

27.09.2022.
Item No.8
Court No.550
Saswata

W.P.A. 15251 of 2022

**Institute of Psychological & Educational Research
(IPER) & Anr.
Versus
Employees' State Insurance Corporation & Ors.**

Mr. Soumya Majumder
Mr. Somnath Naskar
Mr. Ranit Ray

... For the petitioners

Mr. Shiv Chandra Prasad

...For the respondents

Affidavit of service filed in Court is kept with the record.

The present writ application has been filed, inter alia, challenging the orders passed under Section 45A of the Employees' State Insurance Act, 1948 (hereinafter referred to as the 'said Act'). The petitioners say that the petitioner no. 1 was set up in the year 1971 to combine the two fields of disciplines; education and psychology with a research base. It is a voluntary and non-profit organization working for the deprived population at all levels since 1972. Mr. Majumder, learned advocate appearing in support of the aforesaid writ application had raised a jurisdictional issue, inter alia, contending that the petitioner no. 1 is not covered by the said Act.

Drawing the attention of this Court to a notification dated 28th August 2006 published in the Kolkata Gazette, he submits that the said Act was

extended to the classes of the establishment, specified in the schedule annexed to such notification. By referring to the description of establishments, it is submitted that the petitioner no. 1 is neither an educational institution nor a school or college or other institution providing technological or management or legal or management or any other form of education. Consequentially, the provisions of the said Act do not apply to the petitioner no.1. Since, the Act, itself does not apply to the petitioners, the orders passed under Section 45A of the said Act is without jurisdiction and cannot be implemented against the petitioner no.1.

On the aforesaid premise, the petitioners pray for exercise of jurisdiction under Article 226 of the Constitution of India by this Court.

Mr. Majumder further submits that since orders passed under Section 45 of the said Act are nonest, this Court ought to quash the same.

Per contra, Mr. Prasad, learned advocate appearing for the respondents submits that the petitioner no.1 is admittedly covered by the provisions of the said Act. Drawing the attention of this Court to two separate orders, both dated 20th May 2016, passed under Section 45A of the said Act, it is submitted that the Corporation had determined the contributions payable by the petitioner no.1 for the period from 1st April 2011 to 30th April 2012 and from

1st January 2013 to 31st August 2013 and had determined a sum of Rs.43741/- and Rs.26917/- to be the contributions payable by the petitioner no.1 under the said Act for the respective periods.

Mr. Prasad also draws the attention of this Court to a letter dated 27th October 2016, issued by the petitioner no.1 which is at page 67 of the present writ application, to highlight the fact that the petitioner no.1, consequent upon issuance of the orders passed under Section 45A of the said Act and upon issuance of recovery notices, had deposited a sum of Rs.1,46,444/- by way of 5 post dated cheques. The said letter does not raise any jurisdictional issue far less the authority on the part of the respondent/Corporation to determine the liability. The Corporation was well within its jurisdiction and authority to determine the contributions payable by the petitioner no.1 and the decision of the Corporation in the order dated 1st November, 2021 passed under Section 45A of the said Act cannot be faulted.

Despite the fact that the Corporation had determined liability of the petitioners vide its order dated 1st November, 2021 as aforesaid to the extent of Rs.23,02,757/- for the period between September 2016 till March 2021, the petitioners have chosen not to pay a single *naya paisa* in respect of such determination. According to the respondents, there is

an efficacious alternate remedy available to the petitioners in the form of an appeal under Section 45AA of the said Act as also moving the Court constituted under the provisions of the said Act.

Drawing attention of this Court to the page 71 of the writ petition he submits that the petitioner no.1 had submitted to the jurisdiction of the Authority constituted under Section 45AA of the said Act, however, since no pre-deposit was made, no steps were taken on the basis thereof.

In such circumstances, this Court ought not to exercise its extra ordinary jurisdiction and all issues raised by the petitioners can well be decided by the appellate authority constituted under Section 45AA of the said Act, however, without making the pre deposit, as is required under the said Act, the petitioners cannot be entitled to any relief.

Heard the advocates appearing for the respective parties and considered the materials on record.

I find as correctly pointed out by Mr. Prasad that the petitioner no.1 has already submitted an application to the authority constituted under Section 45AA of the said Act, however, no pre-deposit has been made by the petitioners. I am of the view that the issues raised in the present writ application can well be decided by the appellate authority under Section 45AA of the said Act.

There shall be an unconditional order, restraining the respondents from taking any coercive steps against the petitioners for recovery of dues, determined by the respondents, vide order dated 1st November 2021 for a period of 4 weeks from date.

Since, the petitioners had raised a jurisdictional issue, in my opinion, it would be proper to direct the appellate authority constituted under Section 45AA of the said Act to hear out the petitioners' appeal, which is pending before the authorities since 7th January 2022, provided the petitioners makes payment of the 25% of the pre deposit of the amount as determined in the order dated 1st November 2021 passed under Section 45A of the said Act. Such deposit must be made by the petitioners within a period of 4 weeks from date.

In the event, the deposit as aforesaid is made, the appellate authority constituted under Section 45AA of the said Act shall determine the said appeal in accordance with law, by passing a reasoned order after giving an opportunity of hearing to the petitioners.

If the petitioners do not make such deposit, as directed, within the time specified hereinabove, the respondent no.4 shall be at liberty to take appropriate steps for recovery of the amount determined by them

in accordance with law, subject to any right, that the petitioners may have.

With the above observations and/or directions the writ petition being WPA 15251 of 2022 is disposed of.

Since, I have not called for any affidavits, the allegations made in the writ petition are deemed to have been denied by the respondents.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)