

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9436 of 2021

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Santona Banerjee W/o- Mr. Deepak Kumar Banerjee resident of- 147, A.P. Colony, P.O. and P.S.- Rampur, Town and District- Gaya.

... .. Petitioner/s

Versus

1. Employees State Insurance Corporation Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 800 001, Bihar through its Regional Director.
2. Regional Director, Employees State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 800 001, Bihar.
3. Authorised Officer, Employees State Insurance Corporation, Regional Office (RO- Patna), Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 800 001, Bihar.
4. Recovery Officer-cum- Deputy Director, (Recovery), Employees State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 800 001, Bihar.
5. Assistant Director, Employees State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 800 001, Bihar.
6. Branch Manager, Employees State Insurance Corporation, Branch Office, Gaya.
7. Baiju Prasad S/o Late Shyam Narayan Prasad Proprietor, M/s. Shree Shyam Trading Co., having its office at- Haranchand High School, Moriya Ghat, River Side Road, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner : Mr. Manish Jha, Adv.
For the Respondent : Mr. Bindhyachal Rai, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

5 17-03-2023 By way of this writ petition, the petitioner assails the order dated 11.05.2020, whereby the petitioner has been asked to deposit a sum of Rs. 9,12,912/- as arrears of contribution bill payable to the employee for the default period of 19 months from September, 2017 to March, 2019.



Learned counsel for the petitioner submits that the petitioner seeks to remain as the supplier of petroleum for the unit since 31 August, 2017 as the said petrol pump was sealed by the State. The said sealing order was held to be illegal with a direction to unseal the petrol pump by the High Court in CWJC No. 14071 of 2017 vide its judgment dated 05.01.2018 whereafter the supply was transferred to respondent no. 7. As the concerned petrol pump earlier was on COCO (Company owned Company Operated) basis, they opposed the sealing on the ground that once the supply was transferred to respondent No. 7, liabilities cannot be fastened on the petitioner.

Learned counsel appearing for the E.S.I.C raised a preliminary objection of a remedy of appeal being available to the petitioner under Section 45-A of the E.S.I. Act. He further submits that the notice issued to the petitioner remained unanswered and inspite of several opportunities given to the petitioner, the petitioner did not appear before the concerned authorities and the order was passed on the basis of the record available to them.

Learned counsel for the petitioner submits that on account of the pandemic, the petitioner could not submit his reply and the unit being a COCO, ought not to be saddled with



the said penalty.

I have considered the submission. While order passed under Section 45 (A) of the E.S.I. Act is appealable, it requires payment of 25 per cent as pre-deposit for consideration of appeal. From the perusal of the judgment passed by this Court in CWJC No. 14071 of 2017, in the case of Bharat Petroleum Corporation vs. State of Bihar, decided on 5th of January, 2018, it is apparent that the retail outlet was a Company Owned Company Operated petrol pump which was sealed by the State Government on the basis of report dated 28.08.2017 with effect from 1st September, 2017 and from the said date the petitioner has been faced with demand for the period from September, 2017 to March, 2019 which appears to be factually incorrect as the petitioner was not in charge of the petrol pump after 01.09.2017, it having given the retail outlet to respondent No. 7. In fact, the notice was also not required to be answered by the petitioner as the same was required to be given to the new retail outlet holder.

Taking into consideration that the order has been passed *ex parte* and the stand of the petitioner has not been considered, the same is set aside with directions to the petitioner to submit his reply to the concerned E.S.I. authority who will



pass fresh orders after giving opportunity to the petitioner as well as to the respondent.

With the aforesaid observations, the writ petition is disposed of.

(Sanjeev Prakash Sharma, J)

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