

Court No. - 5

Case :- WRIT - C No. - 11370 of 2023

Petitioner :- M/S Vani Systems Pvt. Ltd. Thru. Managing Director Sri Rajiv Shukla

Respondent :- Employee State Insurance Corporation Thru. Deputy Director Sub Regional Office, Esic Lko. And 2 Ors.

Counsel for Petitioner :- Mohd. Ateeq Khan

Counsel for Respondent :- Mayankar Singh

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner and Shri Mayankar Singh, learned counsel for all the respondents.

2. With the consent of learned counsel appearing for the contesting parties, the writ petition is being finally decided.

3. Under challenge is the order dated 11.12.2023, a copy of which is annexure 1 to the petition, passed by the respondent no.3 by which the prohibition has been placed on the bank account of the petitioner on the ground that an amount of Rs.2,26,00,000/- and odd is payable by the petitioner company, which has not been paid and consequently, the said amount be handed over to the ESIC official or sent by registered post by DD in favour of ESI Fund Account.

4. The brief facts of the case as set forth by learned counsel for the petitioner are that the petitioner is a company. On 02.04.2018, a notice was issued to the petitioner company under Section 39 read with Section 40 of the Employees' State Insurance Act, 1948 (hereinafter referred to as "Act, 1948"), a copy of which is annexure 2 to the petition, for not having deposited the contribution towards its employees. The petitioner claims to have submitted his reply which did not find favour with the competent authority, who vide order dated 26.08.2018

passed an order under Section 45A of the Act, 1948 requiring the petitioner to pay an amount of Rs.58 Lacs and odd. The said order was challenged by the petitioner by filing **Writ Petition No.37140(M/S) of 2018 in Re: Vani Systems Pvt. Ltd. Lucknow Vs. Employees State Insurance Corporation & Anr.** and this Court vide judgment and order dated 21.12.2018, a copy of which is annexure 3 to the petition, set aside the order subject to the petitioner depositing an amount of Rs.3,00,000/- with the respondent no.2 and the competent authority was required to pass a fresh order.

5. In pursuance of the order of the writ Court, the competent authority vide order dated 29.03.2019 (page 115 of the writ petition) again passed an order under Section 45A of the Act, 1948 per which an amount of Rs.1 Crore and odd was required to be paid by the petitioner.

6. The petitioner, being aggrieved, filed a **Writ Petition No.15364(M/S) of 2019 in Re: M/s Vani Systems P. Ltd. Vs. Employees State Insurance Corp. & Anr.** and this Court vide judgment and order dated 30.05.2019, a copy of which is annexure 5 to the petition, disposed of the writ petition considering that the petitioner had a statutory remedy under Section 45AA of the Act, 1948 and left it open to the petitioner to file an appeal before the appropriate appellate authority after deposit of Rs.10 Lacs.

7. Learned counsel for the petitioner claims that the aforesaid amount was deposited and an appeal was filed before the appellate authority which was dismissed vide order dated 28.08.2019, a copy of which is annexure 6 to the petition.

8. The petitioner again being aggrieved, filed a **Writ Petition No.28164(M/S) of 2019 in Re: M/s Vani Systems Pvt. Ltd.,**

Lucknow Vs. Union of India & Ors. This Court vide judgment and order dated 19.10.2019, a copy of which is annexure 7 to the petition, allowed the petition and the matter was remitted to the appellate authority to pass a fresh order.

9. Subsequent thereto, the appellate court vide order dated 20.03.2020 (page 64 of the writ petition) dismissed the appeal filed by the petitioner.

10. The petitioner again filed a **Writ Petition No.25625(M/S) of 2020 in Re: M/s Vani Systems Pvt. Ltd. Vs. Union of India & Ors.** and this court vide judgment and order dated 18.12.2020, a copy of which is annexure 8 to the petition, considering that the petitioner has a statutory remedy available under Section 75(1)(g) of the Act, 1948, dismissed the petition on the ground of statutory alternate remedy.

11. In pursuance thereof, the petitioner claims to have filed an application under Section 75(1)(g) of the Act, 1948 in December, 2020 along with an application for stay.

12. The application for stay was rejected by the competent court vide order dated 18.04.2023, a copy of which is annexure 13 to the petition.

13. Subsequent thereto, the order impugned dated 11.12.2023, a copy of which is annexure 1 to the petition, has been passed whereby a prohibition and restraint has been imposed on the bank account of the petitioner as the petitioner has failed to pay an amount of Rs.2,80,36,324/- and the amount has been directed to be handed over to the ESIC official or to be sent by registered post by DD in favour of ESI Fund Account.

14. Being aggrieved, the instant petition has been filed.

15. The grounds raised by the learned counsel for the petitioner for raising a challenge to the order impugned are that (a) no restraint order can be passed against the Director of the company and (b) when the liability has been disputed by the petitioner company, consequently without adjudicating the same, the order impugned could not have been passed.

