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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 16881 of 2022

Kumkum Paul
Vs.
Union of India & Ors.

Mr. Sayan Sinha,
Mr. Stephen Souradip Biswas
.... For the petitioner.

Mr. Himadri Basu,
Mr. Aveek Biswas
... For the Union of India.

Mr. Arindam Maitra
... For the respondent nos. 3 to 5.

On 7th September, 2022, Mr. Maitra, learned advocate appearing for the respondent nos. 3 to 5 had handed over a bunch of documents comprising of 30 pages to demonstrate that the petitioner was kept informed with regard to the pendency of the proceedings under Section 45-A of the Employees' State Insurance Act, 1948 (hereinafter referred to as the said Act). Further hearing of the application was adjourned in order to enable the petitioner to take instructions on the documents submitted by Mr. Maitra.

Today, Mr. Sinha, learned advocate, appearing in support of the aforesaid application submits that although his client had intimation with regard to initiation of proceedings under Section 45-A of the said Act, however, the order passed under Section 45-A of the said Act was not made over to his client. He submits that the aforesaid order dated 15th January, 2021 has come to light only on 7th September, 2022 and 60 days therefrom having not expired, liberty should be afforded to the petitioner to prefer an appeal under Section 45-AA of the said Act by permitting the petitioner to raise all points as may be available to her. Since no order had earlier been made over to the petitioner, the petitioner had no opportunity to challenge the same. He further submits that the petitioner is not carrying on any business and, as such, the authorities had erred in saddling liability on the petitioner. Mr. Sinha further submits that the petitioner is a lady. As such, notices to show cause as to why a warrant of arrest should not be issued against the petitioner, cannot be executed. The same accordingly should be quashed.

In support of the aforesaid contention, Mr. Sinha relies on a recent unreported judgment of this Hon'ble Court in **WPA 13001 of 2022** (**Krishna Sinharay vs. Deputy Director, Employees' State Insurance Corporation & Ors**.).

Mr. Maitra, learned advocate appearing for the respondent nos. 3 to 5, submits that this Hon'ble Court ought not to entertain the present application in exercise of its extra ordinary jurisdiction since an alternative remedy in the form of an appeal under Section 45-AA of the said Act and a right to approach the Employees' State Insurance Court under Section 75 is available with the petitioner. The show-cause notices have been issued for enforcing order passed under Section 45A of the said Act. Hence, no interference can be called for.

Heard the submissions of the learned advocates appearing for the respective parties, it would appear from the documents disclosed by Mr. Maitra that the petitioner was kept informed with regard to the proceedings under Section 45-A of the said Act. The petitioner, however, says that the order passed under Section 45-A of the said Act was never served on her. Without going into such controversy at all, the aforesaid writ application can, however, be disposed of by permitting the petitioner to prefer an appeal under Section 45-AA of the said Act.

I, however, find that the show-cause notices dated $2^{nd}/4^{th}$ May, 2022 and $7^{th}/11^{th}$ July, 2022 by which the petitioner has been directed to show cause as to why a warrant of arrest should not be issued, cannot be executed against the petitioner for the following reasons:-

The aforesaid show-cause notices have been issued for enforcing execution of a certificate and/or for recovery of the amounts payable by the petitioner. From the submission made by Mr. Maitra it would appear that the certificate has been issued to enforce the order passed under Section 45A of the said Act.

It would appear from Section 45 H of the said Act read with the provisions of *second* and *third* schedules of the Income Tax Act 1961 (hereinafter referred to as the Act of 1961) and the Income Tax (certificate proceedings) Rule

1962, as in force from time to time, shall apply with necessary modifications insofar as recovery proceedings under the said Act are concerned.

Part V of *second* schedule of the Act of 1961, deals with the **"*Arrest and Detention Of The Defaulters*"**.

Rule 73 of the *second* schedule of the Act of 1961 provides for issuance of notice to show cause. While Rule 74, of the second schedule of the Act of 1961 provides for hearing. From a conjoint reading of the aforesaid rules it would appear that no order for arrest and detention in civil prison of a defaulter should be made unless Tax Recovery Officer has issued a notice upon the defaulter calling upon him/her to appear.

Rule 81 of the second schedule of the Act of 1961, inter alia, provides as follows:-

"81. Prohibition against arrest of women or minors, etc – The Tax Recovery Officer shall not order the arrest and detention in the civil prison of –

(a) a woman, or
(b) any person who, in his opinion, is minor or of unsound mind".

The show-cause notices dated 2nd/4th May, 2022 and 7th July, 2022/11th July, 2022 have been issued requiring the petitioner to show-cause as to why warrant of arrest should not be issued and why she be not committed in civil prison in execution of the certificate issued under the provisions of the said Act.

The petitioner who is a lady cannot, however, be arrested or detained by the Recovery Officer in civil prison. Since the petitioner cannot be arrested or detained in civil prison, initiation of proceedings for arresting her and sending her to civil prison cannot and does not arise.

A right to prefer an appeal is available under Section 45AA of the said Act. The petitioner claims that the order had come to light only in course of hearing of the writ petition. A perusal of Section 45AA of the said Act requires pre deposit 25% of the contributions so ordered or the contributions as per the petitioner's calculation whichever is higher. From the order passed under Section 45A of the said Act dated 15th January, 2021, it would appear that a sum of Rs. 3,64,650/- (Rupees Three Lakhs Sixty Four Thousand Six Hundred and Fifty) only has been determined towards the contributions due and payable by the petitioner.

In such circumstances as aforesaid, I direct the petitioner to deposit a sum of Rs. 1,00,000/- (Rupees One Lakh) only with the respondent no.3 within four weeks from date.

There shall, however, be an unconditional stay of the recovery proceedings against the petitioner for a period of four weeks from date.

In the event the aforesaid sum as directed above is paid, the same shall be treated as pre-deposit for the purpose of preferring an appeal under Section 45-AA of the said Act. In such event, the petitioner shall be entitled to prefer an appeal from the order dated 15th January, 2021 passed under Section 45A of the said Act within four weeks thereafter and shall be entitled to raise all points are available to her.

If such appeal is filed, the Appellate Authority under Section 45-AA of the said Act shall hear out the aforesaid appeal on merits after giving an opportunity of hearing to the petitioner and dispose of the same by passing a reasoned order. The interim order passed hereinabove shall continue till disposal of the appeal.

In the event, the petitioner does not deposit a sum of Rs.1,00,000/- (Rupees One Lakh) only with the respondent no.3, as directed, the interim order as aforesaid shall stand vacated and the respondent nos. 3 to 5 shall be entitled to enforce the order passed under Section 45-A of the said Act, subject to any statutory right that the petitioner may have.

Since no warrant of arrest can be executed against the petitioner, the show cause notices date 2nd/4th May, 2022 and 7th/11th July, 2022 are quashed.

With the above observations and/or directions the writ petition, being WPA 16881 of 2022 is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)