

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21781 of 2019

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1. Shankar Vastralay through its Proprietor Krishna Murari Kedia, situated at Opposite Pankaj Market, New Market, Saraiyaganj, Muzaffarpur.
 2. Shankar Vastra Bhandar through its proprietor namely Sumitra Devi Kedia, situated at Opposite Pankaj Market, New Market, Saraiyaganj, Muzaffarpur.
 3. Krishna Murari Kedia son of Late B.L. Kedia @ Kedia Banwari Lal resident of Kedia Bhawan, Bank Road, Muzaffarpur.
 4. Sumitra Devi Kedia wife of Late B.L. Kedia @ Kedia Banwari Lal resident of Kedia Bhawan, Bank Road, Muzaffarpur.

... .. Petitioner/s

Versus

1. Employees State Insurance Corporation through the Regional Director, Regional Office, Bihar, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna-800001.
2. The Deputy Director (Authorized Officer), Employees State Insurance Corporation, Regional Office, Bihar, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 800001.
3. The Deputy Director (Recovery Officer), Employees State Insurance Corporation, Regional Office, Bihar, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 800001.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sourendra Pandey,Advocate
For the Respondent/s : Mr.Dr. Anshuman,Advocate

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

Date : 14-10-2022

This matter is heard *via* video conferencing.

In the instant petition, petitioner has prayed the following reliefs:-

"(i) For quashing/setting aside the letter (Form C-18) bearing no. P/4200-15377-0000-1099/97201831 dated 07.09.2018 issued by the Deputy Director, Employees State Insurance Corporation, Regional Office, Bihar (Respondent no.2) whereby and where under the respondent no.2 without carrying out any quasi-judicial proceeding under Section 45A of the Employees



State Insurance Act, 1948 (hereinafter for brevity referred to as the "ESI Act") and without passing any order of assessment as statutorily required by Sub-section (1) of Section 45A of "the ESI Act" straight away demanded payment of alleged ESI contribution dues to the tune of Rs.2,88,745/- for the period 08/2004 to 06/2018 and directed the petitioners to pay the same thereof failing which the respondent no.2 threatened to coercively recover the same under Section 45C to 45I of "the ESI Act" and,

(ii) For quashing/setting aside the letter (Form C-19) bearing no. 42001537700001099/5720191027/407 dated 14.05.2019 issued by the Deputy Director (Authorized Officer), Employees State Insurance Corporation, Regional Office, Bihar, (Respondent no.2) in favour of the Recovery Officer, Employees State Insurance Corporation, Patna (Respondent no. 3) directing to recover the impugned amount of Rs. 288745/- plus interest of Rs 93846/-, totaling to Rs. 382591/- from the petitioners and; the notice of demand bearing no. 42001537700001099/CP/189102 dated 28.05.2019 issued by the Deputy Director (Recovery Officer), Employees State Insurance Corporation, Patna (Respondent no.3) to the petitioners by which the respondent no.3 instituted Certificate Case No. 7642 and directed the petitioners to pay the impugned amount and,

(iii) For quashing/setting aside the prohibitory order contained in letter bearing Reference No. P/R/42001537700001099/7642/RC/19 dated 09.07.2019 issued by the Deputy Director (Recovery Officer), Employees State Insurance Corporation, Regional Office, Bihar, (Respondent no.3) to the Branch Manager, Punjab National Bank, Pankaj Market Branch, Saraiyaganj, Muzaffarpur by which the respondent no.3 attached the Bank Account of the petitioners bearing CA-A/c. No.3048002100018599 and 3048002100000040 directing the Bank to remit the impugned amount with interest to the tune of Rs. 392173/- and,



(iv) For grant of such other relief or relief(s) which the petitioner may be found entitled to."

Under Section 45-AA of the Employees States Insurance Act, 1948. The petitioner has statutory remedy of appeal before the Appellate Authority and without exhausting such remedy he has approached this Court. It is further submitted that material information wrongly taken note off including blood related of the petitioner as a workmen in order to cover particular provision. The same cannot be examined by Writ court without exhausting the remedy of appeal under Section 45-AA. Therefore, the present writ petition is not maintainable in the light of Hon'ble Apex Court decision in the case of **State of Jammu and Kashmir Vs. R.K. Zalpuri and others** reported in **AIR 2016 Supreme Court 3006**. In para 20, it is held as under:-

"20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Others, 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 questions 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.”

Accordingly, the present petition stands disposed off reserving liberty to the petitioner to invoke remedy of appeal. If such appeal is filed, the concerned Appellate Authority is hereby directed to take note off Section 14 of the Limitation Act for the purpose of condonation of delay in filing appeal. Appellate Authority is hereby directed to decide the petitioner's memorandum of appeal to be submitted within a reasonable period of time.

(P. B. Bajanthri, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

