

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.425 of 2016

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Ramdeo Singh Yadav Science College, Code No. 42000046280001303 through its Principal Sri Awadhesh Prasad Yadav, situated at Intermediate Section, Khoja Bazar, Munger - 811201.

.... Petitioner

Versus

1. Employees State Insurance Corporation, a body corporate established under the Employees State Insurance Act, 1948 through its Chairman having its office at Panchdeep Bhawan, Jawaharlal Nehru Marg, Patna - 800001.
2. Dy. Director-cum-Authorized Officer, Employees State Insurance Corporation, Panchdeep Bhawan, Jawaharlal Nehru Marg, Patna - 800001.
3. Regional Director, Employees State Insurance Corporation Regional Office: Bihar, Panchdeep Bhawan, Jawaharlal Nehru Marg, Patna - 800001.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan Prasad, Adv.
Mr. Nilanjan Chatterjee, Adv.
Mr. Sanjeev Kumar, Adv.
For the Respondent/s : Dr. Anshuman, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 02-12-2016

Heard Mr. Nilanjan Chatterjee, learned counsel for the petitioner, who appears alongwith Mr. Rajiv Ranjan Prasad, and Dr. Anshuman, learned counsel for the Employees State Insurance Corporation.

The petitioner is aggrieved by the order dated 30.9.2015 of the Regional Director, Employees State Insurance Corporation, (hereinafter referred to as 'the Corporation'), whereby his appeal has been dismissed on grounds of limitation. The appeal fees deposited by the petitioner through cheque No. UMB741966 dated 19.8.2015 for Rs.6420/- has also been returned to the petitioner. Copy of the order



and the photo copy of the demand draft form part of Annexure 4.

Mr. Chatterjee, learned counsel for the petitioner, while questioning the order dated 30.9.2015 has submitted that the order under appeal was passed by the Deputy Director as the authorized officer under the Employees State Insurance Act, 1948 (hereinafter referred to as 'the Act') on 26.6.2015 but was dispatched only on 2.7.2015, which is manifest from the envelop, a copy of which has been placed on record at Annexure 3, which clearly shows its date of dispatch as 2.7.2015. It is submitted that the said order reached the petitioner only on 9.7.2015 and within 60 days of its receipt, that the appeal in question was filed by the petitioner on 7.9.2015, which is mentioned in the order under challenge, impugned at Annexure 4. It is, thus, submitted by the learned counsel for the petitioner that the delay whatsoever is attributable to the delay in dispatch by the original authority and for which the petitioner cannot be blamed because he has filed the appeal within 60 days of the receipt of the order in tune with the provisions underlying Section 45AA of 'the Act'.

Learned counsel for the petitioner has relied upon a judgment of the Supreme Court since reported in AIR 1996 SC 92 (**Housing Board, Haryana v. Housing Board Colony Welfare Association & ors.**) to submit that the Supreme Court in



consideration of the similar provisions present in the Consumer Protection Act, 1986, has held that starting point for limitation, would be a date on which an order reaches the aggrieved party.

Mr. Anshuman, learned counsel for the Corporation, while not disputing the issue on facts, submits that the appellate authority being bound by the statutory provisions has proceeded to pass the order.

I have heard the learned counsel for the parties and have perused the records.

No doubt, the statutory provisions underlying Section 45AA of 'the Act' prescribes a limitation period of 60 days from the order but the limitation so prescribed under the statutory provisions has to be given a purposeful construction. Admittedly, the records confirm that the order under challenge was dispatched by the authority only on 2.7.2015 and it is the statement of the petitioner that it reached him on 9.7.2015 within a week thereafter. The appeal was filed within the period of 60 days since its receipt on 7.9.2015. In my opinion, the Regional Director has got swayed on hyper technicality of the statutory provisions, to dismiss the appeal on limitation. May be the appeal should have accompanied limitation for condonation of delay but in the circumstances so discussed, it is not a case for rejection of the appeal out rightly on limitation in view of the position explained



by the Apex Court in the judgment relied upon by learned counsel for the petitioner.

In the circumstances so discussed, the order dated 30.9.2015 of the Regional Director is quashed and set aside. The appeal is restored to its file. The petitioner is directed to file an application for condonation of delay, which should be filed within a week of receipt of a copy of this order and whereupon the Regional Director shall consider and dispose of the appeal on merits, in accordance with law and after opportunity of hearing to the petitioner, expeditiously and preferably within six weeks from the date of receipt/ production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08-12-2016
Transmission Date	NA

