

03.12.2025

Ct. No. 10
Sl. No. 6
Moumita

In The High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 26859 of 2023

M/s. Yummy Restaurant and Anr.
Vs
Union of India & Ors.

Md. Nasim Ali
Mr. Sanjib Kumar Mukhopadhyay
Mr. Nargish Parveen

..... for the Petitioners

Mr. Subal Maitra

....for the Respondent nos. 3 and 4

The petitioner in the instant case is a proprietorship firm running in the name and style of M/s. Yummy Restaurant. The petitioner files in the instant case for the following reliefs.

- (a)** *'A Writ of and/or in the nature of Certiorati thereby directing the respondent authorities to certify and transmit to this Hon'ble Court all relevant records of the present case and upon perusal thereof to pass necessary orders including quashing the Memo. Dated September 1, 2023 issued by the respondent No.3, being Annexure "P-5" herein under Section 45A of the Employees' State Insurance Act, 1948;*
- (b)** *A Writ of and/or in the nature of Mandamus thereby commanding the respondent authorities:-*
- (i) To act and proceed in accordance with law;*
 - (ii) To rescind/recall/cancel the Memo. dated September 01, 2023 issued by the respondent No.3, being Annexure "P-5" herein under the provisions of Section 45A of the Employees State Insurance Act, 1948;*

- (c)** *A Writ of and/or in the nature of Prohibition thereby prohibiting the respondent authorities and/or their men or agents from doing any act, deed or thing which may cause prejudice and/or harm to the writ petitioner;*
- (d)** *Rule Nisi in terms of prayers (a),(b) and (c) as above;*
- (e)** *An interim order thereby staying the operation of the Memos. Dated September 01, 2023 issued by the respondent No.3 under Section 45A of the Employees' State Insurance Act, 1948, being Annexure "P-5" herein;*
- (f)** *Costs of and/or incidental to this application;*
- (g)** *To pass such other or further writ or writs, order or orders, direction or directions as to this Hon'ble Court may deem fit and proper.'*

Main grievance of the petitioner is with regard to the order dated 01.09.2023 passed under Section 45A of ESI Act, 1948 (as amended). The petitioner states that on December 22, 2022 the concerned officer of the ESI Corporation compelled him under extreme threat and duress to put his signature in the list of the staff members of the petitioner no. 1. Thereafter on December 30, 2023 the assistant director of the ESI Corporation being the respondent no. 3 wrote a letter to the recovery officer ESI Corporation S.R.O., Durgapur for recovery of the contribution under Section 45 C to 45 I of the ESI Act, 1948 along with the rate of interest 12% per annum from February 21, 2023 against the writ petitioner.

The respondent vehemently opposes such contention of the petitioner and submits that the writ

petition is not maintainable since there is an alternative remedy available under Section 45AA of the ESI Act, 1948. It is also submitted that the order has been passed in the year 2023 and the statutory period to file the appeal is within 60 days from the date of order passed under Section 45A.

The petitioner submits that already they have been put into notes of recovery and filing of an appeal there is no statutory bar in not failing the alternative remedy which is available under Section 45A. At the respondents also relies upon another judgment to negate the contention of the petitioner ***In the matter of: Commissioner of Income Tax & Ors. Vs. Chhabil Dass Agarwal reported at (2014) 1 SCC 603*** and a judgment of Supreme Court ***In the matter of : Harbansh Lal Sahania –Vs.- Indian Oil Corporation Ltd. reported at AIR 2003 (SC 2120 = 2003(2) SCC 107.***

After careful consideration of the case, I am of the considered view that the petitioner is directed to prefer an appeal before the appellate authority upon payment of 25% of the assessed amount within a period of 45 days. The petitioner is directed to pay a cost of Rs.5,000/- to State Legal Services Authority (SLSA) for preferring the appeal before the concerned authority at a belated stage. The appeal shall be entertained subject to

the satisfaction of the payment of cost to the SLISA failing which the appeal shall not be entertained by the appellate authority. The petitioner is directed to produce the proof of payment before the appellate authority at the time of filing of the appeal otherwise the filing of the appeal shall stand forfeited.

The appellate authority is directed to expedite the hearing of the appeal preferably within a period of 60 days.

In the meantime the authority concerned shall not take any coercive steps till the disposal of the appeal filed before the appellate authority.

With the above observations and directions, this writ petition **WPA 26859 of 2023** stands ***disposed of*** and connected application being **CAN 1 of 2024** stands ***disposed of***, without any order as to costs.

(Smita Das De, J.)