

Court No. - 17

Case :- WRIT - C No. - 2080 of 2022

Petitioner :- M/S Lucknow City Transport Services Ltd.
Lucknow Thru. Its Managing Director

Respondent :- Union Of India Thru. Its Secy. Ministry Of
Labour And Employment, New Delhi And Others

Counsel for Petitioner :- Amit Chandra, Arvind Kumar

Counsel for Respondent :- A.S.G.I., Faiqa Khan, Pankaj Kumar
Tiwari, Shishir Pradhan

Hon'ble Alok Mathur, J.

1. Heard Sri Arvind Kumar, learned counsel for petitioner as well as Sri Shishir Pradhan, learned counsel for respondent Nos. 2 & 3.
2. By means of present writ petition, the petitioner has challenged the order passed by Assistant Director who is authorised officer under Section 45-A of the Employees State Insurance Act, 1948.
3. It has been submitted that the petitioner is a limited company registered under the Companies Act, 1956 and falls within the purview of Employees State Insurance Act, 1948. The premises of the petitioner were inspected by the officers of the Employees State Insurance and was found that the petitioner was not depositing his contribution and a show cause notice was issued to the petitioner.
4. As per impugned order, appearance was put in on behalf of petitioner and after duly considering the rival contentions the impugned order dated 04.02.2022 was passed directing the petitioner to deposit its contribution amounting to Rs. 1,79,31,656/- which is a contribution for the period of December to January, 2020. The present writ petition has been filed assailing the aforesaid order mainly on the ground that neither was any show cause notice received by the petitioner and no person has been authorized to appear before the Assistant Director/Authorised Officer.
5. He submits that the impugned order has been passed in gross violation of principles of natural justice.
6. Learned counsel for respondent on the other hand has submitted that petitioner has an equally efficacious alternative

remedy by filing an appeal under Section 45AA of the Employees State Insurance Act, 1948. He further submits that it is not the case that the petitioner was not afforded any opportunity inasmuch as the impugned order itself records that the representative of the petitioner duly appeared and participated in the proceedings and consequently in case the petitioner denies this fact, this disputed question of fact first has to be determined before allowing his objection.

7. He submits that serious disputed question of fact cannot be decided in a writ petition under Article 226/227 of Constitution of India and consequently the petitioner deserves to be relegated to alternative remedy of appeal. Considering the rival submissions, it is noticed that petitioner has contested the fact recorded in the impugned order that the representative of the employer had appeared in personal hearing on 18.11.2021, he denies that any representative of the petitioner had appeared and consequently further submits that the proceedings were concluded without affording an opportunity.

8. This court is of the considered view that serious disputed question of fact arise in the present case for which the petitioner is relegated to alternative remedy of an appeal where all the issues can canvass before him can be adequately considered and decided. It is provided that in case the petitioner files an appeal along with an application for interim relief within next three weeks, the appellate authority shall proceed to consider and decide the same expeditiously in accordance with law. However, application for interim relief shall be decided within a period of two weeks from the date of filing of the appeal in accordance with law.

9. The petitioner undertakes to cooperate in the appellate proceedings and also undertakes not to take any unnecessary adjournments.

10. In light of the above, the writ petition is dismissed on the ground of alternative remedy.

(Alok Mathur, J.)

Order Date :- 14.12.2023

Ravi/