

GAHC010210812019



2026:GAU-AS:6561

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

**Case No. : WP(C)/6469/2019**

M/S. HOTEL BRIDEWAY AND ANR.  
SITUATED AT COLONEL CHOUMUHANI, AGARTALA, TRIPURA, PIN-799001  
AND REP. BY ITS PROPRIETOR BY SRI ASHIT SAHA, S/O LT. ASHUTOSH  
SAHA, R/O AGARTALA, WEST TRIPURA-25

2: ASHIT BARAN SAHA  
S/O LT. ASHUTOSH SAHA  
HAVING HIS BUSINESS FIRM (HOTEL) SITUATED AT COLONEL  
CHOUMUHANI  
AGARTALA  
TRIPURA  
PIN-79900

VERSUS

THE UNION OF INDIA AND 3 ORS.  
REP. BY SECRETARY, MINISTRY OF LABOUR AND EMPLOYMENT, GOVT.  
OF INDIA, SHRAM SHAKTI BHAVAN, RAFI MARG, NEW DELHI-110001

2: THE ASSISTANT DIRECTOR  
EMPLOYEES STATE INSURANCE CORPORATION  
PANCHDEEP BHAVAN  
REGIONAL OFFICE  
NORTH EASTERN REGION  
BAMUNIMAIDAM  
GUWAHATI-21

3: THE APPELLATE AUTHORITY AND REGIONAL DIRECTOR  
EMPLOYEES STATE INSURANCE CORPORATION  
PANCHDEEP BHAVAN  
REGIONAL OFFICE  
NORTH EASTERN REGION  
BAMUNIMAIDAM  
GUWAHATI-21

4:THE RECOVERY OFFICER  
EMPLOYEES STATE INSURANCE CORPORATION  
PANCHDEEP BHAVAN  
REGIONAL OFFICE  
NORTH EASTERN REGION  
BAMUNIMAIDAM  
GUWAHATI-2

**Advocate for the Petitioner** : MR. A GOYAL, MR. J P MORE,MR K ROY,MR. A CHOUDHURY

**Advocate for the Respondent** : MR. K GOGOI, CGC (R-1), MR. K K NANDI, (SC,ESIC) (R-2,3,4)

**BEFORE**

**HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

Date(s) of Hearing	:-	12.05.2026
Date on which judgment is reserved	:-	N/A
Date of pronouncement of judgment	:-	<b>12.05.2026</b>
Whether the pronouncement is of the operative part of the judgment?	:-	N/A
Whether the full judgment has been pronounced?	:-	Yes

## **JUDGMENT AND ORDER**

Heard Mr. A. Goyal, learned counsel for the petitioners. Also heard Mr. K. Gogoi, learned CGC, appearing for the respondent No.1 and Mr. M. Smith, learned standing counsel, ESIC, appearing for the respondent Nos.2 to 4.

**2.** By means of the present writ petition instituted under Article 226 of the Constitution of India, the petitioners have called in question the show-cause notice dated 31.08.2018 issued by the respondent No. 2 under Sections 39 and 40 of the Employees' State Insurance Act, 1948 (hereinafter referred to as "the Act"), the consequential order dated 31.01.2019 passed under Section 45A of the Act determining contribution payable by the petitioners, the appellate order dated 18.06.2019 passed under Section 45AA affirming the said determination, and the consequential recovery proceedings initiated thereafter.

**3.** The essential facts, shorn of unnecessary detail, are that petitioner No. 1 is a proprietorship establishment stated to be running a 10-bedded lodging house under a trade licence issued by the Agartala Municipal Corporation. According to the petitioners, while carrying on their business, they were served with a show-cause notice dated 31.08.2018 requiring them to explain as to why assessment ought not to be made against them for payment of contribution under the provisions of the Act, alleging liability in respect of ten employees.

**4.** In response thereto, instead of furnishing substantive particulars or records, the petitioners sought time by communication dated 22.01.2019. Thereafter, the competent authority proceeded to pass an order dated 31.01.2019 under Section 45A of the Act determining contribution payable by

the petitioners.

