

**(2012) 10 CAL CK 0088**

**Calcutta High Court**

**Case No:** C.O. No. 801 of 2012

Employees" State Insurance  
Corporation

APPELLANT

Vs

M/s M.P. Associates Engineers  
and Another

RESPONDENT

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**Date of Decision:** Oct. 10, 2012

**Acts Referred:**

- Constitution of India, 1950 - Article 227
- Employees State Insurance Act, 1948 - Section 45A, 45AA, 75

**Citation:** (2013) 136 FLR 558 : (2013) LLR 386

**Hon'ble Judges:** Prasenjit Mandal, J

**Bench:** Single Bench

**Advocate:** T.K. Chatterjee, for the Appellant; D.K. Ghosh, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Prasenjit Mandal, J.

This application is at the instance of the Employees" State Insurance Corporation and is directed against the Order passed on January 24, 2012 by the learned Judge, Employees" Insurance Court in connection with Tender Case No. 131 of 2011 thereby disposing of an application dated January 13, 2012 filed by the opposite party. Short fact necessary for the purpose of disposal of this application is that in a proceeding u/s 45A of the Employees" State Insurance Act, 1948, on June 1, 2011, the principal employer was directed to deposit a contribution of Rs. 1,57,658/-. That amount was not deposited by the principal employer/opposite party herein and as such, appropriate steps for recovery were taken by the Recovery Officer for a sum of Rs. 1,99,197/- towards contribution, interests and other costs. Subsequently, an order of attachment was issued upon the bank of the principal employer on October 19, 2011 and in consequence, attachment was done. The applicant/opposite party herein filed an appeal u/s 45AA of the ESI Act and it deposited 25 per cent of the

claim amount as per provision of appeal envisaged in Section 45AA of the Act. Ultimately, the Appellate Authority rejected the said appeal holding that the appeal was time barred. Then, the Tender Case No. 131 of 2011 was filed by the principal employer/applicant herein. That Tender Case was disposed of directing that the said appeal shall be heard u/s 45AA of the ESI Act upon deposit of costs of Rs. 5,000/-. The order of attachment was set aside.

2. Subsequently, the applicant filed an application on January 13, 2012. That application was allowed directing that after deduction of Rs. 5,000/-, the balance amount may be refunded in favour of the applicant by issuing an account payee cheque within 15 days from the date of the order dated January 24, 2012. Being aggrieved, this application has been preferred.

3. Now, the question is whether the impugned order should be sustained.

4. Having heard the submissions of the learned Advocates of both the sides and on perusal of the materials-on-record, I find that the short matter that appears before this Hon"ble Court is that the appeal filed by the applicant/opposite party herein u/s 45AA of the ESI Act was rejected on the ground of delay. In dealing with the Tender Case, when the ESI Court found that the applicant/opposite party herein had deposited 25 per cent of the amount, the concerned Court directed the Appellate Authority to hear out the appeal subject to payment of costs of Rs. 5,000/- by the applicant within the period mentioned above. Therefore, I find that virtually the ESI Court has condoned the delay in filing the appeal before the Appellate Authority upon payment of costs of Rs. 5,000/-.

5. So far as the order of refund is concerned, the ESI Court has held that after deduction of Rs. 5,000/- as costs, the rest amount of the attachment should be refunded. By this way, the ESI Court has ensured payment of costs as directed. Since, the ESI Court has exercised discretionary power in dealing with the matter, in exercising the revisional jurisdiction under Article 227 of the Constitution of India, I am of the view that the exercise of such discretionary power by the ESI Court should not be interfered with.

6. Mr. T.K. Chatterjee, learned Advocate appearing for the petitioner, has referred to the decision of C.O. No. 1649 of 2010 with C.O. No. 1924 of 2010 with C.O. No. 1925 of 2010 passed by this Bench and thus, he has submitted that this application should be allowed.

7. With due respect to Mr. Chatterjee, I find facts here are altogether different and so, the said decision will not be applicable.

8. On the other hand, Mr. D. K. Ghosh appearing on behalf of the opposite party, has referred to the decision of Regional Director, Employees State Insurance Corporation and two ors. v. VMC Film Distributors rep, by its Proprietor Sri V. Doraiswami Raju reported in 2011 II CLR 295 and thus, he has submitted that the ESI

Court is to deal with the matter as per Section 75 of the ESI Act, 1948 and if there is no reason to interfere with the impugned order passed by the ESI Court, the application should be dismissed.

9. For the reasons stated above, I am of the view that the learned Trial Judge has exercised his discretionary power in dealing with the matter.

10. Accordingly, I am of the view that there is no illegality or material irregularity in the impugned order and so, this application should be dismissed accordingly.

11. The application is, therefore, dismissed.

12. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.