

03.04.2023
Item No.13
Court No.550
Saswata

W.P.A. 19899 of 2022
M/s Multytech Enterprise & Anr.
-vs-
Union of India & Ors.

Mr. Amritam Mandal
Ms. Jeenia Rudra
Ms. Megha Chanda

...For the petitioners

Mr. T.K.Chatterjee

...For the respondent nos. 3, 6 and 7

Mr. Rajib Ray

...For the respondent nos. 4 and 5

Affidavit of service filed in Court today is kept with the record.

The present writ application has been filed, inter alia, for a direction upon the respondents to de register the petitioners from the provisions of the Employees State Insurance Act, 1948 (hereinafter the said Act).

Mr. Mandal, learned advocate representing the petitioners submits that the petitioner no. 2 carries on the business of sub-contracting, Pile work since 2001. At no point of time, the workers employed in the petitioner no 2's factory exceeded 6 in number. He says that by improper appreciation of the provisions of the said Act, the petitioners had applied for being covered under the said Act. He says that an order has already been passed under Section 45A of the said Act, without taking into consideration the inspection carried out by the respondents, wherein it has been shown that the number of employees working in the petitioner no. 2's factory was found to be less than 10. He says that the order dated 9th November 2021 passed under Section 45A of the said Act has no basis at all and the same should be set aside.

Per contra, Mr. Chatterjee, learned advocate appearing for the respondent nos. 3, 6 and 7 submits that the petitioners have an alternative remedy in the form of an appeal before the appellate authority constituted under Section 45AA of the said Act. He says that the petitioners, themselves had applied for being enrolled under the provisions of the said Act. A notice as regards implementation of the provisions of the said Act dated 19th December 2017 was also served upon the petitioners. The petitioners had accepted the said notice and did not take any further steps in this regard. By referring to a notice dated 15th September 2021 at page 27 of the writ petition, it is submitted that despite receipt of such show cause notice issued under the provisions of the said Act, the petitioners chose not to appear before the authority concerned. It is under the aforesaid circumstances that the order dated 9th November 2021 has been passed. He says that the respondents cannot be faulted for passing such order.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

I find that the petitioners have an alternative remedy in the form of an appeal under Section 45AA of the said Act. The petitioners' grievances may or may not be genuine. However, the aforesaid contentions of the petitioners have to be considered within the framework of the statute.

In view thereof, I grant liberty to the petitioners to approach the appellate authority constituted under Section 45AA of the said Act within a period of 6 weeks from date.

If such appeal is filed within the aforesaid period, the appellate authority shall hear out and dispose of the said appeal in accordance with law on merits, after giving opportunity of hearing to the petitioners.

With the above directions and observations, the writ petition being WPA 19899 of 2022 is accordingly ***disposed of.***

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

(Raja Basu Chowdhury, J.)