

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1851 of 2019

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1. Bani Fatima Muslim Welfare Trust, Gangasagar, Alallpatti, P.O-D.M.C.H Campus, Darbhanga-846003 through its Secretary,namely Dr. Nasreen Nawab
 2. Woodbine Modern School, Gangasagar, Alallpatti, P.O-D.M.C.H Campus, Darbhanga-846003 through its Principal,namely Dr. Nasreen Nawab

... .. Petitioner/s

Versus

1. Employees State Insurance Corporation, Pachdeep Bhawan, Jawahar Lal Nehru Marg, Patna-800001, Bihar through its Regional Director
2. Regional Director, Employees State Insurance Corporation Pachdeep Bhawan, Jawahar Lal Nehru Marg, Patna-800001, Bihar
3. Authorized officer, Employees State Insurance Corporation, Regional Office(RO- Patna), Pachdeep Bhawan, Jawahar Lal Nehru Marg, Patna-800001, Bihar
4. Recovery Officer Cum- deputy Director, (Recovery), Employees State insurance Corporation Pachdeep Bhawan, Jawahar Lal Nehru Marg, Patna-800001, Bihar
5. Branch Manager, Employees State Insurance Corporation, Branch Office, Darbhanga Bihar
6. Indian Overseas Bank, Kathalbari Branch, Darbhanga through its branch Manager

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 24949 of 2018

Dr. Nasreen Nawab @ Nasreen Nawab, D/o Mohammad Sadiq Ali Khan Alallpatti, Ward No. 27, Ahila, P.O. - D.M.C.H Campus, Dist. - Darbhanga-846003.

... .. Petitioner/s

Versus

1. Employees State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna - 800001, Bihar through its regional director.
2. Regional Director, Employee's State Insurance Corporation. Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna - 800001, Bihar.
3. Authorised Officer, Employees' State Insurance Corporation, Regional OfficeRO - Patna Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna - 800001, Bihar.
4. Recovery Officer-cum-Deputy Director,Recovery, Employees' State Corporation Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna - 800001, Bihar.
5. Branch Manager, Employees' State Insurance Corporation. , Branch Office, Darbhanga.
6. Indian Overseas Bank Kathalbari Branch, Darbhanga through its Branch Manager.

... .. Respondent/s



Appearance :

(In Both the cases)

For the Petitioner/s	:	Mr.Manish Jha, Advocate
For the Respondent/s	:	Mr. S.S. Thakur, Advocate
For I.O.B.	:	Mr. Parijat, Advocate
For ESIC	:	Dr. Anshuman, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 05-02-2019

Heard parties.

Both the petitions are arising from the same order by which the Deputy Director-cum-Authorized Officer in exercise of the power under Section 45-A of the E.S.I. Act, 1948 (as amended) has assessed an amount of Rs.6,94,980/- and directed to deposit the same and failure to deposit, the ESI Authority would initiate the proceeding for recovery of the money as provided under the ESI Act.

Learned counsel for the petitioners has taken a plea that they were not given a proper hearing in the matter and after receiving the notice, the petitioners have personally appeared before the Authority. It appears from the order sheet that on 26.02.2015, neither the employer nor his representative did appear before the Authority for personal hearing. However, keeping in view the natural justice, another opportunity was provided on 24.06.2015 communicated vide letter dated 19.05.2015. Again on 24.06.2015 neither the employer nor his representative did appear before the Authority. Thereafter, the amount was assessed as



mentioned above. Counsel for the petitioners submits that petitioner no.2 of CWJC No.1851 of 2019 has sent a letter on 15.06.2015 (Annexure – 4) to the authorized officer mentioning therein that he cannot attend the proceeding before him on 24.06.2015 on the premise that the person, who is conversant with the matter, is suffering from chronic decease and requested to fix another date, but instead of giving time, the authorized officer has passed an ex-parte order.

Counsel for the ESI submits that the order is appealable under Section 45-AA, but in stead of approaching the appellate authority, the petitioners have directly approached this Court.

Having considered the rival contentions of the parties and looking to the facts and circumstances, petitioners sent a letter on 15.06.2015 to the authorized officer informing that the person, who is conversant with the matter, is suffering from chronic decease, but instead of giving time, the authorized officer has passed an ex-parte order, in such situation, in the interest of justice, the order dated 05.08.2015 passed by the Authorized Officer (Annexure – 6) is hereby set aside and the matter is remanded back to the Authorized Officer for fresh hearing under Section 45-A of the Act.



However, this Court directs the petitioners to appear before the Authorized Officer on 28.02.2019 either personally or through their representatives. There is no need to issue any further notice to the petitioners by the respondent authorities.

However, whatever amount has been recovered will be subject to outcome of the proceeding.

In the meantime, till the order is passed by the Authorized Officer under Section 45-A of the Act, the bank account attached will be treated to have been released.

Accordingly, both the petitions are allowed to the aforesaid extent.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	11.02.2019
Transmission Date	N.A.