**5.** Aggrieved thereby, the petitioners preferred an appeal under Section 45AA of the Act, which came to be dismissed by order dated 18.06.2019. Consequential recovery proceedings having thereafter been initiated, the present writ petition has been instituted.

**6.** Mr. Goyal, learned counsel for the petitioners, has principally contended that the initiation of proceedings itself was without jurisdiction. According to him, the foundational preconditions necessary for invoking the machinery under Sections 44 and 45A of the Act were absent. It is submitted that no lawful material existed to justify formation of the requisite satisfaction that the establishment was liable under the Act or that returns, which were otherwise legally required, had not been furnished.

**7.** It is further argued that the impugned proceedings are founded upon a survey report of the year 2010, whereas the assessment pertains to a subsequent period, thereby rendering the very factual foundation stale, arbitrary and legally unsustainable.

**8.** On the aforesaid basis, it is urged that the impugned proceedings are wholly without jurisdiction and, therefore, the existence of an alternate statutory remedy would not operate as a bar to maintainability of the present writ petition.

**9.** In support of the above submissions, reliance has been placed upon the below mentioned decisions, wherein the Apex Court as well as other High Courts of Co-ordinate Benches have laid down the principle that where assumption of jurisdiction itself is under challenge, the existence of an alternate

remedy does not oust writ jurisdiction.

(i) ***Joti Parshad v. State of Haryana***, reported in **1993 Supp (2) SCC 497**(Para-5);

(ii) ***Durga Enterprises (P) Ltd. and another v. Principal Secretary, Govt. of U.P. and others***, reported in **(2004) 13 SCC 665**(Para-3);

(iii) ***Calcutta Discount Co. Ltd. v. Income Tax Officer, Companies District I Calcutta and another***, reported in **AIR 1961 SC 372**(Para-28);

(iv) ***M/s. Chhugamal Rajpal v. S.P. Chaliha and others***, reported in **(1971) 1 SCC 453**(Para-4);

(v) ***M/s. S. Ganga Saran and Sons (Pvt.) Ltd., Calcutta v. Income Tax Officer and others***, reported in **(1981) 3 SCC 143**(Para-6);

(vi) ***Income Tax Officer and others v. M/s. Madnani Engineering Works Ltd., Calcutta***, reported in **(1979) 2 SCC 455**(Para-4); and

(vii) ***Carborandum Universal Ltd. v. ESI Corporation***, reported in **2025 SCC OnLine SC 2865**(Para-18).

**10.** Per contra, learned standing counsel appearing for the Employees' State Insurance Corporation has contended that the writ petition is not maintainable in view of the efficacious statutory remedy available under Section 75 of the Act.

**11.** It is submitted that the establishment stood covered under the Act, that repeated communications were issued to the petitioners, that reasonable

opportunity was afforded at every stage, and that despite such opportunity, the petitioners neither produced records nor contested the factual basis before the statutory authority in a meaningful manner.

**12.** It is further submitted that questions relating to coverage, number of employees, correctness of contribution determination, and factual disputes concerning liability fall squarely within the statutory adjudicatory framework under the Act and ought not to be examined in exercise of writ jurisdiction.

**13.** Learned counsel appearing for the Union of India has adopted the above submissions and has additionally contended that the writ petition appears to be an attempt to circumvent the statutory adjudicatory mechanism prescribed by Parliament.

**14.** I have considered the submissions advanced by the learned counsels for the parties. I have also perused the materials brought on record as well as the case laws cited at the bar.

**15.** The principal question that arises for consideration is whether the present writ petition ought to be entertained notwithstanding the availability of a statutory remedy under Section 75 of the Act, on the petitioners' assertion that the impugned proceedings are wholly without jurisdiction.

**16.** Before advert to the rival submissions, it would be apposite to briefly notice the statutory framework governing the controversy. The Employees' State Insurance Act, 1948 is a beneficial social welfare legislation enacted to provide social security protection to employees through a statutory insurance mechanism funded by contributions payable under the Act. The liability to make such contribution is not contractual, but statutory in character.