16. Apart from the above, learned counsel for the petitioner also argues that the petitioner has filed an application under sub-section (2-B) of Section 75 of the Act, 1948 praying for exemption from depositing of 50% of the amount which is required to be deposited by him and is a sine qua non to an application being filed under Section 75 of the Act, 1948 and for being entertained.

17. On the other hand, Shri Mayankar Singh, learned counsel appearing for the respondents states that the instant petition is nothing but an attempt to forestall the recovery that has been initiated against the petitioner company inasmuch as, the petitioner has failed repeatedly to get any relief either from this Court or from the competent authority and when his application under Section 75 of the Act, 1948 is pending for consideration before the competent authority and in case any recovery proceedings have been initiated against the petitioner company, it is always open for the petitioner to approach the authority before which the application is pending and there cannot be any occasion of the initial order being challenged before the court concerned and the recovery order being challenged before this Court. It is thus prayed that the writ petition deserves to be dismissed being an abuse of the process of the law.

18. Heard the learned counsel for the parties and have perused the records.

19. From perusal of record, it emerges that admittedly an order under Section 45A of the Act, 1948 has been passed against the petitioner on 29.03.2019 against which an appeal was filed by the petitioner under Section 45AA of the Act, 1948 which has been dismissed on 28.08.2019. The petitioner, being aggrieved by the said order, has approached this Court and this Court, vide judgment and order dated 19.10.2019, had set aside the appellate order and required the appellate authority to decide the appeal afresh. The appeal was rejected vide order dated 20.03.2020 and the writ petition filed against the said order was dismissed on 18.12.2020 relegating the petitioner to the statutory remedy of filing an application under Section 75 of the Act, 1948 available to him.

20. Admittedly, the petitioner has also filed an application under Section 75(g) of the Act, 1948 which is pending for consideration before the authority concerned.

21. The sine qua non of an application under Section 75(g) of the Act, 1948 is deposit of 50% of the amount as provided under Sub-section (2-B) of Section 75 of the Act, 1948. Admittedly, despite the application under Section 75(g) of the Act, 1948 having being filed in December, 2020 by the petitioner, the amount as provided under Sub-section (2-B) of Section 75 of the Act, 1948 was not deposited by the petitioner although there is proviso to Sub-section (2-B) of Section 75 of the Act, 1948 which provides that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section. The petitioner in his own wisdom chose not to file an application for waiver from depositing the requisite 50% of the amount while filing an application under Section 75(g) of the Act, 1948 i.e. in December, 2020 rather, as per the statement of the learned

counsel for the petitioner, an application under the proviso of Sub-section (2-B) of Section 75 of the Act, 1948 has been filed on 10.07.2023 which has been numbered as Application No.14Ga and was directed to come up on various dates of which last date was 08.01.2024. Learned counsel for the petitioner is unable to indicate as to what has transpired on the date fixed.

22. Be that as it may, the fact of the matter remains that orders under Section 45A, 45AA of the Act, 1948 have already been passed against the petitioner which all have been challenged by filing appropriate application under Section 75(g) of the Act, 1948 and the said application is pending before the Court concerned.

23. Incidentally, the stay application filed by the petitioner company in the application under 75(g) of the Act, 1948 was rejected vide order dated 18.04.2023 (page 176 of the petition) solely on the ground that as the petitioner has failed to deposit the amount of 50% of the amount as indicated in the order. Once Sub-section (2-B) of Section 75 of the Act, 1948 makes deposit of 50% of the disputed amount to be a prerequisite, consequently the court below did not err in rejecting the stay application of the petitioner.

24. All the aforesaid facts, as have been enumerated by this Court, go a long way to indicate that every attempt has been made by the petitioner company to escape from its liability from payment of the amounts as due to the petitioner company despite final orders having being passed by the authorities concerned under Sections 45A and 45AA of the Act, 1948. The careless and cavalier attitude on the part of the petitioner company would also be apparent from the fact that despite the writ petition filed against the order under Section 45AA of the

Act, 1948 having been dismissed by this Court vide judgment and order dated 18.12.2020 on the ground of statutory alternate remedy being available to the petitioner of filing an appropriate application under Section 75 of the Act, 1948 which, as already indicated above, requires a deposit of 50% of the disputed amount to be deposited as provided under Sub-section (2-B) of Section 75 of the Act, 1948 and the application itself having been filed on December, 2020, it took the petitioner more than two and a half years to file an application seeking exemption from depositing the said amount which was filed on 10.07.2023. All these facts clearly indicate the abuse of process of the Court.

25. Keeping in view of the aforesaid discussion, no ground for interference in the order impugned dated 11.12.2023 is made out. The writ petition is **dismissed**.

26. Without prejudice to the above, it is open to the court below to decide the application of the petitioner filed under the provision of Sub-section (2-B) of Section 75 of the Act, 1948.

Order Date :- 10.1.2024
S. Shivhare