

GAHC010119452024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3080/2024

PRANTAJYOTI DAINIK
REPRESENTED BY ITS PROPRIETOR SRI NILOY PAUL, SON OF LATE
SACHINDRA KUMAR PAUL, CHANDICAHARAN ROAD, P.O. AND P.S.
SILCHAR ,DIST. CACHAR, ASSAM, PIN- 788005.

VERSUS

THE EMPLOYEES STATE INSURANCE CORPORATION AND 3 ORS
REPRESENTED BY REGIONAL DIRECTOR, ESIC, ADDRESS- PANCHDEEP
BHAWAN, REGIONAL OFFICE, N.E. REGION, BAMUNIMAIDAM, GHY-
781021.

2:THE ASSISTANT DIRECTOR/ DEPUTY DIRECTOR/
AUTHORIZED OFFICER
EMPLOYEES STATE INSURANCE CORPORATION REGIONAL OFFICE
PANCHDEEP BHAWAN
REGIONAL OFFICE
N.E. REGION
BAMUNIMAIDAM
GHY-781021.

3:THE RECOVERY OFFICER
EMPLOYEES STATE INSURANCE CORPORATION
REGIONAL OFFICE
ESIC PANCHDEEP BHAWAN
REGIONAL OFFICE
BAMUNIMAIDAM
GHY-781021.

4:MONISH DAS
S/O- LATE MONINDRA RANJAN DAS
R/O- PUBLIC SCHOOL ROAD
P.O. AND P.S. SILCHAR
PIN- 788005

Advocate for the Petitioner : MR. A BHATTACHARYA

Advocate for the Respondent : SC, ESIC

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 14.06.2024

Heard Mr. S. C. Keyal, learned counsel for the petitioner, who submits that the impugned order dated 27.07.2022 issued under Section 45A of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'ESI Act, 1948'), directing the petitioner to make contribution totaling Rs. 14,58,988/- only for the period from July, 2017 to January, 2021 should be set aside along with the certificate dated 11.10.2022 sent to the Recovery Officer, ESI Corporation, Guwahati. The petitioner has also prayed for setting aside the demand made for Rs. 20,40,642/- issued by the Recovery Officer, ESIC NE Region, issued vide form dated 17.10.2022. As the petitioner did not comply with the above orders and certificates, his bank account in SBI, Axis, IndusInd Bank and Canara Bank has been freezed and Rs. 6 Lakhs have been withdrawn by the respondents.

2. The petitioner's counsel submits that the petitioner has to pay his employees around Rs. 8 Lakh salary per month. As he has not paid their salary for three months from April, 2024, his bank account may be defreezed, so that he can pay his employees. He further submits that though there is an alternative remedy available to the petitioner by approaching the Employees Insurance Court, in terms of Section 75 of the ESI Act, 1948, there is no

Presiding Officer in the ECI Court since March, 2024 and as such, the petitioner has approached this Court.

3. On the other hand, Mr. M. Smith, learned counsel for the respondent Nos. 1, 2 & 3 submits that an alternative remedy is available to the petitioner by exercising the options under Section 45AA or Section 75 of the ECI Act, 1948. He accordingly submits that as an order under Section 45A can be put to challenge by way of an appeal before the Appellate Authority under Section 45AA, the petitioner should be directed to approach the Appellate Authority.

4. On hearing the learned counsels for the parties, it would be apposite to refer to Section 45AA, which is as follows:-

*“**45AA. Appellate authority.** If an employer is not satisfied with the order referred to in section 45A, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of such order after depositing twenty-five per cent.”*

5. The above provision clearly shows that there is an alternative remedy available to the petitioner, besides Section 75 of the ECI Act, 1948.

6. In the case of ***Harbanslal Sahnia & Anr. Vs. Indian Oil Corpn. Ltd. & Ors.***, reported in ***(2003) 2 SCC 107***, the Supreme Court has held that in spite of availability of alternative remedy, the High Court may still exercise its jurisdiction in at least 3 contingencies:-(i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged.

7. In view of the present case not coming within the 3 contingencies laid down by the Supreme Court in ***Harbanslal Sahnia (Supra)***, this Court is of

the view that the writ proceedings should not proceed any further, as there is an alternative remedy available. Accordingly, the petitioner should approach the Appellate Authority under Section 45AA of the ECI Act, 1948, as that is an alternative statutory remedy. However, as the appeal would be beyond the period of limitation provided under Section 45AA, the Appellate Authority should take a lenient view of any condonation delay application that the petitioner may file, keeping in view the fact that the Employees Insurance Court is not session, due to there being no Presiding Officer since March, 2024, as stated by the petitioner.

8. Accordingly, the writ petition is dismissed, with liberty being given to the petitioner to approach the Appellate Authority under Section 45AA of the ECI Act, 1948.

JUDGE

Comparing Assistant