**17.** The expressions “factory”, “principal employer”, and “contribution” are defined under Section 2, which reads as under

“2. **Definitions.**—*In this Act, unless there is anything repugnant in the subject or context,*

.....

(4) “contribution” means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act;

.....

(12) “factory” means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a railway running shed;

.....

(17) “principal employer” means —

- (i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under 7[the Factories Act, 1948 (63 of 1948)], the person so named ;
- (ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the department;
- (iii) in any other establishment, any person responsible for the supervision and control of the establishment;”

Section 39 of the Act stipulates that the contribution payable in respect of an employee shall comprise both the employer’s contribution and the employee’s contribution, payable in the manner prescribed. Section 40 places the primary obligation upon the principal employer to pay, in the first instance,

both components of contribution in respect of every employee covered under the Act. Thus, once an establishment falls within the statutory fold, compliance with contribution obligations follows as a legal consequence.

**18.** Section 44 obligates the principal employer and immediate employer to submit such returns and maintain such registers or records as may be prescribed. Sub-section (2) thereof assumes significance in the present case, inasmuch as it empowers the Corporation, where it has reason to believe that a return which ought to have been submitted has not been so furnished, to require the person in charge of the establishment to furnish particulars necessary to determine whether the establishment falls within the ambit of the Act.

**19.** Section 45A confers power upon the Corporation to determine contribution payable in cases where returns, particulars, registers or records are not submitted, furnished or maintained in accordance with Section 44, or where the employer obstructs the statutory process. In such circumstances, the Corporation is authorized to determine contribution on the basis of information available with it. The provision, however, incorporates procedural safeguards, including affording reasonable opportunity of hearing to the employer and the statutory embargo against determination beyond the prescribed limitation period.

**20.** Against an order passed under Section 45A, the statute provides an appellate remedy under Section 45AA. Beyond the appellate stage, Section 75 vests jurisdiction in the Employees' Insurance Court to adjudicate disputes concerning contribution liability, status of employees, employer liability, and any other dispute arising between the Corporation and the employer in relation to

dues payable or recoverable under the Act. Section 75 reads as under –

**“75. Matters to be decided by the Employees’ Insurance Court.** (1) *If any question or dispute arises as to —*

- (a) *whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee’s contribution, or*
- (b) *the rate of wages or average daily wages of an employee for the purposes of this Act, or*
- (c) *the rate of contribution payable by a principal employer in respect of any employee, or*
- (d) *the person who is or was the principal employer in respect of any employee, or*
- (e) *the right of any person to any benefit and as to the amount and duration thereof, or*
- [(ee) *2 any direction issued by the Corporation under section 55-A on a review of any payment of dependants’ benefits, 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, 3[or any other matter required to be or which may be decided by the Employees’ Insurance Court under this Act,]*

*such question or dispute 1[subject to the provisions of sub-section (2A)] shall be decided by the Employees’ Insurance Court in accordance with the provisions of this Act.*

(2) *[Subject to the provisions of sub-section (2A), the following claims] shall be decided by the Employees’ Insurance Court, namely: —*

- (a) *claim for the recovery of contribution from the principal employer;*
- (b) *claim by a principal employer to recover contributions from any immediate employer;*

[\*\*\*]

- (d) *claim against a principal employer under section 68;*
- (e) *claim under section 70 for the recovery of the value or amount of*

*the benefits received by a person when he is not lawfully entitled thereto; and*

*(f) any claim for the recovery of any benefit admissible under this Act.*

*[(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of section 54-A in which case the Employees' Insurance Court may itself determine all the issues arising before it.]*

*[(2B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent. of the amount due from him as claimed by the Corporation: Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.]*

*(3) No civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by 6[ a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.]”*

Thus, the width of the jurisdiction conferred under Section 75 demonstrates the legislative intent to create a specialized adjudicatory mechanism for determination of such disputes.

