

(2008) 11 AHC CK 0042
In the Allahabad High Court

Shyam Singh

APPELLANT

Vs

Employees" State Insurance Corporation and Others

RESPONDENT

Date of Decision : 26-11-2008

Acts Referred:

Civil Procedure Code, 1882 — Section 226

Employees State Insurance Act, 1948 — Section 85

Citation : (2009) 120 FLR 486 : (2009) 3 LLJ 494 : (2009) 1 UPLBEC 658

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Judgement

S.P. Mehrotra, J.—On oral prayer made by Sri S.D. Kautilya, learned Counsel for the petitioner, he is permitted to implead Regional Director, Employees" State Insurance Corporation, Panchdeep Bhawan, Sarvodaya Nagar, Kanpur as respondent No. 3 in the Writ Petition.

Necessary amendments will be made in the Writ Petition during the course of the day.

2. The present Writ Petition has been filed under Article 226 of the Constitution of India, inter alia, praying for quashing the Recovery Notice dated September 10, 2008 (Annexure 1 to the Writ Petition) issued by the Recovery Officer/Deputy Director, Employees" State Insurance Corporation, Kanpur (respondent No. 2).

Further, prayer has also been made in the Writ Petition that the respondents be directed to consider the claim of the petitioner under the Kshamadan Swikriti Yojana (Apology Accepting Scheme) by re-calculating the assessment dated February 9, 2004 as per rate and amount of wages fixed by the Officer of the respondents in the letter dated December 10, 2002 (Annexure 2 to the Writ Petition).

3. It is, inter alia, averred in the Writ Petition that the petitioner is proprietor of Hotel Padmini situated in Renukoot, District Sonbhadra which was established in the year 1991; and that for the first time, the Officers of the respondents came

to the Hotel of the petitioner on December 10, 2002, and after making inspection of Attendance-cum-Salary Register for the period April 2001 to March 2002 directed the petitioner to deposit the contribution under the Employees' State Insurance Act ; and that accordingly, the petitioner deposited the amount mentioned by the Officer of the respondents on December 13, 2002.

It is, inter alia, further averred in the Writ Petition that by letter dated February 9, 2004, the respondents issued notice informing the: petitioner that he had not deposited the contribution as well as the returns in respect of the contribution for the period January 1994 to March, 2001. The said letter/notice made an ad-hoc assessment of the contribution as amounting to Rs. 2,82,245/-. Copy of the said letter/notice dated February 9, 2004 has been filed as Annexure 4 to the Writ Petition.

It is, inter alia, further averred in the Petition that on a number of occasions, the" petitioner informed the respondents regarding the discrepancies and anomalies committed in making ad hoc assessment and requested to re-determine the same as per existing entry from the month of April, 2001.

It is, inter alia, further averred in the Writ Petition that a complaint being Complaint No. 1705/2002 has been filed against the petitioner before the Chief Metropolitan Magistrate, Kanpur u/s 85 of the Employees' State Insurance Act, 1948.

It is, inter alia, further averred in the Writ Petition that under the provisions of the Employees' State Insurance Act, 1948, a Scheme has been formulated by the Government to settle the dispute in regard to the alleged defaulters who are willing to pay the amount, so that prosecution launched against them may be withdrawn.

4. Supplementary Affidavit has been filed on behalf of the petitioner.

It is, inter alia, stated in the Supplementary Affidavit that the petitioner is seeking the benefit of the aforementioned Apology Accepting Scheme launched by the respondents ; and that in this regard, the petitioner has applied for the benefit of the said Scheme on November 17, 2007 before the Regional Office of the respondents ; and that as the Regional Office has not given any endorsement of receipt, the copy of the application has also been dispatched by Speed Post to Kshetriya Nideshak, Employees' State Insurance Corporation, Varanasi.

Copy of the said application dated November 17, 2008 along with the copy of the receipt regarding Speed Post has been filed as Annexure SA-1 to the Supplementary Affidavit.

5. I have heard Sri S.D. Kautilya, learned Counsel for the petitioner and Sri P.K. Pandey, learned Counsel for the respondents, and perused the record.

In view of the nature of the order, which is being passed below in the Writ Petition, it is not necessary to call for any Counter Affidavit from the respondents.

6. Having regard to the facts and circumstances of the case and having considered the submissions made by the learned Counsel for the parties, I am of the opinion that the interest of justice would be subserved in case the Writ Petition is disposed of with the following directions:

1. Within two weeks from today, the petitioner will file a certified copy of this order alongwith copy of the application dated November 17, 2008 (Annexure SA-1 to the Supplementary Affidavit) before the respondent No. 3.

2. The respondent No. 3 will give opportunity to the petitioner to complete necessary formalities for claiming the benefit of the above Scheme, and after giving opportunity of hearing to the petitioner, the respondent No. 1 will proceed to pass appropriate orders on the aforesaid application dated November 17, 2008 expeditiously preferably, within two weeks of the filing of the certified copy of this order alongwith copy of the aforesaid application] dated November 17, 2008 as mentioned in the Direction No. 1 above.

7. For a period of five weeks or till the disposal of the aforesaid application dated November 17, 2008, whichever is earlier, the Recovery Proceedings pursuant to the Notice dated September 10, 2008 (Annexure 1 to the Writ Petition) will remain stayed provided the petitioner within two weeks from today, deposits an amount of Rs. 2 lacs with the respondent No. 2. The fate of such deposit will depend on the order to be passed by the respondent No. 3 on the aforesaid application dated November 17, 2008.

8. In the event of default on the part of the petitioner in complying with the aforesaid conditions, the interim order granted above regarding stay of Recovery Proceedings will stand automatically vacated and the directions given above for disposing of the aforesaid application dated November 17, 2008 will become in-operative.

9. The Writ Petition is, accordingly, disposed of with the above directions.

It is made clear that this Court has not adjudicated upon the claim of the petitioner on merits.

Certified copy of this order will be supplied to the learned Counsel for the petitioner on payment of usual charges within three days.