

21.05.2024.
Court No.13
Item No. 58
ap

W.P.A. No. 14248 of 2024

Sanju Ghosh
Versus
Employee's State Insurance Corporation & Ors.

Mr. Soumya Majumdar,
Mr. Sanjib Dawn.

...For the petitioner.

Mr. Arindam Maitra.

...For the ESIC.

1. Affidavit-of-service filed in Court today be taken on record.
2. The petitioner challenges the final order dated 15th January, 2024 passed by the Deputy Director, Employee's State Insurance Corporation under Section 45 of the Employees State Insurance Act, 1948.
3. Mr. Majumdar, learned Counsel appearing on behalf of the petitioner submits that the Adjudicating Authority has not applied his mind to the show-cause and the documents produced by the petitioner. He also submits that the person, who heard the petitioner upto 24th November, 2023 was not the person who passed the impugned order dated 15th January, 2024.
4. It appears from the records that the petitioner was not represented before the Authority on 7th December, 2023 when the hearing was concluded and closed.
5. In those circumstances, this Court is of the view that the Deputy Director, Employee's State Insurance

Corporation had no other option but to proceed on the basis of the records.

6. This Bench by order dated 2nd January, 2024 passed in W.P.A. No. 23645 of 2023 (Md. Sahadat Hossain @ Sahadat Hussain- Vs. – Employees' State Insurance Corporation & Ors.), has held that the petitioner has effective alternative statutory remedy of appeal before the Appellate Authority against the order of the first authority under the ESI Act.

7. This Court does not find any reason to interfere with the impugned order under Article 226 of the Constitution of India.

8. In those circumstances, if any appeal is preferred by the petitioner before the Appellate Authority, within a period of two weeks from date, the same shall be considered by the Appellate Authority notwithstanding the expiry of the statutory period for appeal.

9. The Appellate Authority shall call for the records from the First Authority and carefully considered the documents already on record, hear the petitioner and/or his legal representatives and pass appropriate order on the appeal, within a period of three months from the date of appeal.

10. With the aforesaid directions, the instant writ petition shall stand disposed of.

11. There will be no order as to costs.

12. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)