

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10805 of 2021**

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1. South Bihar Power Distribution co. Ltd. a company incorporated under the Companies Act 1956, Vidyut Bhawan, Bailey Road, Patna- 800001. Represented through Deputy General Manager (HR/Adm), South Bihar Power Distribution Co. Ltd. Vidyut Bhawan, Bailey Road, Patna.
2. Managing Director, South Bihar Power Distribution Co. Ltd. (SBPDCL), Vidyut Bhawan, Bailey Road, Patna- 800001. ... Petitioners
- Versus
1. Union of India through the Ministry of Labour and Employment, Govt. of India.
2. Employees State Insurance Corporation, (under the Ministry of Labour and Employment), Govt. of India through its Assistant Director, Panchdeep Bhawan, Regional Office, Nehru Marg, Patna- 800001.
3. Alok Kumar Mishra Son of not known to the petitioner, Assistant Director and Authorized Officer, Employees State Insurance Corporation (Ministry of Labour and Employment, Govt. of India) Panchdeep Bhawan, Regional Office, Nehru Marg, Patna – 800001. ... Respondents
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**Appearance :**

For the Petitioners : M/s D.V. Pathy, Prakash Kumar, Hires Kumar & Sadashiv Tiwary, Advs.  
For the UOI : Mr.Dr. K. N. Singh, ASG  
For Respondent No. 3 : Mr. Sudhir Kumar Bijpuriya, Adv.

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**CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY**  
**ORAL ORDER**

6      05-10-2024                      Heard the learned counsel for the parties.

2. Learned counsel appearing on behalf of the petitioners has stated that impugned order has been passed by the authority without considering the fact that the petitioners have appeared on the date of hearing, i.e., on 25.02.2021. That on 25.02.2021 the necessary documents were submitted, but, the authority without verifying the same has passed the ipugned order stating that neither the employee nor their representative have appeared at that time of hearing on 25.02.2021.



3. Learned counsel has drawn the attention of the Court to Annexure 9 wherein the seal and signature of the authority is there to evidence that the representative of the petitioners appeared before the authority on 25.02.2021, i.e., the date of hearing and submitted the documents. That Writ Petition is liable to be allowed on this sole ground.

4. Learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present Writ Petition and stated that the petitioners are having an alternative and efficacious remedy of filing the case under Section 75(1)(g) of the Employees' State Insurance Act, 1948. Counsel has stated that though the respondents was granted several opportunities, the petitioners have not bothered to appear. That the authorities left with no other option have passed the order impugned. Learned counsel has stated that the order does not suffer from any illegality or infirmity which warrants any interference from this Hon'ble Court and prays for dismissal of the present Writ Petition.

5. Admittedly, in the present case, as seen from the record, the officer concerned while passing the order under Section 45A of the Employees' State Insurance Act, 1948, has recorded that on 25.02.2021 neither the employee nor any



representative appeared before the undersigned for personal hearing and did not choose to submit any record in support of their contentions. However, Annexure 9 which is a letter addressed to the Assistant Director, ESIC-1, Panchdeep Bhawan, Patna, by the petitioners reveals that the petitioners have appeared before the authority and submitted necessary documents in support of this case.

6. In the counter affidavit filed by the respondents there is no whisper with regard to the above documents filed by the petitioners which evidence that the petitioners appeared before the authority on 25.02.2021. Though the counsel for the respondents has vehemently opposed the maintainability of the Writ Petition on the ground of there being an alternative and efficacious remedy, this Court as well as the Hon'ble Supreme Court in a catena of cases has time and again has held that the bar for exercising jurisdiction under Article 226 of the Constitution of India can not be curtailed because on the ground of availability of an alternative and efficacious remedy under the Act (see the judgments passed in **Whirlpool Corporation Vrs. Registrar of Trade Marks, Mumbai**, reported in (1998) 8 SCC, 1, **Puneet Kumar vs Union of India & Ors.** reported in 2023 SCC OnLine SC 214:2023(2) BLJ 278 (SC) & (2023) 3



**SCC 629 : 2023 SCC OnLine SC 116, Godrej Sara Lee Ltd.  
Vrs. Excise and Taxation Officer-cum-Assessing authority &  
Ors. reported in 2023 SCC OnLine SC 95 and Jagdish Bharti  
Vrs. the State of Bihar & Anr. reported in 2011(3) PLJR, 677)**

7. Having regard to the fact that the impugned order is passed against the principles of natural justice and equity and the finding recorded are contrary to the record, the impugned order is set aside. The matter is remanded back to the authority concerned for passing orders afresh duly putting the petitioners on notice and give them opportunity of hearing.

8. In view of the above mentioned facts and circumstances the impugned order is set aside and the matter is remanded back to the authority concerned for passing orders afresh.

9. With the above directions, the writ petition stands disposed of.

**(A. Abhishek Reddy , J)**

Shamshad/-

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