

28.09.2022.
Item No.5
Court No.550
Saswata

W.P.A. 19073 of 2022

**Yaduka Agrotech Pvt. Ltd.
Versus
Employees' State Insurance Corporation & Ors.**

Mr. Dyutimoy Paul
Mr. A.K.Upadhyay

... For the petitioner

Mr. Shiv Chandra Prasad

...For the ESIC

The petitioner complains that despite preferring an appeal under Section 45AA of the Employees' State Insurance Act, 1948 (hereinafter referred to as the 'said Act'), not only the same has not been disposed but the respondents are taking steps for recovery. Drawing the attention of this Court to pages 32 and 33 of the writ application, Mr. Paul, learned advocate appearing for the petitioner submits that the petitioner has filed an appeal dated 22nd March 2022 and the same was accompanied by a pre deposit of 25% of the outstanding demand. According to the petitioner, the aforesaid appeal under Section 45AA of the Said Act has till date not been disposed of. He further submits that the respondents despite keeping the appeal pending have already initiated garnishee proceedings against the petitioner.

Mr. Prasad, learned advocate appearing for the ESI Corporation hands over a copy of the order passed under Section 45AA of the said Act dated 5th

September, 2022 in respect of an appeal filed by the petitioner on 13th July 2022. The petitioner says that the aforesaid order passed under Section 45AA of the said Act is absolutely a non-speaking order and the same does not disclose any reason. In any event the aforesaid order does not dispose of the appeal filed by the petitioner vide application dated 22nd March, 2022.

Today Mr. Prasad, however, submits, on instruction, that the appeal filed by the petitioner on 22nd March 2022 has not been disposed of till date. As such, this Hon'ble Court may permit the appellate authority, constituted under Section 45AA of the said Act, reasonable time to dispose of the appeal.

I have heard the advocates appearing for the respective parties. I have perused the order dated 5th May 2022 passed by the appellate authority under Section 45AA of the said Act. It would appear that the Additional Commissioner & Regional Director and Appellate Authority had mechanically passed the aforesaid order without any application of mind. The aforesaid order, however, does not form subject matter of challenge. As such no interference to such order is called for. The aforesaid would, however, not prevent the petitioner from taking appropriate steps if so advised.

In view of the submissions made by Mr. Prasad today, let the appellate authority constituted under

Section 45AA of the said Act hear out and dispose of the appeal filed by the petitioner vide letter dated 22nd March, 2022 after giving a reasonable opportunity of hearing to the petitioner. Needless to mention that the authority concerned must dispose of the appeal by passing a reasoned order.

In view of the direction passed above, there shall be an order of injunction, restraining the respondents from taking any coercive steps for recovery of any amount due to the petitioner in respect of any demand arising out of orders, which form subject matter of challenge filed before the authority constituted under Section 45AA of the said Act. The order of injunction shall continue till disposal of the appeal by the appellate authority constituted under Section 45AA of the said Act.

With the above observations and/or directions, the writ petition being WPA 19073 of 2022 is disposed of.

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.)