

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5305 of 2015

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1. Shantiniketan Awasiya Bal Vidyalaya, Aiyapur, Muzaffarpur- 842001 through its Chairman

2. Kumar Deepankar, S/o Late Dr. M.L. Das, Resident of C/o Shantiniketan Awasiya Bal Vidyalaya, Aiyapur, Muzaffarpur- 842001.

.... Petitioners

Versus

1. Regional Director, Employee's State Insurance Corporation, Panchdeep Bhawan Bailey Road, (J.N. Marg), Opp. C.R. Building, Patna-800001.

2. Deputy Director, Employee's State Insurance Corporation, Panchdeep Bhawan, Baily Road, (J.N. Marg), opp. C.R. Building, Patna-800001.

3. Revenue Recovery Officer, Employee's State Insurance Corporation, Panchdeep Bhawan, Bailey Raod, (J.N. Marg), Opp. C.R. Building, Patna-800001.

4. Branch Manager, Muzaffarpur Branch Office, Employee's State Insurance Corporation, Behind S.B.I. Bhagwanpur, Muzaffatpur- 842001.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Choudhary, Advocate
Mr. Akshansh Ankit, Advocate

For the Respondent-ESIC: Dr. Anshuman

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-02-2017

The present writ application has been filed on behalf of the petitioners for quashing the show cause notice as contained in C18-Adhoc dated 27.08.2014 (Annexure-1 to the present application) as well as notice as contained in Letter dated



05.11.2014 (Annexure-2 to the present application) issued by the Deputy Director, Employees' State Insurance Corporation (for short 'ESIC'), Patna whereby the petitioner school was asked to show cause for the alleged non-compliance of the Employees' State Insurance Act, 1948 (for short 'ESI Act') for the period 2009-2014. Further, a prayer has been made to set aside the remittance order as contained in Letter dated 16.02.2015 issued by the Revenue Recovery Officer, ESIC whereby and whereunder a sum of Rs.15,34,915/- has been recovered from the bank account of the petitioner school.

2. In the counter affidavit filed on behalf of the respondent-ESIC a preliminary objection has been raised regarding maintainability of the writ petition as the petitioners have not exhausted the statutory remedies provided under the ESI Act for the redressal of their grievances.

3. Countering the contentions raised in the counter affidavit filed on behalf of the ESIC, learned counsel for the petitioners submitted that the order dated 31.03.2014 passed by the Deputy Director under Section 45-A of the ESI Act is grossly in violation of the principle of natural justice and the statutory provisions prescribed under the Act and, hence, there would be no bar in entertaining the application under writ jurisdiction.



4. In reply, learned counsel for the respondents-ESIC submitted that there is no truth behind the allegation that the statutory provisions were not complied with before passing the order dated 31.03.2014 whereby arrears of contribution payable by the employer in respect of claim has been determined against the petitioner. He submitted that there is nothing on record on the basis of which it can be said that the principle of natural justice was not followed before passing the order against the petitioner school under Section 45-A of the ESI Act.

5. I have heard learned counsel for the parties and perused the record.

6. I find substance in the argument of the learned counsel for the respondents-ESIC.

7. The petitioners have a remedy of appeal under Section 45-AA and thereafter remedy lies under Section 75 of the ESI Act before the Employees Insurance Court against an order passed under Section 45-A of the ESI Act.

8. The statutory provisions prescribed under Section 45A and 75 of the ESI Act is reproduced hereunder for ready reference:-

“45A. Determination of contributions in certain cases.-

(1) Where in respect of a factory or



establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any Social Security Officer or other official of the Corporation referred to in sub-section (2) of section 45 is prevented in any manner by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment:

Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.

Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable.

(2) An order made by the Corporation under sub-section (1) shall be sufficient proof of the claim of the Corporation under section 75 or for recovery of the amount determined by such order as an arrear of land revenue under section 45-B or the recovery under section 45-C to section 45-I.



75. Matters to be decided by Employees' Insurance Court.-

(1) If any question or dispute arises as to-

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act, or

(c) the rate of contribution payable by a principal employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

(ee) any direction issued by the Corporation under section 55-A on a review of any payment of dependants' benefit, or

[***]

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court



under this Act, such question or dispute subject to the provisions of sub-section (2-A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (2-A), the following claims shall be decided by the Employees' Insurance Court, namely:-

(a) claim for the recovery of contributions from the principal employer;

(b) claim by a principal employer to recover contributions from any immediate employer;

[***]

(d) claim against a principal employer under section 68;

(e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and

(f) any claim for the recovery of any benefit admissible under this Act.

(2-A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by



this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of section 54-A in which case the Employees' Insurance Court may itself determine all the issues arising before it.

(2-B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation:

Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court”.

9. True, it is that despite the existence of an alternative remedy it is within the jurisdiction of this Court to grant



relief under Article 226 of the Constitution, but it is equally well settled law that normally the High Court should not exercise its extraordinary writ jurisdiction if there is an adequate and efficacious alternative remedy.

10. In **State of Himachal Pradesh & Ors. vs. Gujarat Ambuja Cement Ltd. and Anr.** [AIR 2005 SC 3936], the Supreme Court held: *“it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy”*.

11. In **Sheela Devi vs. Jaspal Singh** [(1999) 1 SCC 209] and **Punjab National Bank vs. O.C. Krishnan and Ors.** [(2001) 6 SCC 569], the Hon’ble Supreme Court held: *“where hierarchy of appeals is provided by the Statute, party must exhaust the statutory remedies before resorting to writ jurisdiction”*. It further held: *“if somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction”*.

12. In **K.S. Rashid and Son vs. Income-tax Investigation Commission and others** [AIR 1954 SC 207], the Supreme Court held that Article 226 of the Constitution confers on



all the High Courts a very wide powers in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

13. In the present case, after hearing the parties and on examination of the record, I am of the opinion that it is not a case in which it can be said that principle of natural justice has been violated or procedure required has not been adopted before passing of the order under Section 45A of the ESI Act.

14. Under the circumstances noted above, in view of availability of an equally efficacious statutory remedy to the petitioners for the redressal of their grievances, I am not inclined to entertain the present application under extraordinary writ jurisdiction.

15. Accordingly, the writ application is disposed of with liberty to the petitioners to approach the appellate authority prescribed under Section 45-AA of the ESI Act, 1948. In case such an appeal is filed before the appellate authority within four weeks



from today, the appellate authority shall condone the delay in filing
the appeal and decide the same on merits in accordance with law.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.03.2017
Transmission Date	NA

