

21.09.2022.
Item No.13
Court No.550
Saswata

W.P.A. 16854 of 2022

**Remount Construction & Anr.
Versus
The ESI Corporation & Ors.**

Mr. Anindya Bose
Mr. Nikhil Kumar Gupta

... For the petitioners

Mr. T.K.Chatterjee

...For the respondent nos. 1-3

The present writ application has been filed, inter alia, challenging the order dated 21st January 2021 under Section 45A of the Employees State Insurance Act, 1948 (hereinafter referred to as the 'said Act'). The petitioners also challenged the notices dated 31st March 2022 and 26th June 2022 as also notice dated 24th June 2022.

Mr. Bose, learned advocate appearing in support of the aforesaid writ application submits that the petitioners had participated in a tender process floated by the South Eastern Railways and for that purpose had obtained ESIC registration. Unfortunately, the petitioners could not succeed in the aforesaid tender process and for reason as aforesaid, did not employ any workers for the period from July 2015 to February 2017. It is the petitioners' case that the petitioners had subsequently applied for allotment of registration number, whereupon the ESIC authorities has allotted a different registration number to the petitioners. Such allotment of ESIC number was made on 13th June 2017. It is the petitioners further case that consequent upon allotment and issuance of the registration number in the year 2017, the petitioners by letter dated 15th

November, 2019 had applied for cancellation of the first ESIC code number allotted previously.

Mr. Bose submits that a notice of show cause dated 28th June 2019 was issued for determination to be made under Section 45A of the said Act. The petitioners have participated in such proceeding and had sought for adjournment. Drawing the attention of this Court to the letter dated 18th January 2021, the petitioners submit that the personal hearing was offered by the respondent no.2. However, since the petitioner no.2 was unwell and had fever, he could not attend such hearing. The petitioners had requested the authorities to fix another date of hearing for providing personal hearing to the petitioners. Despite receipt of such communication, the authorities did not consider the petitioners' representation for adjournment and had passed a final order on 21st January 2021.

According to Mr. Bose, the aforesaid order has been passed in violation of the principles of natural justice without taking note of the fact that the petitioner no. 2 was indisposed and could not attend the hearing during the pandemic period. It is further submitted that in furtherance of the aforesaid order, steps are being taken by the authorities for implementing the order passed under Section 45A of the said Act. The aforesaid order is bad in law. No reasonable opportunity of hearing was afforded to the petitioners and as such, the aforesaid order should be set aside and the petitioners should be remanded to the said authority for hearing afresh.

Per contra, Mr. Chatterjee, learned advocate appearing for the respondent nos. 1 to 3 submits that the petitioners were all along kept informed with regard to the adjudication under Section 45A of the said Act. The petitioners were given ample opportunity of hearing. The petitioners did not avail of such opportunity. In any event, it is submitted that there is an appellate authority, as also an Insurance Court, constituted under the said Act and this Hon'ble Court ought not to entertain the present writ application, especially when the petitioners have not bothered to make payment of the contributions determined by them.

It is submitted by Mr. Chatterjee that the petitioners should not be permitted to agitate their grievances without preferring an appeal from the order passed under Section 45A of the said Act.

I have considered the submissions made by the respective parties and the materials on record. The petitioners complain of violation of principles of natural justice, inter alia, on the ground that the petitioners had been denied a reasonable opportunity to represent themselves. The petitioners complain that during the pandemic period, the respondents did not take into consideration the fact that the petitioner no.2 was suffering from fever and despite receipt of the request for affording an opportunity of personal hearing, the order impugned dated 21st January 2021 was passed.

It would, however, appear that the order passed under Section 45A of the said Act is an appealable order.

The authorities, have already determined a sum of Rs.84,728/- as the contribution payable by the petitioners. A perusal of Section 45AA of the said Act, inter alia, provides that *if an employer is not satisfied with the order referred to in Section 45A, he may prefer an appeal* subject to a pre-deposit of 25 % of the contribution so ordered or the contribution as per his own calculations or whichever is higher, with the Corporation.

I am of the opinion that in the fitness of things, it would be appropriate to permit the petitioners to prefer an appeal from the aforesaid order passed under Section 45A of the said Act. As such, I propose to dispose of the present writ application by granting liberty to the petitioners to prefer an appeal under Section 45AA of the said Act on the following terms:

There shall be an unconditional stay of all further proceedings for recovery in respect of determination made by respondent no.2 under Section 45A of the said Act for a period of 4 weeks from date.

The petitioners are directed to deposit a sum of Rs.25,000/- with the respondent no. 1 within a period of 4 weeks from date.

Upon deposit of the aforesaid amount of Rs.25,000/-the notice of attachment dated 24th June 2022 issued under Section 45G of the said Act shall stand quashed.

If the aforesaid deposit is made, the petitioners shall be at liberty to prefer an appeal within a period of 4 weeks, thereafter.

In the event, the deposit is made and the appeal is filed, the interim order passed herein shall continue till disposal of the appeal and the appellate authority constituted under Section 45AA of the said Act, shall hear out and dispose of the appeal, preferred by the petitioners on merits by giving a reasonable opportunity to the petitioners of being heard.

The appellate authority shall also take into consideration the grounds of appeal raised by the petitioners and pass a reasoned order.

In the event, the petitioners does not make the deposit of Rs.25,000/- within the period stipulated above, or does not prefer the appeal within the time, indicated hereinabove, the interim order passed herein shall automatically stand vacated and the respondent no.2 shall be entitled to enforce the aforesaid order subject to any statutory right that the petitioners may have.

With the above observations, the writ petition being WPA 16854 of 2022 is disposed of.

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

All parties shall act on the basis of the server copy of this order duly downloaded from the official *website* of this Court.

(Raja Basu Chowdhury, J.)