

WPO/395/2025

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

KRISHNENDU BHATTACHARYYA.

-VERSUS-

THE EMPLOYEES STATE INSURANCE
CORPORATION AND ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA DUTT (PAUL)

Date : 19th June, 2025.

Appearance:

Mr. Mainak Ganguly, Adv.
Mr. Shankar Mukherjee, Adv.
.... for the petitioner.

Mr. Bodhisatta Biswas, Adv.
...for the respondent.

The Court: The writ petition has been preferred against an order dated 25th February, 2025 passed by the respondent nos.2 (ESI Corporation) under Section 45A of the ESI Act.

It appears from the said order that the petitioner/ employee did not attend the hearing in spite of being granted sufficient opportunity.

Respondent/ESI submits that the said order being appealable under Section 45AA of the Act, the writ petition is not maintainable.

The petitioner/employee has relied upon the following judgments to counter the case of the respondent/ESI regarding maintainability of the writ petition:

i. Himmatlal Harilal Mehta vs. State of Madhya Pradesh & Ors. reported in (1954) SCC 405 (para 10);

ii. M.G. Abrol, Additional Collector of Customs, Bombay & Anr. vs. Shantilal Chhotelal & Co. & Ors. reported in 1965 SCC Online SC 19 (para 15)

In the present case, admittedly there has been no appeal preferred under Section 45AA of the ESI Act from the order under Section 45A of the ESI Act.

The case of the petitioner is that the ESI authorities have sought to recover contribution for a period subsequent to cessation of operation of the subject establishment without considering the expiry of the Certificate of Establishment available on public domain and as such have failed to discharge their statutory duties.

Though the petitioner herein has alleged illegal, arbitrary and violation of his right under Article 14 of the Constitution of India, the case as made out that the ESI authority had erroneously not considered that the operation of the Establishment had ceased, is a matter to be considered by the appellate authority on adducing evidence and the materials on record.

Admittedly, the petitioner did not attend the hearing in spite of notice, as such there is nothing to show, prima facie, that the petitioner's fundamental right has been infringed.

Accordingly, the relief of the petitioner lies before the appellate authority under Section 45AA of the ESI Act and not before the writ Court.

Considering the said facts and the materials on record and in the interest of Justice, the writ application is disposed of with a direction that the writ

petitioner herein is at liberty to file an appeal under Section 45AA of the ESI Act within 30 days from the date of this order, which the appellate authority shall consider in accordance with law, and by passing a reasoned order decide the same within 30 days thereafter.

The period of limitation is thus extended for a period of 30 days, in the interest of justice.

The writ petition (WPO/395/2025) stands disposed of.

Applications, if any, connected thereto stands disposed of consequently.

Interim order, if any, stands vacated.

It is made clear that this Court has not gone into the merits of the case while considering the maintainability of the writ application.

(SHAMPA DUTT (PAUL), J.)