

GAHC010260602019



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

Case No. : WP(C)/7863/2019

NARAYAN PRASAD CHOKHANI
S/O- SRI PURUSHOTTAM DAS CHOKHANI, J B ENTERPRISES BUILDING
NEAR HANUMAN TOWER, S J ROAD, ATHGAON, GUWAHATI- 781001, DIST-
KAMRUP(M), ASSAM

VERSUS

THE REGIONAL DIRECTOR, EMPLOYEES STATE INSURANCE
CORPORATION AND 2 ORS
ESIC, BAMUNIMAIDAN, GUWAHATI- 21, ASSAM

2:THE ASSISTANT DIRECTOR (REVENUE)
ESIC
BAMUNIMAIDAN
GUWAHATI- 21
ASSAM

3:THE ASSISTANT DIRECTOR (INSURANCE)
ESIC
BAMUNIMAIDAN
GUWAHATI- 21
ASSA

Advocate for the Petitioner : MR. A R SHOME

Advocate for the Respondent : SC, ESIC

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

01-05-2024

Heard Shri A. R. Shome, learned counsel for the petitioner. Also heard Shri M. Smith, learned Standing Counsel, ESIC appearing for all the respondents.

2. Considering the facts and circumstances and also that this writ petition is pending since the year 2019, the same is taken up for disposal at the admission stage.

3. The petitioner has put to challenge an order dated 16.09.2019 passed by the Regional Director, ESIC, North-East Region whereby the representation of the petitioner submitted pursuant to an earlier direction of this Court has been rejected.

4. The facts, as projected are that the petitioner is the proprietor of M/s the Wardrobe which is at Police Bazar. Shillong. Vide communication dated 24.08.2016, a demand was made by the respondent Corporation for payment of the contribution for the period of July 2013 to July 2016 which was followed by further demands. The consistent case of the petitioner as indicated in his representation is that he had never employed 10 or more employees and therefore he would not come within the ambit of the ***Employee's State Insurance Act, 1948*** (hereinafter call the Act). At that stage, the petitioner had earlier approached this Court by filing WP(C) No. 4795/2019 which was disposed of vide an order dated 19.07.2019 with a direction to consider the representation of the petitioner. Vide the order dated 16.09.2019, the representation has been rejected. The said order is the subject matter of

challenge in this petition.

5. Shri Shome, the learned counsel for the petitioner has submitted that prior to the rejection, no proper opportunity was granted to the petitioner to make his submissions as he was not personally heard.

6. The petitioner was also deprived of an opportunity to produce the relevant records towards his claim that at no point of time, he had employed 10 or more employees. He has submitted that the statement made by the Manager is not correct and based upon that, the impugned rejection order has been passed.

7 *Per contra*, Shri Smith, the learned Standing Counsel has submitted that the issue involved are issues of facts which are disputed by the Corporation. It is submitted that there are materials to show that in the year 2013 itself, the proprietorship concerned was brought under the ambit of the Act by allotting a number and on proper inspection, the number of employees were found to be more than 10 and therefore the demand is justified. He further submits that there is a mechanism in the Act itself for redressal of grievances of this nature. He accordingly submits that this writ petition is not liable to be entertained and should be dismissed.

8. To appreciate the rival contentions, this Court has taken the recourse to the Act of 1948. Under Section 75, a dispute redressal mechanism has been laid down to be decided by the Employee's Insurance Court and amongst the matters which can be adjudicated, the same includes any matters which is a dispute between a principal employer and the Corporation. In the instant case, it appears that the dispute is between the employer and the Corporation more particularly on the aspect of applicability of the Act and the same would come

within the ambit of an adjudication process under the aforesaid provision of law. In any case, the issue raised involves disputed questions of fact which cannot otherwise also be adjudicated by this Court in exercise of powers under Article 226 of the Constitution of India. The Act further provides an appellate forum in the form of Section 82 wherein the High Court has been prescribed to be the Appellate Court.

9. In view of the aforesaid facts and circumstances and the statutory provision, this Court is of the opinion that there is no requirement to delve into the facts of the case and the rival submissions on the said facts. The appropriate mechanism for adjudication of such disputes being provided in the Act itself, this writ petition is disposed of with liberty to the petitioner to approach the appropriate Employee's Insurance Court as provided under Section 75 of the Act.

10. Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant