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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 8519 of 2023

Kaji Chand Hossain alias Kaji Chan
Vs.
Union of India & Ors.

Mr. Dhananjoy Banerjee
Mr. Agniswar Chowdhury
... For the petitioner.

Mr. Falguni Bandyopadhyay
... For the respondent no.1

Mr. Arindam Maitra
...For the respondent nos. 2, 3 and 4

The present writ petition has been filed, *inter alia*, challenging the proceedings initiated under Section 45G of the Employees' State Insurance Act, 1948 (hereinafter referred to as the "said Act").

It is the petitioner's contention that without serving any notice or any order under Section 45A of the said Act, the petitioner's bank account had been attached. By referring to a notice dated 5th October, 2021, it is submitted that the authorities had purported to issue a notice under Section 45G of the said Act and initiate garnishee proceedings against the petitioner. The petitioner says, since the petitioner was not even served with any notice or any order, the statutory remedy provided for is illusory. It is submitted that the conduct of the respondents in attaching the petitioner's bank account

is extra judicial and is an administrative over-reach. The petitioner also complains of violation of principles of natural justice.

Mr. Banerjee, learned advocate representing the petitioner submits that the aforesaid notice, which is at page 20 of the writ petition, cannot be sustained and the same should be set aside and quashed.

Mr. Maitra, learned advocate representing the respondents/Employees' State Insurance Corporation submits that the petitioner is covered by the said Act. A notice of hearing in connection with the proceedings initiated under Section 45A of the said Act, was duly served on the petitioner. The petitioner despite notice, did not participate in such proceedings. Following the aforesaid an order under Section 45A of the said Act has already been passed on 6th August, 2020. He, however, candidly submits that although the above order under Section 45A of the said Act was passed, the department is not in a position to demonstrate service of the aforesaid order on the petitioner.

Mr. Banerjee, in reply submits that the petitioner did not receive any notice intimating the petitioner as regards hearing of the proceedings under Section 45A of the said Act. In any event, the pandemic having intervened, the petitioner had no opportunity to take any steps in this regard.

Having heard the learned advocates appearing for the respective parties and considering the materials on record, I find that the order under section 45A of the said Act is an *ex-parte* order. The respondents have also not been able to demonstrate service of the aforesaid order on the petitioner. The date of hearing indicated in the said order appears to be just before the pandemic. Although Mr. Maitra has claimed that the petitioner was served with the notice of the proceedings, however, it does not appear that the order was passed immediately after the date fixed for hearing. It would also appear from the order that the hearing was fixed on 6th March, 2020, and on that date the petitioner did not appear. The order was also not passed on that day. The order was passed during the pandemic on 6th August, 2020. No reasons are forthcoming as to why after the lockdown the order was passed on 6th August, 2020 without notice to the petitioner. The respondents candidly acknowledge that they are unable to demonstrate service. As such taking into consideration the fact that the petitioner had not been heard at all by the authorities and since the order had not even been served on the petitioner, the same cannot be sustained.

The aforesaid order dated 6th August, 2020 and the demand raised on the basis thereof cannot be sustained and the same are accordingly set aside and quashed.

The petitioner is, however, directed to report, along

with all documents and records, before the respondent no. 3 on 22nd May, 2023. The said respondent no. 3 is directed to take into consideration the documents and records to be filed by the petitioner including objections, if any, and pass a fresh order under Section 45A of the said Act, after giving an opportunity of hearing to the petitioner. It is made clear that no further notice would be required to be served on the petitioner for hearing to take place on 22nd May, 2023. Since, the order under Section 45A of the said Act has been quashed and set aside, the order of attachment dated 5th October, 2021, passed under Section 45G of the said Act is also set aside and quashed.

With the aforesaid observations/directions, the writ petition, being WPA 8519 of 2023 stands disposed of.

There shall 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.)