

OD-4

ORDER SHEET

WPO 374 of 2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S. ARVIND METALS & MINERALS PVT. LTD.
VS.
EMPLOYEES' STATE INSURANCE CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 7th May, 2024.

Ms. Soma Mishra Chatterjee, Advocate for the petitioner.

The Court : The writ petition has been filed by stating that the same to be one under Group VIII. However, the department on scrutiny has noticed that the same pertains to Group III and has been placed before this Court on being released by the Bench taking up the matters under Group VIII.

Leave is granted to the petitioner to correct the presentation form and the first page of the writ petition wherein Group VIII is mentioned.

This writ petition has been filed on 24th April, 2024 challenging an order dated 1st February, 2024 passed under the provision of Section 45A of the Employees' State Insurance Act, 1948 (in short ESI Act). The order is annexed at page 34 and 35 of the writ petition. The ESI Act specifically provides for an appeal provision under Section 45AA of the said Act. Even a party displeased with an order passed under the provision of Section 45A of the ESI Act can in certain cases take recourse of Section 70 of the said Act.

Although, alternative remedy is not an absolute bar in maintaining a writ petition but in view of the appellate provision which has the authority to go into the factual aspect of the matter, the writ petition is disposed of by granting the petitioner liberty to approach the appellate authority under Section 45AA of the ESI Act challenging the order impugned herein by preferring an appeal. In the event the appeal is preferred within 22nd May, 2024, the appellate authority shall decide the appeal on merits without going into the issue of limitation and belated filing of the appeal. The appellate authority shall hear out the matter in accordance with the provision of law by affording the parties to the appeal, if the same is filed, a reasonable opportunity of hearing. The appellate order should be a reasoned order and shall redress all the issues before it. The appellate authority shall decide the appeal, if filed, independently and without being influenced in any manner by the observations made herein. The appeal, if filed within the timeframe provided in this order, shall be disposed of within a period of six months from the date of filing of the same.

It is also made clear that I have not gone into the merits of the matter.

The writ petition is accordingly disposed of.

(ARINDAM MUKHERJEE, J.)