12.09.2023
Item No.6
Court No.550
Saswata

W.P.A. 11903 of 2022
Arun Dutta
Versus
ESI Corporation & Ors.

Mr. Supriya Ranjan Ghosh
... For the petitioner

Mr. Saumitra Banerjee
...For the respondent nos. 1 to 4

1. The present writ application has been filed, *inter alia*, challenging the order dated 24th February, 2022 passed by the respondent no. 4. The petitioner contends that the petitioner is, at present running a bar -cum-restaurant in the name and style of Nature View Restaurant and is duly complying with the provisions of the Employees' State Insurance Act, 1948 (hereinafter referred to as the "said Act").

2. It is, however, the petitioner's case that all on a sudden, just before the onset of the pandemic, the petitioner's bank account was attached pursuant to the notice under Section 45-G of the said Act and on the basis thereof, a sum of Rs.7,16,736/- had been realized from the petitioner's bank account maintained with the Axis Bank, Baidyabati branch.

3. According to the petitioner, since the aforesaid recovery was made without taking note of the employee strength of the petitioner, including closure of business due to Government intervention, he had made a representation before the Recovery Officer on 24th February, 2020, thereby objecting to the recovery as aforesaid. Despite receipt of such representation, since, the respondents

did not take any steps in this matter, the petitioner was compelled to move before this Hon'ble Court.

4. On contested hearing, by order dated 6th December, 2021, a Coordinate Bench of this Court, *inter alia*, taking into consideration the fact that the representation made by the petitioner on 24th February, 2020 was yet to be disposed of, had directed the concerned respondents to dispose of the representation made by the petitioner, within 3 months from the date of receipt of the order.

5. Records would reveal that the order under Section 45-A of the said Act has already been passed on 29th July, 2016, wherein the respondents had made an ex parte determination, thereby determining, the petitioner to have employed 11 employees for the period between August 2015 to March 2016 and on the basis thereof, had determined a sum of Rs.47,190.00/- as contribution payable by the petitioner.

6. The petitioner, however, in its representation dated 24th February, 2020 contended that the respondents have purported to realize a sum of Rs. 7,16,736/- from the petitioner's bank account, although, the notice under Section 45-G of the said Act was limited to Rs.7,14,036/-. Records would reveal that pursuant to the direction passed by this Court on 6th December, 2021, the petitioner was given an opportunity of hearing. In course of hearing, the petitioner had produced the following documents:-

> *"1. Unaudited Balance Sheet for the year 2015-16, ITR, TDS Statement & Ledger for*

> *head as "Donation & Subscription", "Tea & Tiffin" and "Travelling & Conveyance" only.*
>
> *2. Unaudited Balance Sheet for year 2016-17, ITR, TDS Statement & Ledger for head "Donation & Subscription", "Tea & Tiffin" and "Travelling & Conveyance" only."*

7. Unfortunately, the respondent no. 4, by an order dated 24th February, 2022 without considering the documents relied on by the petitioner, had purported to return a finding that the petitioner has failed to produce relevant documents. The aforesaid speaking order dated 24th February, 2022 does not reflect why the aforesaid documents disclosed by petitioner had not been taken into consideration by him. The said order also does not identify as to what would constitute the relevant document which the petitioner was required to disclose, which he had failed to produce. The order appears to be cryptic and unreasoned.
8. Having regard to the aforesaid, I am of the view that the aforesaid order dated 24th February, 2022 cannot be sustained and the same is set aside.
9. The respondent no. 4 is directed to re-hear the petitioner's representation dated 24th February, 2020 afresh, having regard to the documents disclosed by the petitioner.
10. If the respondent no.4 is of the view that any further documents are required, he/she must identify such documents for the petitioner to produce the same. The aforesaid decision must be taken by the respondent no.4 within a period of 3 months from the date of communication of this order, after giving reasonable

opportunity of hearing to the petitioner and the same must be communicated to the petitioner.

11. With the above directions and observations, the writ application being WPA 11903 of 2022 is ***disposed of***.

12. 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.*)