

20.09.2023
Item No.28
Court No.550
Saswata

W.P.A. 21670 of 2023
M/s Biswapita Cold Storage Pvt. Ltd.
Versus
Employees State Insurance Corporation & Ors.

Mr. Uddipan Banerjee

... For the petitioner

Mr. Mihir Kundu

...For the ESI Corporation

1. The writ petition has been filed, inter alia, challenging the order dated 13th July 2023 passed by Employees Insurance Court (In short EI Court) in Tender case no. 46 of 2023 under Section 75 of the Employees State Insurance Act, 1948 (hereinafter referred to as the “said Act”).
2. Unfortunately the petitioner has made the learned Judge, E.I. Court a party to the petition. It is to well settled that Tribunal or a Judicial Officer cannot be impleaded as a party to the petition. The E.I. Court not being required by Law to defend its own order ought not to have been impleaded a party. Accordingly, let the name of the respondent no.3 be deleted from the cause title.
3. The petitioner claims to be covered under the provisions of the said Act and had been depositing its contributions since the date of coverage up to the month of June 2018. It is the petitioner’s case that although, the employees employed by the petitioner are insured under the provisions of the said Act, however, such employees have been raising complaints as regards benefits offered by the Corporation. It is the petitioner’s case that due to

resistance put up by the employees, the petitioner stopped making deposit of the contributions with the Corporation since, June 2018. It is also the petitioner's case that the respondents had, however, by order dated 16th September 2022, issued under Section 45A of the said Act, determined the contributions payable by the petitioner for the period from July 2018 to March 2021, as Rs.2,61,954/-.

4. Challenging the aforesaid determination, the petitioner had filed a proceeding under Section 75 of the said Act before the EI Court and simultaneously while praying for an order of injunction restraining the respondent corporation from taking any coercive steps had also sought for waiver of the pre-deposit, as required for filing of an appeal.
5. It is in connection with the said application that by order no. 3 dated 13th July 2022, the EI Court was, inter alia, pleased to direct the petitioner to deposit 30 per cent of the claimed amount directly with the ESIC by 22nd August 2023.
6. Mr. Banerjee, learned advocate, by placing reliance on the provisions of the said Act submits that the EI Court, under no circumstances could have directed the petitioner to deposit the claimed amount with the ESIC. It is submitted that the statute provides for pre-deposit to be made with the Court. The proviso to Section 75(2)(B) of the said Act and its proviso not only authorises but also empowers the EI Court to reduce or waive the amount to be deposited by the petitioner

under the said sub-Section. The provisions of the said Act, however, do not permit the EI Court so as to direct the petitioner, to deposit the said amount with the Corporation.

7. Having regard to the aforesaid, it is submitted that the aforesaid direction to deposit 30 per cent of the demand of the respondent no. 1 is without jurisdiction. Mr. Banerjee, however, candidly submits that the petitioner was and is at all materials times, ready and willing to make the aforesaid deposit with the EI Court.
8. Mr. Kundu, learned advocate representing the respondent nos.1 and 2 submits that an order under Section 45A of the said Act has been passed upon notice to the petitioner. Since, the petitioner had failed to avail the opportunity provided to him and did not even chose to file any statement or calculations stating therein, contributions actually payable, the matter was decided ex parte. It is submitted that in the backdrop as aforesaid, the authorised officer was pleased to decide the quantum of contribution payable by the petitioner on the basis of assumed wages. There is no irregularity on the part of the authorised officer, in determining the same.
9. It is still further submitted that the petitioner chose not to prefer an appeal from the aforesaid order, instead has filed a proceeding before the EI Court. He submits that there is no irregularity on the part of the EI Court in directing the petitioner to deposit 30 per cent of the claimed amount with the Corporation.

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

11. Admittedly, in this case I find that a determination has already been made under Section 45A of the said Act. The petitioner is, however, aggrieved by such determination and has chosen to challenge such determination by filing a proceeding before the EI Court. I find that the petitioner has not only filed an application for injunction but had also filed an application for waiver of the pre-deposit under Section 75(2)(B) of the said Act. By an order dated 13th July 2023, such application under Section 75(2)(B) has been disposed of, thereby, directing the petitioner to deposit 30 per cent of the claimed amount with the respondent no. 1. I do not find any irregularity on the part of the EI Court in directing the petitioner to secure 30 per cent of the claimed amount. However, the direction to deposit the same with the respondent no. 1 appears to be contrary to and in conflict with the provision of Section 75(2)(B) of the said Act. Although, the EI Court has directed the respondent no.1 to retain the amount as a trustee, no benefit therefore, unlike Section 45AA of the said Act, which provides that in the event of success, the appellant shall be entitled to refund of the amount with interest, has been made available to the petitioner.

12. In any event, it is well settled that the statutory authority is bound to adhere to the statutory provision and can act in accordance with such provision and not in derogation thereof. No exceptional circumstances

have been made out for directing the petitioner to make the deposit with the respondent no.1.

13. Having regard to the same and taking into consideration the submissions made by the petitioner, I direct the petitioner to deposit 30 per cent of the amount so directed to be deposited by the EI Court, to be deposited with the EI Court on or before 30th September 2023.
14. In the event, the aforesaid deposit is made with the EI Court, within the time specified hereinabove, the EI Court shall register the case and shall dispose of the same on merits.
15. With the above directions and observations, the writ application being WPA 21670 of 2023 is ***disposed of***.
16. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)