

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 5682 of 2023

M/s. Shiv Shakti Prints
Vs.

The Assistant Director, Employees State
Insurance Corporation & Ors.

For the petitioner : Mr. Prasanta Kumar Pakrashi
Mr. Sk. Mustafi Rahaman

For the respondent : Mr. Soumitra Banerjee
No. 1 and 3.

Heard on : 10.04.2023

Judgment on : 10.04.2023

Raja Basu Chowdhury, J:

1. Affidavit of service filed in Court today is taken on record.
2. The present writ petition has been filed, *inter alia*, challenging the order dated 20th January, 2022 and in effect the notice dated 5th August, 2022, issued under Section 45C to 45I of the Employees' State Insurance Act, 1948 (hereinafter referred to as the said Act), on the basis whereof, the petitioner's banker, the respondent no.2, had purported to debit freeze the petitioner's bank account.

3. Mr. Pakrashi, learned advocate representing the petitioner submits that the petitioner is not covered under the provisions of the said Act. Notwithstanding the aforesaid, the respondents have purported to issue the order dated 20th January, 2022, under Section 45A of the said Act. Immediately, upon receipt of the said order, the petitioner had, by a communication issued by the petitioner's advocate, brought to the notice of the authorities that the petitioner had never employed 10 or more persons in a particular year. Despite receipt of such letter, the respondents did not take any steps in the matter.
4. In the interregnum the respondents had attempted to enforce the aforesaid order passed under Section 45A of the said Act, by issuing a notice dated 5th August, 2022. Since thereafter, the petitioner had received a communication dated 2nd February, 2023 issued by the petitioner's banker, informing that the petitioner's bank account maintained with them had been marked as debit freeze, as per the demand notice received from the Employees' State Insurance Corporation (in short, ESIC) Authorities.
5. By relying on a communication dated 27th February, 2023 issued by the respondent's authorized Officer, the petitioner says that although, the petitioner had preferred an appeal under Section 45AA of the said Act, the same was rejected,

inasmuch as, the same was filed beyond 60 days from the date of passing of the order under Section 45A of the said Act. Let the communication dated 27th February, 2023 be taken on record. He says that unless the petitioner is appropriately protected the respondents shall realize the entire demand from the petitioner's bank account without any further adjudication. He says that the authorities ought not to have rejected the petitioner's appeal and ought to have considered the same. That the petitioner has a running business, freezing of the petitioner's bank account will have a devastating effect on the petitioner's business and the petitioner shall be forced to shut down.

6. *Per contra*, Mr. Banerjee, learned advocate, representing the ESIC, submits that on the basis of an inspection carried out by the ESIC authorities, the order under Section 45A of the said Act had been passed. He, however, acknowledged the fact that the petitioner has a right of appeal under Section 45AA of the said Act. He says that since the appeal was filed belatedly, the same had been rejected.
7. Mr. Banerjee submits that this Court ordinarily ought not to entertain a writ petition of this nature as the petitioner has an alternative remedy.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that an order has been passed under Section 45A of the said Act. The order passed under Section 45A is, however, a best judgment assessment and is also subject to appeal under Section 45AA of the said Act. I find that the petitioner claims that it never employed more than 10 persons. The communication dated 27th February, 2023, as placed before this Court by the petitioner's advocate reveals that the appellate authority had rejected the appeal filed under Section 45AA of the said Act, on the ground that the same was filed beyond 60 days.
9. I am of the view, since a statutory right has been conferred on the petitioner to prefer an appeal under Section 45AA of the said Act and since, the order under Section 45A is subject to appeal, the respondents should hear out and dispose of the appeal on merit, especially when the coverage of the said Act has been questioned by the petitioner. In such view of the matter, the communication dated 27th February, 2023, as made over by the petitioner in Court today wherefrom it appears that the petitioner's appeal under Section 45AA of the said Act has been rejected, is set aside and quashed. The Appellate Authority under Section 45AA of the said Act is directed to hear out the petitioner's appeal, subject to the petitioner complying with pre-deposit of 25 per cent of the

determination made under Section 45A of the said Act with the respondents.

10. In the event, the petitioner prefers an appeal within a period of 8 weeks from date, the Appellate Authority under Section 45AA of the said Act shall hear out and dispose of the same on merit by passing a reasoned order, in accordance with law, after giving an opportunity of hearing to the petitioner.
11. In view of the aforesaid, the communication dated 5th August, 2022 issued under Section 45C to 45I of the said Act is also set aside and quashed.
12. Needless to mention, during the pendency of the appeal, the respondent authorities shall not take any coercive steps against the petitioner for enforcement of the aforesaid order dated 20th January, 2022, passed under Section 45A of the said Act.
13. The respondent no.2 is also directed to permit the petitioner to operate the bank account maintained with them.
14. The aforesaid order is being passed taking into consideration the fact that the petitioner is a running concern, and a blanket debit freeze of its bank account is likely to affect the petitioner, in carrying out its business, dealings and transactions.

15. With the aforesaid directions and/or observations, the writ petition is disposed of.
16. There shall be no order as to costs.
17. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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