
(2000) 04 PAT CK 0125
In the Patna High Court
Case No : C.W.J.C. No. 8659 of 1999

M/s. Awantika Mistan Bhandar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-04-2000

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A

Citation : (2000) 4 PLJR 610

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Kamal Nayan Choubey and Chandrashekhar Pd. Singh, for the Appellant; Arun Srivastav for Respondents 2 to 4 and Mrs. Ranjana Pathak for State, for the Respondent

Judgement

S.N. Jha, J.—In this writ petition the petitioner is aggrieved by the demand raised by the Employees' State Insurance Corporation in terms of Section 45A of the Employees' State Insurance Act, 1948. From the Scheme of the said Act, it appears that against the summary determination of the liability of the principal employer, there is provision for raising dispute/claim before the Employees' Insurance Court (ESI Court) u/s 75 of the Act within three years from the date of accrual of cause of action. Before approaching the ESI Court, the employer is required to deposit 50% of the demand u/s 75(3) of the Act. This is where the shoe seems to be pinching. However, as an alternative remedy is available under the statute which is quite efficacious, this Court would not like to entertain the writ petition bypassing those provisions, merely because the person may have to deposit 50% of the amount, when disputed question are involved and under the proviso appended to sub-section (2B) of Section 75, it is open to the ESI Court, for reasons to be recorded in writing, to waive or reduce the amount to be deposited thereunder. Counsel for the petitioner referred to the report of the Inspector and submitted that the basis of the proceeding being the Inspector's report u/s 45, the number of employees shown therein being only eight, the establishment does not come within the purview of the Act; I do not want to

make any comments. In fairness to the respondents however, I must observe that according to the Corporation, the establishment where the number of employees was found to be eight is only a part of the establishment owned by the petitioner. This is a matter which may be considered by the ESI Court.

In the above view of the matter, this Court would relegate the petitioner to the alternative remedy as provided u/s 75 of the ESI Act, and thus dispose of the petition.