

11.10.2023
Item No.15
Court No.550
Saswata

W.P.A. 12181 of 2023
Monirul Sk.
-vs-
The Union of India & Ors.

Md. Safiul Alam

...For the petitioner

Mr. Raja Satyajit Banerjee

Mr. Sourav Sengupta

Mr. Krishnik Chatterjee

...For the Union of India

Ms. Atulya Sinha

...For the respondent no. 5

Mr. S.C.Prasad

...For the respondent nos. 3 and 4

1. The present writ application has been filed, inter alia, challenging the recovery of Rs.2,01,772/- on account of ESI dues from the petitioner.
2. It is the petitioner's contention that all on a sudden, the Employees' State Insurance Corporation (hereinafter referred to as the "Corporation") by purporting to attach the petitioner's bank account, had recovered a sum of Rs.2,01,772/- from the petitioner's bank account. According to the petitioner, the petitioner is a painter and earns his livelihood by carrying out paint jobs. The petitioner submits that at no point of time was he covered by the provision of the Employees State Insurance Act, 1948 (hereinafter referred to as the "said Act").
3. Notwithstanding the aforesaid, all on a sudden for the first time on 28th April 2022, the petitioner was served with a notice issued by the Corporation wherein, it has been alleged that the petitioner has failed to make payment of the ESI contribution from October 2013. Subsequently, on the basis of a purported order of

attachment dated 13th January 2023, issued under Section 45A of the said Act, the Corporation had recovered a sum of Rs.2,01,772/- from the petitioner's bank account. When the aforesaid matter came up for consideration on 7th August 2023 this Court had directed the respondent nos. 2 to 4 to produce an inspection report, if any, in relation to extension of coverage of the said Act, to the petitioner and/or his establishment.

4. Subsequently, on 9th August 2023 since, the learned advocate representing the respondents had produced certain documents claiming them to be returns of contributions, filed in Form-5 under Rule 26 of the Employees 'State Insurance (General) Regulation, 1950, this Court directed the respondents to file a report in the form of an affidavit, indicating the particulars of the insured persons covered under the provisions of the said Act.
5. The respondent corporation has since, filed a report and has, *inter alia*, claimed that the aforesaid recovery has been made on the basis of an order passed under Section 45A of the said Act. Unfortunately, the said order was not disclosed by the Corporation in the said report. It would be relevant to indicate that the Corporation also did not indicate the names of the persons insured under the provisions of the said Act, though it was claimed that there are amounts outstanding on the basis of contributions payable by the

petitioner since, the year 2013. The petitioner has since taken an exception to the said report.

6. Today, Mr. Prasad, learned advocate appearing for the respondent nos. 2 and 3 discloses an order dated 28th July 2022 issued under Section 45A of the said Act. From the aforesaid order, it appears that a sum of Rs.1,38,600/- was determined towards contribution payable by the petitioner. The Corporation, however, could not produce any document to establish service of any notice on the petitioner prior to passing of the aforesaid order. Admittedly, a sum of Rs.2,01,772 has been recovered from the petitioner, although, the determination made under Section 45A of the said Act appears to be limited to Rs.1,38,600/-.
7. In view thereof and having regard to the aforesaid, I am of the view that the recovery made by the respondents is beyond the determination already made under Section 45A of the said Act, especially when the corporation is unable to demonstrate service of notice prior to passing the order under Section 45A of the said Act.
8. I direct the Corporation to forthwith refund a sum of Rs.63,172/- to the petitioner, after keeping apart a sum of Rs.1,86,600/-.
9. The petitioner shall be at liberty to file an appeal from the order under Section 45A of the said Act. In the event appeal is filed by the petitioner within 6 weeks from date, the same shall be decided on merit. The Appellate Authority while taking into consideration the petitioner's appeal must consider whether any steps have been

taken by the Corporation to insure any of the workers of the petitioner's establishment, since 2013 as according to the respondents the petitioner did not comply with the provisions of the said Act on and from the month of October 2013. The Appellate Authority shall also consider justifiability of the claim of the corporation from the year 2013, without extending benefit of the Act to the petitioner's establishment.

10. The aforesaid sum of Rs. 1,86,600/- shall abide by the result of appeal.

11. With the above direction and observation, the writ application being WPA 12181 of 2023 is accordingly **disposed of.**

(Raja Basu Chowdhury, J.)