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19.05.2022
Ct. No.10
b.das

WPA 7878 of 2022

Subhash Kumar
Vs.
Union of India & Ors.

Mr. Susanta Kr. Gangopadhyay
Mr. Arun Kr. Chakraborty
Ms. S. Banerjee ...for the petitioner.

Mr. Sayak Ranjan Ganguly
Ms. Srijani Ghosh ...for the respondent No.1.

Mr. S. C. Prasad ...for the ESI Authorities.

Written instructions submitted by the ESI authorities
is taken on record.

The petitioner has pleaded violation of natural
justice. An order under Section 45A of the Employees'
State Insurance Act, 1948 was served on him without
giving him an opportunity of being heard and without any
notice of hearing being served on him. Also, the order
impugned determines contribution for the period from July
2016 to December 2016 and January 2017 to March 2018.

It is submitted on behalf of the petitioner that the
contract for outsourcing of vegetation services between the
petitioner and the Air Force Station, Salua, Kharagpur,
district-Paschim Medinipur was in force from 1st April,
2014 to 30th June, 2016 and the ESI authority could not
have determined the contribution payable by the petitioner

after the said period when the contract was already concluded.

It is evident from the completion certificate issued by the Air Force authority in favour of the petitioner on 7th April, 2022 (annexure P-1 to the writ petition) that the contract of the petitioner with the Air Force was for the period 1st April, 2014 to 30th June, 2016 and there is no document suggesting extension of the said contract.

The ESI authorities have not produced any document to prima facie suggest that notice of hearing under Section 45A of the Act of 1948 was served on the petitioner and the order impugned dated 25th September, 2019 demonstrates that it was passed in the absence of the petitioner.

Therefore, it can be concluded that the petitioner was deprived of an opportunity of hearing before the authority before the order impugned was passed.

It is submitted that the bank account of the petitioner has been attached by the authority pursuant to the said order and a notice to show cause as to why the petitioner shall not be committed to civil prison in execution of the Certificate has been issued to the petitioner on 28th February, 2022/1st March, 2022.

The innocuous prayer of the petitioner is for grant of an opportunity to place his contention before the concerned authority before any order under Section 45A of the 1948 Act is passed.

Upon consideration of the submission made on behalf of the parties and material on record, this Court is of the view that the petitioner should be given an opportunity of being heard before the concerned authority before any order is passed under Section 45A of the 1948 Act and decision taken by the authority on 25th September, 2019 requires reconsideration.

In view of the same, the order impugned dated 25th September, 2019 is set aside. Consequently, the notice dated 28th February, 2022/1st March, 2022 is also set aside.

The bank account of the petitioner be released from attachment, if any, by the ESI authority.

The ESI authorities are directed to serve notice upon the petitioner intimating the date of hearing of the matter and dispose of the matter by a speaking order on merits after giving reasonable opportunity of hearing to the petitioner, who is at liberty to produce all relevant documents before the authority in making his submission before it.

The entire exercise is expected to be completed within the period of three months from the date of communication of this order.

With the above observations and directions this writ petition being WPA 7878 of 2022 is disposed of.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)