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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction

ORIGINAL SIDE

WPO/107/2023

PUNJAB GLASS DEPOT.

-Versus-

UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

Date : 3rd August, 2023

Appearance :
Mr.Ovik Sengupta, Adv.
Mr.Arindam Paul, Adv.
...for the petitioner.

Mr.S.C. Prasad Adv.
..for the ESI Corporation.

The Court :

1. Challenging the order dated 7th June, 2022 passed under Section 45G of the ESI Act, 1948 (in short, 'the said Act') read with 2nd and 3rd Schedule of the Income Tax Act, 1961, and income tax (certificate proceedings) rules, 1962, the present application has been filed. The petitioner claims that at all material times only a total number of six persons were employed with the petitioner. Notwithstanding the aforesaid, the respondent nos.2 and 3 by initiating proceedings for recovery, have realised a sum of Rs.2,03,387/- from the petitioner's bank account.

2. When the present writ application was moved, since, there was no scope to pass any interim order, directions were issued for exchange of affidavits. After exchange of affidavits, the petitioner had filed a supplementary affidavit disclosing the particulars of the employees employed with the petitioner since, February, 2011. By relying on the aforesaid affidavit, Mr. Sengupta, learned advocate appearing for the petitioner, submits that the coverage of the Act could not have been extended to the petitioner for respondent nos.2 and 3 to effect recovery, as the employee strength of the petitioner was no more than six at any given point of time.
3. In the affidavit-in-opposition filed on behalf of the respondent nos.2 and 3, it has, however, been, *inter alia*, stated by the said respondents that on the basis of inspections carried out at the petitioner's establishment on 13th July, 2011 and 18th August, 2011, the respondents had identified eleven persons who were working in the petitioner's establishment. According to the respondent nos.2 and 3, a copy of such inspection report was also made over to the partner of the petitioner who had duly accepted the same by putting his seal and signature thereon. By relying on a copy of the said inspection report and a series of

communications issued to the petitioner, which are been brought on record by the respondents by filing a supplementary affidavit, affirmed on 2nd May, 2023, it is submitted that the petitioner has suppressed the factum of not only the inspection, but the receipt of series of communications, *inter alia*, including orders passed under section 45A of the said Act. By drawing attention of this Court to, three several orders passed under Section 45A of the said Act, all dated 2nd January, 2013, it is submitted that the respondent nos.2 and 3 had determined liability of the petitioner for the period from 10th February, 2011 till December, 2012. Since, the petitioner chose not to comply with the aforesaid orders, notices were issued by the recovery officer under Section 45G of the said Act. Despite receipt of such notices, the petitioner having not taken any steps, the respondent authorities were ultimately compelled to initiate further proceedings for recovery by way of issuance of order of attachment on 7th June, 2022. It is in pursuance to the aforesaid order, the respondents had been able to recover a sum of Rs.2,03,387/-.

4. This Court in order to ascertain the steps taken by the aforesaid respondents to extend the actual coverage of the Employees' State Insurance Act to the employees of

the petitioner, had called upon the respondent no.2 to file a report in the form of affidavit. Pursuant to the aforesaid direction, a report has been filed.

5. Mr. Prasad, learned advocate representing the aforesaid respondents, submits that by reasons of failure on the part of the petitioner to comply with the requisition, no steps could be taken by the respondents to extend the actual coverage of the said Act to the employees of the petitioner. He submits that the petitioner by gross suppression of material facts has filed the present writ application and the same deserves to be dismissed with costs.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. From the documents disclosed by the respondent no.2 it would be apparent that way back in the year 2011, an inspection was carried out at the petitioner's establishment. Copy of such inspection report also appears to have been made over to the petitioner. Such fact would corroborate from the seal and signature of the petitioner's partner appearing thereon. Admittedly, in this case, three several orders under Section 45A of the said Act have been passed. The petitioner did not challenge such orders. The petitioner also did not bother to make payment of the contributions. In such

circumstances, the action of the respondent nos.2 and 3 in purporting to realise their demands by issuing orders under Section 45G of the Act, by issuing attachment order dated 7th June, 2022, cannot be said to be irregular. I also find that the petitioner has conveniently suppressed the aforesaid facts while filing the present writ petition. Although, in the affidavit-in-reply, the petitioner has denied of any inspection being carried out at its establishment in the year 2011, such denial appears to be evasive and not convincing, in the light of the disclosure of the documents made by the respondent no.2 in the supplementary affidavit.

7. Having regard to the aforesaid, I am of the view, the petitioner having approached this Hon'ble Court in exercise of its extraordinary writ jurisdiction ought to have made full and complete disclosure. Having not done so and having suppressed material facts, *inter alia*, including inspection held at the petitioner's establishment in the year 2011, I am of the view, the petitioner is not entitled to any relief.

8. At the same time the respondent nos.2 and 3 having already realised a sum of Rs.2,03,387/-, cannot be permitted to retain the same without extending the benefits thereof to the employees of the petitioner. As

such, the respondent nos.2 and 3 are directed to immediately take steps for extending the actual coverage of the said Act, to the employees of the petitioner, especially when the particulars of such employees are already on record. Since, the statute authorises the respondent nos.2 and 3 to carry out inspection, it shall be open to the aforesaid respondents to carry out inspection, if necessary, for the purpose of verifying the names and particulars of the employees of the petitioner. The entire exercise for extending the actual coverage of the said Act to the employees of the petitioner should be completed within a period of eight weeks from date.

9. With the aforesaid observations and directions, the writ application is disposed of. There shall, however, be no order as to costs.

10. All parties are directed to act on the basis of a server copy of this order duly downloaded from the official website of this Court, without insisting for a certified copy thereof.

(RAJA BASU CHOWDHURY, J.)

S.Das/