

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION No.29991 of 2016

ORDER:

Vide the present petition, the petitioner questions the order of respondent No.2 dated 03.02.2016 directing to pay Rs.18,01,800/- towards arrears of contribution for the period November, 2012 to April, 2015 under Section 45-A of the Employees State Insurance Act, 1948.

It is stated in the petition that the petitioner shifted his business to plot No.14, III Floor, Soma Enclave, Deendayal Nagar, Neredmet, Hyderabad, since 01.04.2010. Respondents being aware of the same, however, not issued any notice to the petitioner, as is evident from the impugned order dated 03.02.2016. Thus there is violation of principles of natural justice as no opportunity was afforded to the petitioner while passing the impugned order.

I have perused the impugned order. It is stated in the show cause notice that the employer was afforded an opportunity to represent his case in person at the time of personal hearing on 13.11.2015 and to submit a statement of contributions due actually as per their records. It is further stated that notices were sent by the registered post with acknowledgment due. The employer received notice as per postal acknowledgment on the file but he did not respond to the same nor he paid any contributions for the period mentioned in the notice. However, the employer was afforded

one more opportunity of personal hearing on 28.01.2016 vide office letter dated 05.01.2016. Notice was also sent by the registered post with acknowledgment due. The employer neither responded to the notice nor paid any contributions for the period till this day as per available information in the records.

I note the aforesaid copy was sent to Shri K.Surendra Reddy, Proprietor of P.R.R.Services. It is stated that the said K.Surendra Reddy is not available. The address of the petitioner is mentioned as plot No.22, Sai Ram Enclave, Deendayal Nagar, Neredmet, Hyderabad. Whereas the petitioner shifted his business to plot No.14, III Floor, Soma Enclave, Deendayal Nagar, Neredmet, Hyderabad, in the year 2010. The correct address of the petitioner is very much available with the respondents.

Be that as it may, the order dated 03.02.2016 is appealable under Section 45AA of the Act. As stated by the counsel for the petitioner, his business was closed from November, 2012, as is evident from the letter dated 15.10.2012 issued by the Aramax India Private Limited. In the said letter, it was stated that the contract of the petitioner was terminated and the final date of contract would be 30.10.2012.

Learned counsel for the petitioner submits that, as there is violation of principles of natural justice, the petitioner is not liable to pay the demanded amount. If the matter is

remitted to the appellate authority, the petitioner has to deposit 25% of the demanded amount.

Sri B.G.Ravinder Reddy, learned Standing Counsel for Employees State Insurance Corporation, on advance notice, submits that the impugned order dated 03.02.2016 is passed by the authorized officer under the Employees State Insurance Act, 1948 (respondent No.2) and, as against the order passed by the authority, an appeal lies to the appellate authority under Section 45AA of the Employees State Insurance Act, 1948 (for short 'the Act').

Keeping in view the averments in the petition, and the submissions of the parties, since an appeal lies to the appellate authority as against the impugned order, the petitioner is directed to approach the appellate authority, under Section 45AA of the Act, within two weeks from today. The appellate authority shall, however, decide the appeal without insisting to deposit the amount under Section 45AA of the Act.

The respondents shall not take coercive steps against the petitioner till the decision is rendered by the appellate authority.

Needless to state that, if the appellate authority comes to the conclusion that the petitioner was served with show cause notice, and there is no violation of principles of natural justice, respondents are at liberty to recover the amount as per law.

In view of the above directions, Writ Petition stands disposed of.

Miscellaneous Petition pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

SURESH KUMAR KAIT, J

Dt:07.09.2016
Note:CC three days
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