

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3176 OF 2021

Property Guards Security Services Pvt. Ltd.
Through Subodh Ramdeo Kumar .. Petitioner
vs.
State of Maharashtra and anr. .. Respondent

Mr. V.S. Kapse a/w Anoushka Goyal I/b. Mr. Fast Track Legal for the
Petitioner.

Mr. A.P. Vanarase, AGP for the State-Respondent No.1.

Ms. Seema K. Chopda for Respondent No.2.

CORAM : M.S.KARNIK, J.

DATE : SEPTEMBER 1, 2021

P.C.

Heard learned counsel for the parties.

2. The Petitioner is an employer. According to the ESI Authorities there was failure on the part of the employer to deduct the contribution payable towards the ESI contribution for the period from January 2011 to September 2011. Accordingly, a show cause notice came to be issued to the Petitioner. By the order dated 05.11.2012 an amount of Rs.61,14,859/- was determined as a contribution payable.

3. The Petitioner then by a communication dated 04.01.2013 informed that there was nothing due and payable by the Petitioner as according to them, the evidences to that effect were submitted

to the office. Even in the communication dated 04.01.2013 it was pointed out by the Petitioner that the evidence enclosed would demonstrate that the contribution in fact have been paid by the Petitioner.

4. The Respondent-Corporation initiated proceedings for recovery of the contribution determined and directed the Recovery Officer vide communication dated 29.06.2021 to take necessary steps. With interest, now the Recovery Officer was asked to recover the amount of Rs.1,34,50,464/- from the Petitioner.

5. Learned counsel for the Petitioner submitted that the impugned order is passed totally in breach of the principles of natural justice and that the Petitioner was not heard before passing the order. To support his submission, he relied upon the communication dated 04.01.2013 where a specific contention to this effect was raised. Further, he submitted that the materials produced to show that contributions have been made for the period from January 2011 to September 2011, are not considered. Learned counsel submitted that for a period of eight years, nothing was heard and they were under the impression that the Petitioner will be called for hearing in view of the representation made on 04.01.2013 which is at Exhibit 'I' to the Petition. It is only after the recovery proceedings are initiated and pursuant to a notice dated 29.06.2021, that the Petitioner took steps to file the Petition.

6. Section 45AA of the Employees' State Insurance Act, 1948 ('the said Act' for short) provides for a remedy of an Appeal to an employer not satisfied with the order made under Section 45A. Learned counsel submits that now on account of delay in filing the Appeal, the Appellate Authority may not entertain the Appeal under Section 45AA of the said Act. Moreover, he submits that a phenomenal sum is demanded by way of the recovery notice and if at all the Appeal is filed, the Petitioner will have to deposit twenty-five percent of the contribution demanded, which will be prejudicial to the Petitioner.

7. In my opinion, as the Act provides for a remedy of filing an Appeal under Section 45AA, it is for the Petitioner to approach the Appellate Authority in the first instance which is an equally efficacious remedy. The Petitioner may file an application for condonation of delay which shall obviously be dealt with in accordance with law. As regards the pre-deposit, if permissible, the Petitioner may apply for the waiver of the pre-deposit. Nonetheless, the Petitioner has to resort to the remedy of an Appeal under Section 45AA of the said Act.

8. The period spent in prosecuting the present Petition being bonafide, the Tribunal to sympathetically consider pendency of this Petition and the time spend while considering the question of delay.

9. To enable the Petitioner to file an Appeal under Section 45AA of the said Act and since for almost eight years no steps have been taken for recovery of the amount, as the Petitioner is contending financial hardships apart from the fact that it is the case of the Petitioner that the contributions in fact have been paid but not considered, for a period of four weeks from today, the recovery notice shall not be acted upon. Liberty to the Petitioner to file an Appeal or adopt any appropriate proceedings.

10. Keeping all contentions open, the Writ Petition is disposed of.

(M.S.KARNIK, J.)

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