**21.** It is, therefore, evident that the Act constitutes a comprehensive statutory code providing not merely for assessment and recovery, but equally for adjudication of disputes arising therefrom. It is in the backdrop of this statutory scheme that the objection as to maintainability and the petitioners' challenge to the assumption of jurisdiction fall to be considered.

**22.** From a cumulative reading of the aforesaid provisions of law, it is evident that once a factory or establishment employs 10 or more persons, registration under the Act becomes mandatory. Upon registration, the employer is obliged to pay contributions in accordance with the Act on the basis of records submitted by him. Section 45A empowers the Corporation, in specified circumstances, to determine the amount of contribution payable on the basis of available material where statutory returns, particulars, registers or records are not furnished or where the employer obstructs the statutory process. Significantly, Section 45AA provides an appellate remedy against such determination. Most significantly, Section 75 vests jurisdiction in the Employees' Insurance Court to adjudicate disputes concerning contribution liability, status of employees, liability of principal employers, and any other dispute arising between the employer and the Corporation in relation to contributions or dues recoverable under the Act.

**23.** The existence of an alternate remedy does not create an absolute bar to the exercise of writ jurisdiction under Article 226 of the Constitution. Equally, it is well settled that the writ jurisdiction, though plenary, is discretionary.

**24.** Ordinarily, where a statute creates rights and liabilities and simultaneously provides a complete machinery for redressal, the High Court would decline to entertain a writ petition unless exceptional circumstances are shown, such as:

- (i) breach of principles of natural justice;
- (ii) patent lack of jurisdiction;
- (iii) challenge to vires; or
- (iv) manifest arbitrariness resulting in grave injustice.

[Refer: ***Whirlpool Corporation -Vs- Registrar of Trade Marks, Mumbai & Ors.,*** reported in ***(1998) 8 SCC 1*** ]

**25.** The petitioners seek to bring the present case within the exception of jurisdictional infirmity. The central submission of the petitioners is that the respondent authorities lacked jurisdiction to initiate proceedings since the conditions contemplated under Section 44 were absent and, therefore, the consequential exercise under Section 45A is rendered void.

**26.** At first glance, the argument appears attractive. However, upon closer scrutiny, this Court is unable to accept the same for reasons that follow.

**27.** A distinction must be maintained between a case of total absence of jurisdiction and a case where the jurisdictional facts themselves are disputed and require adjudication on evidence.

**28.** Where the authority acts in respect of a subject matter wholly alien to the statute, the defect goes to the root of jurisdiction. However, where the authority acts within the field assigned by statute and the challenge pertains to correctness of the factual foundation on which such jurisdiction was assumed, the matter ordinarily falls within the domain of statutory adjudication.

**29.** The distinction is of considerable importance. The existence of a jurisdictional fact may, in a given case, be amenable to judicial scrutiny. However, where the determination of such foundational fact itself necessitates appreciation of disputed evidence and examination of rival factual assertions, and the statute provides a specialized forum competent to undertake such adjudication, the writ court would ordinarily decline to substitute that statutory process at the threshold.

**30.** In the present case, the respondent authorities do not purport to exercise power dehors the Act. Their case is that the petitioners' establishment fell within the statutory coverage threshold; that a survey had revealed the presence of ten employees; that communications were issued calling upon the petitioners to comply; that contributions remained unpaid; and that despite opportunities, the petitioners neither furnished records nor placed contrary materials.

**31.** Whether the survey was factually correct, whether the establishment indeed employed the requisite number of persons, whether the assessment was founded on proper material, whether reliance on earlier data was justified, and whether the contribution determined is legally sustainable, these are all matters requiring factual adjudication. Such questions cannot be elevated into a plea of inherent lack of jurisdiction merely by labelling them as jurisdictional objections.

**32.** The materials on record disclose that the respondents assert coverage on the basis of a survey conducted on 07.04.2010 in the presence of a representative of the establishment, followed by communication requiring compliance under the Act.

**33.** It is also the specific case of the respondents that subsequent communications were issued and that the petitioners failed to regularize compliance.

