

GAHC010052952024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1687/2024

CHANDAN SAHU
S/O- LAXMAN PRASAD SAHU,
AMOLAPATTY,
DHAKUAKHANA,
DIST. LAKHIMPUR,
ASSAM,
PIN- 787055.

VERSUS

THE EMPLOYEES STATE INSURANCE CORPORATION AND 2 ORS.
REPRESENTED BY REGIONAL DIRECTOR,
ESI CORPORATION,
REGIONAL OFFICE,
BAMUNIMAIDAM,
GUWAHATI-781020.

2:ASSISTANT/ DEPUTY DIRECTOR/ AUTHORISED OFFICER
ESI CORPORATION REGIONAL OFFICE
BAMUNIMAIDAM GUWAHATI-781020.

3:RECOVERY OFFICER
REGIONAL OFFICE ESI CORPORATION
BAMUNIMAIDAM
GUWAHATI-781020

Advocate for the Petitioner : MR. B J GHOSH

Advocate for the Respondent : SC, ESIC

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 27.03.2024

Heard Mr. B.J. Ghosh, learned counsel for the petitioner and Mr. M. Smith, learned counsel appearing for all the respondents.

2. The petitioner is a registered employer under the Employees' State Insurance Act, 1948 (hereinafter referred to as the 'Act'). An order dated 29.10.2021 under Section 45A of the Act was issued by the respondent Corporation, for alleged non compliance of various show cause notices with regard to non submission of the Employees State Insurance contribution to be made by the petitioner. The petitioner's case is that the show cause notices could not be accessed by the petitioner due to the Covid-19 pandemic. Despite the above, the impugned order dated 29.10.2021 under Section 45A of the Act was issued, directing the petitioner to deposit an amount of Rs.17,48,382/-. Thereafter a certificate for recovery of dues dated 11.01.2023 was issued by the Authorized Officer to the Recovery Officer under section 45 C to 45 I of the Act. The petitioner filed an application under Section 45 E(2) of the Act on 25.09.2023, for withdrawal of the certificate dated 11.01.2023 and to reassess the contribution to be made by the petitioner.

3. As the petitioner's representation was not being considered, the petitioner filed WP(C) No. 6996/2023, challenging the impugned order dated 29.10.2021 issued under Section 45A of the Act and the certificate for recovery of dues dated 11.01.2023. WP(C) 6996/2023 was disposed of vide order dated 13.12.2023, by directing the Authorized Officer under the Act to consider the

petitioner's representation dated 25.09.2023 filed under Section 45 E(2) of the Act and to pass a speaking order. The relevant paragraph of the order dated 13.12.2023 passed in WP(C) No. 6996/2023 is reproduced below as follows-

"In view of the aforesaid facts and circumstances, the instant writ petition is disposed of by directing the authorized officer under the Act of 1948 to consider the application dated 25.09.2023 said to have been filed under Section 45 E (2) of the ESI Act, 1948 and pass a speaking order as expeditiously as possible and preferably within a period of 3 (three) weeks from the date of receipt of certified copy of this order. To facilitate such consideration, the petitioner is required to furnish a fresh copy of the said application along with the certified copy of this order. "

4. Consequent to the above order dated 13.12.2023 passed in WP(C) 6996/2023, the Authorized Officer of the respondent Corporation issued a speaking order dated 25.01.2024, rejecting the petitioner's prayer for withdrawing the order dated 29.10.2021 and the certificate for recovery of dues.

5. The petitioner has now filed the present writ petition with a prayer to set aside the speaking order dated 25.01.2024, the certificate for recovery of dues dated 11.01.2023 issued by the Authorized Officer of the respondent Corporation and the impugned order dated 29.10.2021.

6. The petitioner's counsel submits that the petitioner was not given an opportunity of being heard by the Authorized Officer before passing the speaking order dated 25.01.2024. He submits that the matter should be remanded back to the concerned Authorized Officer to take a fresh decision, after giving an opportunity of hearing to the petitioner.

7. The petitioner's counsel submits that the petitioner is having 5 to 7

employees, while the certificate issued by the respondent Corporation is on the premise that the petitioner is employing 175 employees.

8. On the other hand, Mr. M. Smith, the learned counsel for the respondents submits that the order dated 13.12.2023 passed in WP(C) 6996/2023 had made a direction to the Authorized Officer to consider the petitioner's representation dated 25.09.2023, which was said to have been filed under Section 45 E(2) of Act and there was no direction to give an opportunity of hearing to the petitioner. He further submits that there is an alternative remedy available under Section 75 of the Act and the petitioner would have to approach the appropriate forum in terms of the statutory remedy available, for redressal of his grievance.

9. I have heard the learned counsels for the parties.

10. Section 45E(2) and Section 75 (c) and (g) of the Act states as follows-

“45E: Validity of certificate and amendment thereof-

(2) Notwithstanding the issue of a certificate to a Recovery Officer, the authorised officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.”

“75. Matters to be decided by Employees' Insurance Court.-

(c) the rate of contribution payable by a principal employer in respect of any employee, or

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues

payable or recoverable under this Act, [or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act],

such question or dispute [subject to the provisions of sub-section (2A)] shall be decided by the Employee's Insurance Court in accordance with the provisions of this Act."

11. The order dated 13.12.2023 passed in WP(C) 6996/2023 had directed the Authorized Officer under the Act to consider the petitioner's application dated 25.09.2023 and the same has been done, vide speaking order dated 25.01.2024. This Court having directed the petitioner to approach the authorities under the Act, this Court is of the view that the challenge to the speaking order dated 25.01.2024 would also have to continue to be made under the Act.

12. The above being said, there are disputed questions of fact involved, as can be seen from the stand taken by the petitioner's counsel that the petitioner is employing only 5-7 persons, while the respondent Corporation has made the order dated 29.10.2021 on the premise that the petitioner is employing 175 persons. These disputed questions of fact cannot be decided in a writ petition. Further, there is a statutory alternative remedy available to the petitioner under Section 75 of the Act. I have also noticed the various orders passed by this Court in somewhat similar cases, wherein this Court had directed various petitioners to avail of the alternative remedy available under Section 75 of the Act. The orders were passed in WP(C) 981/2022, WP(C) 5554/2018, WP(C) 2772/2016 and WP(C) 6064/2021. Further, in the case of ***E.S.I.C. Vs. C.C. Santhakumar***, reported in ***(2007) 1 SCC 584***, the Supreme Court has held that if an employer fails to challenge the determination made under Section 45A of the Act under Section 75 of the Act before the Court, then the determination

under Section 45A becomes final against the employer.

13. In view of the reasons stated above, the petitioner would have to avail the alternative statutory remedy available under the Act. The petitioner is accordingly given the liberty to approach the Employees Insurance Court under Section 75 of the Act with his grievance.

14. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant