

03.03.2025
Item No.201
Ct. No. 30
Aloke

C.O. 3993 of 2024

**M/s. Bee Pee Jay Finance Ltd.
Vs
Employees State Insurance Corporation**

Mr. Rachit Lakshmani
Mr. Uddipan Banerjee
Mr. Subhrakanti Samanta
... for the petitioner

Mr. Mihir Kundu
... for the ESI Corporation

The present civil revisional application has been preferred against order no. 30 dated 16th April, 2024 passed by the learned Judge, Employees Insurance Court, Calcutta in Tender Case No. 24 of 2019.

By the said order under challenge the Judge, Employees Insurance Court, Calcutta has been pleased to reject the petitioner's application under Section 75(2B) of the ESI Act, 1948 but has been pleased to grant an order of injunction against the opposite party/Corporation from taking any coercive action against the applicant/petitioner herein.

In course of hearing the opposite party-ESI Corporation has submitted copies of documents in support of their contention that an order under Section 45A of the ESI Act has been passed by the appropriate authority on 18/24 May, 2012. A copy

has been placed before the Court along with other the documents.

Learned counsel for the petitioner submits that the said order was never served upon the petitioner. The petitioner became aware of the said order only when the recovery notice dated 15/24/04/2019 was served upon them. In their application which was disposed of by the order challenged herein the petitioner had again raised the issue that no proceedings under Section 45A of the ESI Act was either conducted nor was any order served upon them.

Learned counsel for the ESI Corporation has filed certain documents in support of his contention that proper notice in respect of the proceedings under Section 45A EPF Act was served upon the petitioner herein who failed to appear for hearing and the order passed was also duly served. As such, the order under challenge being in accordance with law requires no interference. Exception to the said documents has been filed by the petitioner herein.

On hearing the parties and considering the materials on record it appears from the document at page 54/55 of the application which is an order dated 26.12.2014 in Tender Case No.73 of 2012 that it was recorded by the Judge of the ESI Court while dismissing an application under Section 75(2B) of

the Act, that it was **premature**. The specific finding of the Court in respect of the application being premature is as follows :

“Ld. Advocate for the OP/ESI Corporation has submitted their the present tender case is premataure one and no cause of action arose. He pointed out the Section 77 of the ESI Act. “The cause of action in respect of a claim by the corporation for recovering contribution (Including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the ESI Corporation first time.” He candidly admits that no order U/s 45A of the ESI Act has been passed by the OP/ESI Corporation. He therefore urged that the applications filed by applicant should be rejected.

*Considering the facts of the case and having regard to materials on record I find from the record tht the OP/ESIC issued a notice in form C-18 ad hoc basis dated 16/01/12 vide annexure ‘A’ claiming contribution to the tune of Rs.1,49,078/- and fixing a date of hearing on 15/3/2012. On 15/3/12 the applicant appeared before the hearing officer and submitted all relevant documents **but the hearing officer has passed no final order U/s 45A against the applicant till now.***

*In view of above made discussions, I am constrained to hold that the present **tender case is premature as there is no cause of action and same should be dismissed.** No effective orders is passed in respect of the injunction petition and the petition U/s 75(2B).*

Hence it is

Ordered

*that the **present tender case is premature one** and same should be dismissed. At the same time the notices C-18 ad hoc basis and CRO 164 dated 16/01/2012 are considered and rejected.”*

It appears that the said order is dated 26.12.2014 whereas the order under Section 45A of the ESI Act is dated 18/24.05.2012. It is thus clear that the submission made in the tender case no. 73 of 2012 made by the ESI Corporation was not correct and this supports the case of the petitioner that neither the proceedings under Section 45A of the ESI Act was done in presence of the petitioner nor was the order under Section 45A of the ESI Act served upon the petitioner.

The petitioner's case that he first came to know about such proceeding only when the recovery notice was issued in the year 2019 and he challenged the same before the Court by an application which was disposed of by the order under challenge is prima facie correct.

In the said order the Court has also recorded that the applicant has stated that no order was served by the claimant.

The learned counsel for the ESI Corporation submits that the order under Section 45A is appealable under Section 45AA

of the Act and the petitioner should approach the proper forum for relief.

Considering the said admitted facts on record, this Court finds that the petitioner has prima facie proved before this Court that the order under Section 45A of the ESI Act was never served upon him.

In the order dated 26.12.2014 it appears that ESI Corporation submitted that no order under Section 45A of the ESI Act has been passed whereas it appears that on 14/24.05.2012 an order under Section 45A of the Act has already been passed.

Considering the said facts the recovery notice dated 24.03.2019 is also not in accordance with law being in violation of the principle of natural justice and is thus **set aside.**

The petitioner is granted leave to prefer an appeal under Section 45AA of the ESI Act against the order passed under Section 45A of the ESI Act within 30 days from the date of this order on deposit of only 25% of the amount under demand/claimed.

Be it be noted that the said 25% shall be, only in respect of the total demand made and the same shall not include any interest, till the period of 30 days from the date of this order, in

view of the fact that the total delay and leches herein is due to the conduct of the ESI Corporation.

Considering the directions above, the Tender Case 24 of 2019 also stands disposed of.

C.O. 3993 of 2024 is accordingly disposed of.

There will be no order as to costs.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

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

(Shampa Dutt (Paul), J.)