

03.10.2023
Item No.8.
Court No.550.
AB

WPA 28876 of 2022

**M/s. Remount Construction & Anr.
Vs
The Employees' State Insurance Corporation & Ors.**

Mr. Nikhil Kumar Gupta,
Mr. Barnamoy Basakfor the Petitioners.

Mr. T. K. Chatterjee
....for the Respondent No.1 to 4.

1. The present writ petition has been filed challenging the orders dated 5th December, 2022 and 6th/8th December, 2022, passed by the Appellate Authority under Section 45AA of the Employees' State Insurance Act, 1948 (hereinafter referred to as the "Said Act").
2. The petitioners say that despite this Hon'ble Court permitting the petitioners to prefer an appeal from the order passed under Section 45A of the said Act upon deposit of Rs.25,000/- and despite the petitioners depositing the said sum, the respondents have not permitted the petitioners to place their case and by a mechanical order disposed of the appeal.
3. Pursuant to a direction passed by this Court, the respondents have filed their affidavit-in-opposition. The respondents, *inter alia*, contend that the

coverage of the petitioners' establishment was extended on the basis of an application made by the petitioner no.1. Admittedly, no inspection was carried out by the respondents. It has, however, been candidly submitted by Mr. Chatterjee, learned Advocate representing the respondents that the petitioners are presently complying with the provisions of the said Act pursuant to allotment of registration no. 41000668260001009.

4. It is, however, the contention of the petitioners that the petitioners' establishment had initially been allotted a registration no. 41000609680001001. At the relevant point of time, since, the petitioners did not have adequate number of employees, by a letter in writing dated 15th November, 2019, the petitioners have requested the respondents to cancel the first registration number. Despite receipt of such letter dated 15th November, 2019, which is part of the writ application, no step was taken by the respondents.
5. Records reveal that subsequently an order under Section 45A of the said Act was passed on 21st January, 2021. At the instance of the petitioners by an order dated 21st September, 2022, this Court had granted liberty to the petitioners to challenge the said order upon deposit of Rs.25,000/-. The petitioners claim to have complied with such pre-

condition and having deposited Rs.25,000/- with the respondents, preferred an appeal before the Appellate Authority under Section 45AA of the said Act.

6. It is the petitioners' contention that although, the petitioners' representative was present on December 5, 2022 and had made submission, without adhering to such submission, the Appellate Authority had disposed of the appeal, purportedly by a mechanical order dated 6th/8th December, 2022. Admittedly, the order dated 6th/8th December, 2022 does not take into consideration the case made out by the petitioners in the petition. The order also does not consider whether the petitioners could be called upon to comply under two separate registration numbers, and whether issuance of registration number on the basis of an application can make the petitioner no.1 liable for the subsequent years, without any further inspection, notwithstanding the petitioners seeking cancellation of such registration. There appears to be no attempt to make the determination on the basis of the records especially when the order under Section 45A of the said Act was passed on the basis of assumed average wages. The aforesaid order also appears to be mechanical and cryptic.

7. Having regard to the aforesaid, I am of the view that the aforesaid order dated 6th/8th December, 2022, which is impugned in the petition, cannot be sustained and the same is, accordingly, set aside and quashed. The Appellate Authority under the said Act is directed to rehear the petitioners' appeal afresh upon giving a reasonable opportunity of hearing to the petitioners by permitting the petitioners to disclose records and to dispose of the same in accordance with law.
8. With the aforesaid observations and direction, WPA 28876 of 2022 stands disposed of.
9. Urgent Photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Raja Basu Chowdhury, J.)