

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13717 of 2024

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Sambodhit a Society registered under the Society Registration Act, 1860, having its registered office situated at - Harishchandra Nagar, Sipara, P.O.- Delwan, P.S. - Beur, Town and District - Patna, through its Secretary, namely Jay Kumar Soni, aged about 50 years, gender- male, S/o Late Bachchan Prasad.

... .. Petitioner/s

Versus

1. Employees State Insurance Corporation Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 8000001, Bihar through its Regional Director.
2. Regional Director, Employees State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 800001, Bihar.
3. Authorised Officer, Employees State Insurance Corporation, Regional Office (RO-Patna), Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 800001, Bihar.
4. Recovery Officer-cum-Deputy Director, (Recovery), Employees State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 800001, Bihar.
5. Branch Manager, Employees State Insurance Corporation, Branch Office, Patna.
6. Axis Bank Limited, S.P Verma Road Branch, Patna through its Branch Manager.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Jha, Adv.
For the Respondent/s : Mr. Sudhir Kumar Bijpuria, Adv.

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

7 13-05-2025 Heard the learned counsel for the parties.

2. This writ petition has been filed for the following
relief(s):-

*“I. To quash/set-aside Order dt.
30.11.2023 (Annexure -P2) passed by the
Authorised Officer (Respondent No.3) u/s. 45-A
of the ESI Act, 1948 whereby the Respondent
has determined 35,16,282/- (Rupees Thirty-five*



lacs sixteen thousand two hundred and eighty-two only) as arrears of contribution payable by the petitioner with respect to 177 (one hundred and seventy-seven) employees for the period of 40 (forty) months from September, 2018 to December, 2021 and allow the petitioner to present their case before the Authorised Officer and

II. To direct the Respondent No. 3 to permit the petitioner to present their case and then to examine and assess the actual contribution, if any, payable by the petitioner with respect to its 177 (one hundred and seventy-seven) employees for the period of 40 (forty) months from September, 2018 to December, 2021 and

III. To direct the Respondent ESIC to allow the petitioner to operate their CA Bank account bearing CA A/c No. 142010100231671 maintained with the Axis Bank Limited, S.P Verma Road Branch (000142), Patna and

IV. To direct the Respondent Bank i.e. Axis Bank Limited, S.P Verma Road Branch (000142), Patna to allow the petitioner to operate their CA Bank account maintained with them and”

3. Learned counsel for the petitioner has stated that the petitioner is a society registered under the Society Registered Act, 1860 and is covered by the provisions of the



Employees State Insurance Act. Learned counsel has stated that initially there were only 10 persons and subsequently the same was increased to 34 members till January, 2022. Thereafter the number of employees covered under the scheme from February 2022 onwards went upto 177 employees. That the authority has issued the notice dated 24.08.2016 initially for the ten employees only. That as per the C6 Register issued by the authority, it is clearly mentioned that as of February 2022 the number of employees were only 34. However, the authority while calculating the amount of contributions to be paid by the petitioner has taken into consideration the number of employees as 177 for the period 2018 till December 2021. That as a matter of fact, the C6 register shown, the number of employees working in the organization is only 34 up till January 2022. Learned counsel has stated that the miscalculation done by the respondents is glaring on the face of it and, therefore, the impugned order is liable to be set aside. That the matter may be remanded back to the authority concerned for passing orders afresh duly taking into consideration the number of employees as reflected in C6 register and also any other documents that the petitioner may file. Learned counsel has, therefore, prayed this Hon'ble Court to set aside the impugned order and pass



necessary orders.

4. *Per contra*, the learned counsel appearing on behalf of the respondents Employees' State Insurance Corporation has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the petitioner had ample opportunity to file his explanation along with necessary documents before the authority after receipt of the show cause notice. However, the petitioner has not chosen to appear before the authority, therefore, left with no other alternative, the authority has passed the impugned order. Further, it is stated that the petitioner has a provision to file statutory appeal under section 45AA of the ESI Act, 1948 within a period of 60 days from the date of the order however petitioner has not chosen to file any statutory appeal. That in case the petitioner is aggrieved by the said order, he can approach the Employees Insurance Court under Section 75 of the Act. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. A perusal of the impugned order, the show cause notice as well as the C6 register filed by the respondents along with the counter affidavit reveals that initially the show cause notice was issued to the petitioner for payment of the ESI



amounts for only 10 employees. Further, as seen from the C6 register, the number of employees till January 2022 was only 34 and thereafter it has increased to 177 from February, 2022. The disputed period for calculation of the ESI amounts is from September 2018 till December, 2021. The authority while calculating the contribution to be made by the petitioner has calculated as if 177 employees were working during the said period. This miscalculation done by the authority is on the face of it is illegal, perverse and contrary to the record and, therefore, liable to be set aside and the same is accordingly set aside.

That in so far as the prayer sought for by the respondent to dismiss the present writ petition on the ground of availability of the alternative remedy is concerned, this Court as well as the Hon'ble Supreme Court in a catena of cases has time and again held that relegating the party to approach the appellate authority solely on the ground that alternative remedy is available is bad more particularly when the impugned order on the fact of it is illegal, perverse, contrary to the record. Having regard to the same, the impugned order is set aside and the matter remanded back to the authority for calculating the actual ESI amount payable by the petitioner as per the number of employees reflected in the C6 register. It is needless to mention



that the petitioner shall be given an opportunity of hearing before any order is passed and he shall be permitted to submit documents in support of his case. The entire exercise to be completed as expeditiously as possible preferably within a period of eight weeks from the date of receipt of the copy of this order.

6. With the above directions, the present writ petition stands allowed to the extent indicated. In case the petitioner does not cooperate with the disposal of the case, the authorities are free to pass necessary orders in accordance with law.

7. Having regard to the fact that is an amount of approximately 15 lakhs is already remitted to the ESI Corporation by the bank, the freeze on the account of the petitioner shall forthwith be removed and the petitioner shall be permitted to operate the account.

(A. Abhishek Reddy , J)

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