**34.** The show-cause notice dated 31.08.2018 specifically set out the allegations forming the basis of the proposed determination and afforded the petitioners an opportunity to respond.

**35.** The petitioners were not condemned unheard. The record indicates that a personal hearing opportunity was initially fixed. The petitioners neither

meaningfully responded within time nor produced records controverting the respondent's factual assertions. Even thereafter, an additional opportunity appears to have been afforded. The grievance, therefore, is not one of denial of opportunity, but rather disagreement with the substantive basis of determination. That distinction is material.

**36.** The decisions cited by the petitioners on jurisdictional invalidity principally arise in the context of fiscal enactments where assumption of jurisdiction depended upon satisfaction of specific statutory conditions.

**37.** The legal principle emerging therefrom is unexceptionable. However, precedents are not to be applied divorced from statutory context or factual matrix. A decision is an authority for what it actually decides, not for what may logically be extended from it in abstraction. [Refer: ***State of Haryana -Vs- Ranbir @ Rana***, reported in ***2006 5 SCC 167***(Para-12)]

**38.** In the present case, the challenge is not to an authority acting beyond statutory subject-matter competence. Rather, the challenge concerns the factual correctness and legal sustainability of contribution determination within the statutory framework of the Act. Such disputes are precisely those which Parliament has entrusted to the adjudicatory machinery under Section 75. Accordingly, the reliance placed by the petitioners upon the cited authorities does not materially advance their case at the threshold stage of maintainability.

**39.** This Court also finds considerable force in the submission advanced on behalf of the respondents that the issues raised involve disputed questions of fact.

**40.** Whether ten employees were in fact employed, whether the establishment

stood validly covered, whether the survey report is reliable, whether subsequent contribution determination is excessive, speculative or legally erroneous; all these questions require evidentiary examination.

**41.** Exercise of writ jurisdiction is ordinarily ill-suited for such fact intensive adjudication, particularly where a specialized statutory forum exists.

**42.** The statutory architecture of the Act reinforces this conclusion. The Employees' Insurance Court constituted under Section 74 read with Section 75 is not a mere appellate adjunct, but a specialized adjudicatory forum vested with authority to examine disputes arising between the Corporation and the employer in relation to contribution liability and recoverable dues.

**43.** The breadth of Section 75(1)(g), in particular, leaves little room for doubt that disputes of the present nature squarely fall within its remit.

**44.** Where the legislature has consciously created a specialized forum equipped to adjudicate such disputes, judicial discipline ordinarily warrants deference to that legislative design.

**45.** This Court also finds that the issue is no longer res integra before this Court. Coordinate Benches of this Court, while dealing with analogous challenges arising under the Employees' State Insurance Act, have consistently held that where the controversy pertains to liability, coverage, contribution determination, or factual disputes arising from orders under Section 45A, the aggrieved party ought to avail the statutory remedy under Section 75 rather than invoke writ jurisdiction in the first instance. Reference in this regard is made to a decision of a Co-ordinate Bench of this Court in the case of ***Hotel Radha International -Vs- Employee State Insurance ESI***

**Corporation & 5 Ors, [WP(C) No. 4139/2014]**, wherein this Court has held as under –

“8.B. *Alternative Remedy:*

- i. *It is by now well settled that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and is not limited by any other provision of the Constitution. It is equally well settled that under Article 226 of the Constitution of India, the High Court, is having discretion to entertain or not to entertain a writ petition, having regard to the facts and circumstances of the case. The availability of alternative remedy is a self imposed restriction and normally, High Court should not exercise its discretion under writ jurisdiction, when an effective and efficacious remedy is available. However, such alternative remedy shall not operate as a bar, where the writ petition has been filed for enforcement of any of the fundamental rights or where there has been violation of the principle of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged or an important legal issue is involved. It is also well settled that the power under Article 226 of the Constitution of India to issue a writ can be exercised not only for the enforcement of the fundamental right but also for any other purpose as well.*
- ii. *It is also by now well settled that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India. This Rule of exercise of statutory remedy is a rule of policy and convenience and it is discretionary.*
- iii. *The said principle also emphasizes that in cases where there are disputed question of facts, the High Court may decide not to exercise its writ jurisdiction, except when an important question of law is involved.*
- iv. *In the aforesaid context, now let this court first deal with the provision of the Act:*
  - a. *Section 45A of the Act, 1948 deals with the determination on contribution in certain cases. Sub Section 1 of Section 45A of the Act, 1948, the Corporation is empowered to determine, by order, the amount of contribution payable in respect of employees of the establishment/factory etc. on the basis of information that may be gathered by an Officer under Section 45 of the Act, 1948. However, such*

