

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2881 of 2022

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Maa Vindhyaavashni Enterprises, a Proprietorship firm having its office situated at- H/o A.K. Singh, 86 Shoubhagya Sharma Path, Brindavan Colony, Rukanpura, P.O. - B.V College, Town and District - Patna, represented through its Proprietor, namely Roma Mamta, aged about 49 years, gender-female, W/o Rana Ramesh Chandra Singh.

... .. Petitioner/s

Versus

1. Employees State Insurance Corporation Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna - 800001, Bihar through its Regional Director.
2. Regional Director, Employees' State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna - 800001, Bihar.
3. Authorised Officer, Employees' State Insurance Corporation, Regional Office (RO- Patna), Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna - 800001, Bihar.
4. Recovery Officer-cum-Deputy Director, (Recovery), Employees' State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna - 800001, Bihar.
5. Assistant Director, Employees' State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna - 800001, Bihar.
6. Branch Manager, Employees' State Insurance Corporation, Branch office, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Jha, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 09-11-2022

In the instant petition, petitioner has prayed for the following relief/reliefs:

“I. To quash/set aside Order dt. 12.11.2018 (Annexure – 1) passed by the Authorized Officer (Respondent No.3) u/s 45 – A of the ESI Act, 1948 whereby he has



determined Rs. 3,49,099/- (Rupees five lacs forty thousand five hundred and forty-one only) as arrears of contribution payable by the petitioner being the employer for the period of 25 (twenty-five) months between March, 2016 and March, 2018 and to allow the petitioner to present their case before the Authorized Officer and.

II. To direct the Respondent No. 3 to permit the petitioner to present their case and then to examine and assess the actual contribution payable by the petitioner, if any, for the period of 25 (twenty-five) months from March, 2016 to March, 2018 and.

III. To grant any other and further relief(s) as to which this Honourable Court may deem fit and proper in the interest of justice.”

2. The present petition is not maintainable as petitioner has not exhausted remedy of appeal before the appellate authority while invoking Section 45 – AA of Employees’ State Insurance Act, 1948. Apex Court in the case of *State of Jammu and Kashmir V/s. R.K. Zalpuri and others* reported in AIR 2016 SC 3006, Paragraph-20 which is held as under:

“20. Having stated thus, it is useful to refer to a passage from *City and Industrial Development Corporation V/s. Dosu Aardeshir Bhiwandiwalla and others* {(2009) 1 SCC 168}, wherein this Court while



dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) Adjudication of writ petition involves any complex and disputed question of facts and whether they can be satisfactorily resolved;

(b) The petition reveals all material facts;

(c) The petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) Person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) Ex facie barred by any laws of limitation;

(f) Grant of relief is against public policy or barred by any valid law; and host of other factors”

3. One of the principle laid down by the Apex Court in the aforesaid decision is before entertaining a writ petition, Writ Court is required to examine whether writ is maintainable or not or if petitioner has a statutory remedy, whether he has exhausted or not? Perusal of the records, it is crystal clear that the petitioner has not exhausted the remedy of appeal under Section 45 AA of the Employees’ State Insurance Act, 1948.

4. Accordingly, the present petition stands dismissed on the ground that petitioner has not exhausted the statutory remedy.

Underline supplied



5. Dismissal of the present petition would not come in the way of invoking Section 45 AA of Employees’ State Insurance Act, 1948. If such memorandum of appeal is filed before the appellate authority, in that event, appellate authority is hereby directed to take note of Section 14 of the Limitation Act for the purpose of condonation of delay.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	11.11.2022
Transmission Date	

