

05.09.2023  
Item Nos. 7  
Court No.550  
Saswata

**W.P.A. 10474 of 2023**  
**M/s Maruti Coal Handling Services**  
**-vs-**  
**The Learned Judge, Employees' Insurance Court & Ors.**

Mr. Balai Chandra Paul  
Mr. Debangshu Ghorai

...For the petitioner

1. The petitioner is a sole proprietorship firm, who claims to provide contract labourers. The petitioner also claims to be covered by the Employees State Insurance Act, 1948 (hereinafter referred to as the "said Act") with effect from 2<sup>nd</sup> May 2015. The petitioner contends that despite making payment of its contributions, the authorities had passed an order under Section 45A of the said Act on 24<sup>th</sup> December 2021, thereby determining a sum of Rs.8,21,898/- towards the contributions payable by the petitioner for the period from December 2016 to August 2021.
2. It has been the contention of Mr. Paul, learned advocate appearing for the petitioner that the aforesaid determination had been made without consulting the records and on the ground that the petitioner had failed to submit any statements/returns. Challenging the aforesaid order, the petitioner has moved before the Employees' Insurance Court and the same was registered as Tender Case no. 43 of 2022.
3. The petitioner claims that the petitioner had also filed an application under Section 75 (2B) of the said Act, inter alia, praying for waiver of the deposit of 50 per cent of the claimed amount. The said application was,

- however, disposed of by order no. 7 dated 5<sup>th</sup> April 2023, thereby directing the petitioner to pay 40 per cent of the 11,26,466/-.
4. When the writ application was moved, Mr. Paul had submitted that despite the original determination made under Section 45A of the said Act being restricted to Rs.8,21,898/-, the Employees' Insurance Court had exceeded its jurisdiction in directing the petitioner to make payment of 40 per cent of Rs.11,26,446/-, especially when there was not demand for the aforesaid amount.
  5. Although, the said application was contested by the learned advocate representing the Employees' State Insurance Corporation, however, since no document could be produced to substantiate the aforesaid claimed amount, this Court while directing exchange of affidavits, also directed the petitioner to make payment 40 per cent of the amount as determined by the order dated 24<sup>th</sup> December 2021 under Section 45A of the said Act with the Employees' State Insurance Authorities within a period of two weeks from the date of such order.
  6. It was further made clear that in the event, deposit as directed was made, the interim order restraining the respondents from taking any coercive action against the petitioner, shall continue till the disposal of the present application.
  7. The petitioner claims to have complied with the direction for deposit of 40 per cent of Rs.8,21,898/-.

8. Despite direction, no affidavit-in-opposition appears to have been filed. The respondents are also not represented today. Mr. Paul has, however, candidly placed before this Court, a copy of the affidavit-in-opposition served on the writ petitioner by the respondents. From the annexure to the affidavit, it would appear that the respondents had, by computing interest on the determination made under Section 45A of the said Act added a sum of Rs.304.503/- for the period up to 9<sup>th</sup> September 2022 and had thereby raised an aggregate demand of Rs.11,26,466/- on the petitioner. Such fact would corroborate from the notice dated 12<sup>th</sup> September 2022.
9. Having regard to the aforesaid, the order dated 5<sup>th</sup> April 2023 passed by the Employees' Insurance Court, directing the petitioner to make payment 40 per cent of the Rs.11,26,466/- cannot be said to be irregular. The petitioner, therefore, is obliged to comply with the above direction issued by the Employees' Insurance Court.
10. Considering the submission made by Mr. Paul, I am of the view that the petitioner should be directed to make payment of the balance amount as directed by order dated 5<sup>th</sup> April 2023 less the amount already paid to the Employees State Insurance authority pursuant to the order dated 3<sup>rd</sup> July 2023 in three equal monthly installments to the ESI authorities. First of such installments shall be made on or before 30<sup>th</sup> September 2023 and the succeeding installments shall be paid on or before 30<sup>th</sup> of each succeeding month.

11. In the event, the aforesaid deposit is made within the time prescribed and the petitioner is able to demonstrate proof of payment, the Employees' Insurance Court shall register the case and shall hear out the same in accordance with law after giving opportunity of hearing to the parties. In such event, the respondents shall be restrained from taking any coercive steps against the petitioner in respect of the demand arising out of the order passed under Section 45A of the said Act till disposal of the proceedings before the Employees' State Insurance Court.
12. In the event, the petitioner does not make payment of the first installment or any one of the succeeding installments as directed above, the interim order shall automatically stand vacated and it shall be open to the respondents to take such steps, as advised, in accordance with law.
13. It is made clear that the deposit of the aforesaid amount with the Employees' State Insurance authorities shall abide by the result of the proceedings pending before the Employees Insurance Court.
14. With the above directions and observations, the writ application being WPA 10474 of 2023 is ***disposed of***.
15. 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.)**