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16.07.2025
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**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 7254 of 2024

**M/s. Prince Auto Uluberia & Anr.
-versus
The Union of India & Ors.**

**Mr. Kushal Chatterjee,
Mr. Prasayan Mukherjee.
...For the Petitioners.**

**Mr. Somnath Ganguli, Ld. AGP,
Ms. Pratiti Das.
...For the State.**

**Ms. Rashmi Bothra,
Ms. Tanusree Ghosh.
...For UOI.**

**Mr. Shiv Chandra Prasad.
...For ESI Corporation.**

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

2. The petitioners are aggrieved by the order passed by the Employees State Insurance Corporation on 6th November, 2023 directing recovery of interest on account of delayed payment of the contribution under Sections 45(C) to 45(I) of the Employees State Insurance Act, 1948 as amended. The petitioners are also aggrieved by the order dated 8th December, 2023 passed under Section 85B of the Act.

3. The petitioners allege violation of principle of natural justice as no opportunity of hearing was given to the petitioners prior to fixation of interest on account of delayed payment of the contribution.

4. The petitioners submit that as regards recovery of damages, an opportunity ought to have been given prior to passing any order under Section 85B.

5. It has been submitted that the petitioners could not remain present at the time of hearing as the petitioners received the notice of hearing after the date and time fixed for hearing.

6. It has also been submitted that for quantification of the rate of interest, an opportunity ought to have been provided to the petitioners. It has been submitted that interest has been fixed at a very high rate without hearing the petitioners.

7. Learned advocate appearing on behalf of the petitioners relies upon the judgment delivered by this Court in the matter of **Engser Ltd. & Anr. -vs- Employees Provident Fund Organization & Ors.** reported in **2007 SCC Online Cal 23 : (2007) 2 Cal LT 650** in support of the submission that an opportunity of hearing ought to have been given to the employer.

8. Reliance has also been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of **Bharat Heavy Electricals Ltd.-vs- Employees' State Insurance Corporation** reported in **(2008) 3 SCC 247**.

9. Prayer has been made to set aside the order passed under Sections 45(C) to 45(I) of the Act and the order passed under Section 85B of the Act.

10. Learned advocate appearing on behalf of the State Insurance Corporation opposes the prayer of the petitioners.

11. It has been submitted that the petitioners ought to have approached the appellate forum under Section 75 of the Act before the Employees' Insurance

Court. As regards the order passed under Section 45A, the petitioners ought to have approached the appellate authority under Section 45AA.

12. I have heard the submissions made on behalf of the parties and have perused the documents placed before this Court.

13. It appears that the order passed under Section 45A of the Act where the liability of the employer was fixed, has been admitted and acted upon by the petitioners. The order has been complied with by making payment as indicated in the said order. The petitioners never raised any allegation with regard to its liability for making payment. After adjudicating the liability of the employer, the authority has proceeded to direct the employer to pay interest on account of delayed payment of the contribution. Compensation has also been directed to be paid under Section 85B.

14. The provision of Section 75 of the Act deals with any dispute in between the employer and the employee in respect of the Act. The Employees' Insurance Court is the competent forum to decide the dispute.

15. In *Engser Ltd.* (supra) the Court was dealing with the provisions under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The issue was with regard to the liability of the employer being fixed. In the instant case, the employer has already accepted its liability and has made payment of the contribution. Accordingly, the said decision does not come to the aid of the petitioners.

16. In *Bharat Heavy Electricals Ltd.* (supra), the Court was considering the proviso appended to Section 45A of the Act. In the instant case, opportunity of

hearing was given to the petitioners at the stage of fixing liability under Section 45A.

17. The submission of the petitioners is that further opportunity of hearing ought to be granted at the time of fixation of interest.

18. As there is already an appellate provision under Section 75 of the Act, the Court keeps this point open and grants liberty to the petitioners to approach the appellate forum in accordance with law for redressal of their grievances.

19. The writ petition stands disposed of.

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

(Amrita Sinha, J.)