

10.10.2023

Ct.No. 550

Sl.No. A 34

Amalranjan

WPA 22053 of 2023

M/s. Satyam Infra Project and anr.

Vs.

Union of India & Ors.

Mr. Subrata Bhattacharyya

Ms. Shipra Santra

...for the petitioners

Mr. Atarup Banerjee

Mr. Ramen Bose

...for the UOI

Mr. Subal Moitra

Mr. Arindam Moitra

...for the ESIC

1. This writ petition has been filed, inter alia, challenging the order dated 19th June, 2023 passed by the Employees Insurance Court (in short “the E.I. Court) in Tender Case no. 61/2022 under Section 75 of the Employees State Insurance Act, 1948.
2. The petitioners claim to be covered by the provisions of the said Act and had been regularly complying with the provisions of the said Act. According to the petitioners there is nothing due on account of arrears of contribution under the provisions of the said Act.
3. It is the contentions of the petitioners that the respondent authorities all on a sudden by serving an order under

Section 45A of the said Act, claimed to have determined a sum of Rs. 22,87,940/- towards contribution due and payable by the petitioners for the period of March, 2017 to August, 2021.

4. According to the petitioners, the aforesaid determination has been done on the basis of assumed wages.
5. Challenging the aforesaid order passed under Section 45A of the said Act, a proceeding has been filed under Section 75(1) of the said Act, before the E.I. Court.
6. Simultaneously, with the filing of such application, the petitioners praying for waiving of predeposit amount under the said Act, had also filed an application under Section 75(2) (B) of the said Act.
7. The learned E.I. Court by its Order no. 8 dated 19th June, 2023 while allowing the application under Section 75 (2) (B) of the said Act in part had directed to deposit of 30% of the claimed amount, with the Employees State Insurance Corporation by 24th August, 2023.
8. It is submitted that the statutory provisions do not mandate deposit of the

claimed amount with the Corporation. Having regard to the aforesaid it is submitted that the aforesaid direction to deposit 30% of the claimed amount with the Corporation is without jurisdiction.

9. Mr. Bhattacharya, learned advocate appearing for the petitioners further submits that the petitioners have already made payment of the entire contributions and if the petitioners are directed to make additional deposit, the same shall cause financial burden on the petitioners.

10. In the facts and circumstances noted hereinabove, he prays for setting aside of the order impugned dated 19th June, 2022 and prays for a direction upon the E.I. Court to hear out the case without insisting for any security.

11. Mr. Moitra, learned advocate representing the Corporation on the other hand submits that the provisions of the said Act provides for pre-deposit to be made while maintaining a proceeding under Section 75(1) of the said Act. He also says that unless 50% of the amount claimed by the Corporation is deposited

with the E.I. court or in the alternative, the amount of the predeposit amount is reduced or waived by the E.I. Court the matter cannot be heard. He submits that since, a power has been conferred upon the E.I. Court to either waive or reduce the amount to be deposited under Sub. Section 75 (2) (B) of the said Act, and the E.I. Court having exercised its discretion directing the petitioners to deposit 30% of the claimed amount with the Corporation, the said order cannot be said to be irregular.

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

13. Admittedly, in this case, I find that a determination has already been made under Section 45A of the said Act. The petitioners are, however, aggrieved by such determination and have chosen to challenge such determination by filing a proceeding before the E.I. court.

14. I find that the petitioners have not only filed an application under Section 75 (1) of the said Act, 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 19th June, 2023 such application under Section 75(2) (B) of the said Act has been disposed of, thereby, directing the petitioners to deposit 30% of the claimed amount with the respondent Corporation.

15. I do not find any irregularity on the part of the E.I. Court in directing the petitioners to secure 30% of the claimed amount. Admittedly, no disputes between the petitioners and the Corporation in respect of any contributions or any other dues can be raised before the E.I. Court, unless the petitioners have deposited with the E.I. Court 50% of the amount claimed by the Corporation or such other amount so to be determined by the E.I. Court.

16. Having regard to the aforesaid the directions issued by the E.I. court directing the petitioners to secure 30% of the claimed amount cannot be said to be irregular, however, the direction to deposit the same with the Corporation appears to be contrary to and in conflict

with the provisions of Section 75 (2)(B) of the said Act.

17. Having regard to the aforesaid I modify the impugned order dated 19th June, 2023 thereby, directing the petitioners to deposit 30% of the amount so directed to be deposited with the Corporation, to be deposited with the E.I. Court itself on or before 30th October, 2023.

18. 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.

19. With the above directions and observations, the writ application being WPA 22053 of 2023 is disposed of.

20. All parties are to act on the basis of server copy of this order duly downloaded from the Official Website without insisting for any certified copy thereof.

(Raja Basu Chowdhury, J.)