

03.05.2023
Item Nos. 10
Court No.550
Saswata

W.P.A. 6763 of 2023

Tushar Ranka

-vs-

Employees' State Insurance Corporation & Ors.

Mr. Supriya Ranjan Ghosh

...For the petitioner

Mr. Mihir Kundu

...For the ESIC

The present writ application has been filed, inter alia, challenging the order dated 20th December, 2022 passed under Section 45G of the Employees' State Insurance Act, 1948 (hereinafter referred to as the "said Act").

It is the contention of the petitioner that without service of the order under Section 45A of the said Act, the aforesaid *garnishee* proceeding under Section 45G of the said Act has been initiated against the petitioner. In course of hearing of the present application, Mr. Kundu, learned advocate appearing for the ESIC has produced the order passed under Section 45A of the said Act, dated 21st April, 2022. The order under Section 45A of the said Act, records that the aforesaid proceedings had been initiated after issuance of a show-cause dated 15th February, 2022. Since the petitioner did not attend the proceedings an *ex parte* order based on best judgment assessment has been made in absence of the records.

There, however, appears to be uncertainty as to whether the said order was at all served on the petitioner or not. It could not be established that the aforesaid order had been served on the petitioner. It also appears that *ex parte* hearing was held.

Be that as it may, since no useful purpose will be served in keeping the writ petition pending, I propose to dispose of the same by passing the following order:

- For all practical purpose, the order dated 21st April, 2022 passed under Section 45A of the said Act, shall

be deemed to have been served on the petitioner on 24th April, 2023 when a copy of the same was made over by Mr. Kundu, learned advocate representing ESIC to Mr. Ghosh learned advocate representing the petitioner, in Court.

- The petitioner shall be at liberty to file an appeal under Section 45AA of the said Act within a period sixty days from 24th April, 2023.
- Since the proceeding under Section 45G of the said Act was apparently initiated without service of the order under Section 45A of the said Act, the said proceeding under Section 45G of the said Act, initiated vide notice dated 26th December 2022 is set aside and quashed.
- The respondents shall be at liberty to take appropriate steps against the petitioner for enforcement of the aforesaid order passed under Section 45A of the said Act, in the event the petitioner does not prefer an appeal within the period stipulated above.
- In the event, however, an appeal is filed by the petitioner, the petitioner shall be at liberty to produce documents in support of his contentions and all further steps by the respondents would abide by the result of the appeal.

With the above observations and directions, the writ petition being WPA 6763 of 2023 is accordingly ***disposed of.***

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)