

19. 03. 2024

BP
Sl.2
Court No. 23

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 28297 of 2023

M/s. Multytech Enterprise & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Shiladitya Barma
Mr. Simanta Kabir
Ms. Priyanka Ghosh
..for the petitioners

Mr. Ansar Mondal
Mr. Asish Dutta
..for the State

Ms. Mitali Bhattacharya
..for P.F. Authority

Mr. T.K. Chatterjee
..for ESI Corporation

The matter appears to have a chequered history. This is the second round of litigation by the petitioners being the employers disputing the claim of the Employees State Insurance Act (hereinafter referred to as ESI Act). By an order dated 9th November, 2021 the competent authority awarded a sum of Rs. 1,84,223/- under the provisions of Section 45A of the ESI Act in favour of the respondent no.2. The petitioners (employers) challenged the said order by filing a writ petition being WPA 19899 of 2022. The said writ petition was disposed of by an order

dated 3rd April, 2023 by which the petitioners (employers) were permitted to approach the appellate authority under Section 45AA of the ESI Act to challenge the order dated 9th November, 2021 as the same was an appealable order. A time period of six weeks was given to the employers to file the appeal. The petitioners (employers) did not avail such opportunity and much after expiry of the six weeks time period approached the appellate authority. The appellate authority by an order dated 30th October, 2023 rejected the appeal on the ground that six weeks time period has expired.

The petitioners (employers) have challenged the said order and are seeking further extension of time by setting aside the order dated 30th October, 2023 to permit the appeal to be taken up by the appellate authority and heard on merits. The petitioners say that it has a good case on merit as, according to the petitioners, the provisions of ESI Act is not applicable to the establishment being the petitioner no.1. Even if it is assumed without admitting that the petitioners have a very good case on merit then also the conduct of the petitioners is deplorable. The petitioners cannot take the compliance of a statutory requirement in a light manner. The object of ESI Act is social security benefit which is a beneficial legislation. The employer is required to deduct

and deposit if his contribution along with employees' contribution with the authority within a stipulated time period for the benefit of the employees failing which the employer is saddled with consequences as provided in the statute. In the instant case the employers challenged the order in the writ petition without preferring an appeal when the order is an appealable order. After getting a benefit in the first writ petition the petitioners did not avail the opportunity so given. The petitioners, therefore, are not entitled to be shown any further sympathy or favour at the second round of the litigation before this Court.

The order dated 30th October, 2023 does not suffer from any infirmity. I do not also find any cogent ground to permit the petitioners one more opportunity to assail the order passed as far back as on 9th November, 2021 before the appellate authority.

The writ petition therefor, fails and is accordingly dismissed.

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

(Arindam Mukherjee, J.)

