**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.22141 of 2019**

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1. M/s Barauni Sahkari Sheet Bhandar Limited Barauni-3, Barauni Deodhi, through its Elected Chairman Sri Krishnadev Jha, aged about 69 years, Gender-Male, Son of Late Ram Pratap Jha, Resident of Vilage- Shokhara 1, Ward No.3, Sograha, P.S.-Barauni, District- Begusarai, Pin-851112, at Present Elected as Chairman of the Managing Committee of the Barauni Sahkari Sheet Bhandar Limited, Begusarai, P.O.-Teghra, P.S.-Teghra, District, District Begusarai, Begusarai-851113 (Bihar).
2. Shri Madan Mohan Singh Son of Late Ram Lakhan Singh Resident of Village-Pattal Bigha, P.O.-Punthal, P.S.-Narhat, District- Nawada. At Present Working as Manager of M/s Barauni Sahkari Sheet Bhandar Limited, Barauni-3, Barauni Deodhi, Begusarai-851113.

... ... Petitioners

Versus

1. The Union Of India Through the Secretary, Ministry of Labor and Employment, Government of India.
2. The Regional Director, the Employee State Insurance Corporation, Ministry of Labor and Employment, Govt. of India, Panchdeep Bhawan, Jawaharlal Nehru Marg, Patna-800001.
3. The Director the Employee State Insurance Corporation, Ministry of Labor and Employment, Govt. of India, Panchdeep Bhawan, Jawaharlal Nehru Marg, Patna- 800001.
4. The Assistant Director the Employee State Insurance Corporation, Ministry of Labor and Employment, Govt. of India, Panchdeep Bhawan, Jawaharlal Nehru Marg, Patna- 800001.
5. The Deputy Director the Employee State Insurance Corporation, Ministry of Labor and Employment, Govt. of India, Panchdeep Bhawan, Jawaharlal Nehru Marg, Patna- 800001.

Respondent 1st Set

6. Amrendra Kumar Son of Late Jangilal Sah, Resident of Village-Mirzapurganj, P.O.-Vidyapati Nagar, District -Samastipur.

... ... Respondent 2nd set

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**Appearance :**

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| For the Petitioner/s | : | Mr. Kaushalesh Choudhary, Adv. |
| For the Respondent/s | : | Mr. Anshuman Singh, CGC |
| For the E.S.I.C. | : | Mr. Sanjay Kumar, Advt. |

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**

**ORAL JUDGMENT**

**Date : 20-01-2020**

Heard learned counsel for the petitioners, learned counsel for the Union of India and learned counsel for the E.S.I.C.

The writ application has been filed seeking a direction for setting aside the order dated 21.01.2019 passed by the Assistant Director of the Employees' State Insurance Corporation (hereinafter referred to as the "E.S.I.C.") directing the petitioner to deposit 2,21,376/- (Rs. Two Lacs Twenty One Thousand Three Hundred Seventy Six only) being the contributions of the temporary employers for the period January 2014 to March, 2018. The direction was to deposit the amount within 60 days from the date of the order. The petitioner complains that the order is without affording the petitioner an opportunity of putting forth his stand in respect of the claim. The said submissions of the petitioner's counsel regarding order being passed without opportunity of hearing, *prima facie*, appears to be incorrect. The impugned order dated 21.01.2019, records that the Manager and one member of the unit appeared in the personal hearing and submitted audited Balance sheet/profit & loss accounts for the financial year 2015-16 to 2017-18. Having done so, they requested an adjournment for producing the remaining records. The hearing was, therefore, adjourned to 24.08.2018. A Clerk of the unit appeared in personal hearing on 24.08.2018 and stated that the Manager was suffering from Cardiac ailment and had been admitted for treatment. He also submitted the Balance sheet and profit and loss account for the financial year 2013-14 and 2014-15 with a request for an adjournment. Again, the matter was adjourned on 28.09.2018. On 28.09.2018 none appeared for the Unit.

The Assistant Director, E.S.I.C., thereafter, has recorded that ample reminders and opportunities were granted. The employer, however, did not produce all the records and only produced the Balance sheet/ profit & loss accounts for the financial years 2013-2014 to 2017-18. The same accounts have been filed with various Tax Authorities and Govt. Departments. Accordingly, the Assistant Director has placed reliance upon the said final accounts to ascertain the figure of salary and wages which are shown to have been paid to the employees. Accordingly, an order has been passed under Section 45-A of the Employees' State Insurance Act, 1948 (for short 'the Act').

The counsel for the petitioner submits that during period for which the petitioner has been saddled with the liability, the unit was leased out to another entity, and as such, the petitioner cannot be held liable for the liability under the Act for the said period.

The learned counsel, representing the Union of India as well as for the E.S.I.C., has drawn the attention of the Court towards Section 93(A) of the Act to submit that even in case of transfer of establishment by sale, gift, lease or licence, the transferor continues to be jointly and severally liable for the dues in respect of any contribution or any other amount payable under this Act in respect of the periods up to the date of such transfer. He submits that in view of such statutory provision the petitioner by setting up a plea of lease cannot escape his liability.

Section 75 of the Act provides for disputes to be decided by the Employees' Insurance Court established under the Act. Section 45AA provides the Appellate Authority for assailing the orders passed under Section 45A. The order dated 21.01.2019 assailed in the instant proceedings itself contains a note that the order was appealable.

The appeal, however, is subject to deposit of the amount prescribed under the Act. The petitioner, therefore, has remedy before the Appellate Authority. The plea that he was not giving an opportunity to present his case and that on account of the Manager of the Unit being ill such remedy could not be availed of substantially is an issue of disputed facts which can be looked into by the Appellate Authority. The other plea also raised by the petitioner unit disputing the liability can also be examined in the statutory appeal. Since the petitioner is yet to avail the remedy of appeal, this Court would refrain from giving any finding on the submissions advanced by the rival parties regarding the enforceability of the liability. The petitioner would be at liberty to avail the statutory remedy of appeal before the Competent Authority as the issue involves examination of disputed questions of fact for which the adequate alternative remedy would be before the Statutory Authority, but in accordance with law.

The writ petition is devoid of the merit and the same is dismissed.

**(Madhuresh Prasad, J)**

shyambihari/-

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | N/A |
| **Uploading Date** | 06/02/2020 |
| **Transmission Date** | N/A |