

16. 04. 2024

BP
Sl. 4
Court No. 23

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 1860 of 2023

Vivekananda Mission School on behalf of
President Smt. Chandana Maity & Anr.

Vs.

The Secretary Ministry of Health and
Welfare and Employees Provident Fund
& Ors.

Mr. Prasanta Kumar Pakrashi
..for the petitioners

Mr. Arindam Maitra
..for ESIC

Affidavit of service filed in Court today is taken
on record.

The Employees' State Insurance Corporation (in
short ESIC) is represented.

On behalf of the respondent no.2 being the
Recovery Officer, ESIC a preliminary inspection report
dated 6th March, 2017 along with the visit note is placed
before the Court which is taken on record. It will appear
from the visit note that the petitioner no.2 had signed the
same after affixing the stamp of the petitioner no.1 on 6th
March, 2017. Subsequent thereto show cause notices
were issued and a hearing date was fixed on 17th April,
2019 when the petitioners did not appear. The matter was

adjourned and directed to appear on 25th July, 2019.

It is the case of ESIC that despite receipt of the notices the petitioners did not appear as a consequence whereof on 28th November, 2019 an order under Section 45A of the Employees State Insurance Act, 1948 (in short ESI Act) was passed directing the petitioner no.1 to pay a sum of Rs. 1,65,165/- on account of contribution under the ESI Act for the period 03/17 to 12/18. This order was served on the petitioners on 30th April, 2022 as submitted by the respondent no.2 by producing a photocopy of a track report which is also taken on record with the show cause notices. .

It is the case of the respondent no.2 (ESIC) that despite being aware about the proceedings the petitioners never participated therein nor did they take any step to challenge the order dated 28th November, 2019 passed under Section 45A of the ESI Act.

It is further submitted by ESIC that the petitioner no.2 namely, Tapan Kmar Maity having signed the visit note after affixing the seal of the petitioner no.1 is, therefor, associated with the petitioner no.1. The petitioner no.2 cannot now feign ignorance and say that he is no way connected with this school.

That apart from the cause title itself it is apparent that the petitioner no.1 is represented by Smt.

Chandana Maity as its President who is described as the wife of petitioner no.2 namely, Tapan Kumar Maity. The petitioners on the other hand say that no contribution is required to be made on behalf of the school as the same is not covered under the ESI Act. It is also submitted that the personal account of Tapan Kumar Maity (respondent no.2) could not have also been attached or directed to be freezed.

The petitioners have themselves disclosed the notice dated 4th June, 2019 by which the date of hearing was fixed on 25th July, 2019, the visit note duly signed by Tapan Kumar Maity as also the order under Section 45G of the ESI Act respectively at pages 40, 41 and 42 of the writ petition.

For the ends of justice, the petitioners will be entitled to challenge the order under Section 45A of the ESI Act passed on 28th November, 2019 though the time to prefer such appeal has expired long back subject to the petitioners depositing the assessed amount of Rs. 1,65,165/- along with applicable interest thereupon as a predeposit for preferring such appeal if not the said amount has already been realised. The appeal, if filed with a predeposit within 10th May, 2024 the Appellate Authority shall consider the same on merit without going into the limitation failing which the opportunity afforded

to the petitioners to prefer an appeal shall automatically stand discharged. The petitioners if make the predeposit as directed and file the appeal, shall be at liberty to seek for de-freezing the amount of petitioner no.2 with Punjab National Bank. The Appellate Authority shall independently consider the issue of defreezing the account of petitioner no.2 in accordance with law without being influenced in any manner by any observation made herein.

It is also made clear that I have not gone into the merits of the matter and the Appellate Authority, if the appeal, is filed shall be free to decide on all the issues independently and afresh.

Nothing further remains to be adjudicated in this writ petition. The same is accordingly disposed of.

Since I have not called for affidavit, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)

