in the following terms :

"The ESI Corporation begins with the Revenue Recovery Act to avoid ad valorem court fees and verification and then enjoys the switch over to the Bengal Public Demands Recovery Act. This comes under the category of 'fraud upon the statute'."

3. The Corporation challenged the order of the Certificate Officer by way of writ petition before the High Court which was dismissed. This appeal by the Corporation is against the judgment of the High Court.

4. We have heard learned counsel for the appellant-Corporation. We have been taken through the judgment of the High Court and the relevant part of the order of the Certificate Officer as reproduced in the special leave petition. We are of the view that the Certificate Officer was patently in error in rejecting the request of the Corporation to initiate recovery proceedings under the State Act. The Corporation could initiate recovery proceedings either under the Central Act or under the State Act. The requisition under the Central Act being a public demand, there was no legal difficulty in allowing the Corporation's

request to switch over the proceedings under the State Act. We are of the view that the Collector should have exercised its discretion to allow the proceedings to be continued under the State Act.

5. We therefore allow the appeal, set aside the order of the High Court, allow the writ petition of the Corporation filed before the High Court and set aside the order of the Certificate Officer. No costs.

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JUDIS