*determination is subject to the condition of giving a reasonable opportunity of being heard to the principal or immediate employer or the person in charge of the factory or the establishment as the case may be. Such determination is also subject to the condition that the no such order can be passed in respect of a period beyond 5 years from the date on which the contribution shall become payable.*

*b. Section 45A(A) of the Act, 1948 deals with the Appellate Authority. It provides that if an employer is not satisfied with the order passed under Section 45A of the Act, 1948, he can approach the appellate authority, as may be provided by regulation, within 60 days of the date of such order, after depositing 25% of the contribution, so directed or the contribution as per the own calculation of the employer, whichever, is higher. Proviso to Section 45A(A) of the Act, 1948, mandates that if the employer finally succeeds in the appeal, the Corporation is to refund the statutory deposit made under Section 45A(A) of the Act, 1948 to the appellant together with such interest as may be specified in the regulation.*

*c. Admittedly, in the case in hand, the challenge made under this batch of writ petitions are determination made under Section 45A of the Act, 1948 and notice issued under first proviso to Section 45A of the Act, 1948.*

*d. Chapter-VI of the Act, 1948 deals with adjudication of dispute and claims.*

*e. Section 74 under this Chapter mandates constitution of Employees' Insurance Court and such Court is to be constituted by the respective State Government by notification published in official Gazette, for such local area as may be specified in the notification.*

*f. Section 75 of the Act, 1948 enumerates the nature of dispute that can be adjudicated by the Employee Insurance Court constituted under Section 74 of the Act, 1948. Amongst other, Clause-G of Sub Section 1 of Section 75 of the Act, 1948 prescribes that the Employee Insurance Court can decide any other matter beyond those subject matters enumerated under Clause-a to Clause- e.e of Sub Section 1 of Section 75 of the Act, 1948, which is in dispute between a principal employer and the corporation or between a principal employer or an immediate employer or between a person and a corporation or between an employee and principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act.*

*g. Thus, the jurisdiction of the corporation to issue the notice raised by the petitioner and/or the dispute as regards the number of the employees*

*can very well be determined by such a Court.*

*h. It is clear that under the scheme of Act, 1948, there is provision for appeal under Section 45A. Thus, rights of appeal have statutorily been created. Such provision of appeal prescribes the remedy and procedure for enforcing right of an aggrieved party, who is aggrieved by an order passed by an adjudicating authority. An order passed under Section 45A of the Act, 1948, is an appealable order under Section 45AA of the Act, 1948. Section 75 of the Act, 1948 deals with matters to be decided by Insurance Court. Under Section 75, the Insurance Court is conferred jurisdiction to decide any question or dispute enumerated therein and therefore, the issue whether the petitioners are liable to pay contribution can also be adjudicated by a competent Insurance Court. That being the position, it is clear that the petitioners are having an alternative efficacious remedy, which is statutorily created.*

*i. The Act, 1948 is one of the most important Legislation relating to social security measures for workers in independent India and it was created to provide financial support to the workers in times of medical distress etc. From the provisions as discussed hereinabove, the Act is a code unto itself and not only contains comprehensive procedure for recovery of dues but also emphasizes quasi judicial and judicial bodies for redressal of grievances of any aggrieved person. Therefore, in the given facts of the present case, this court is not inclined to exercise its discretionary power under Article 226 of the Constitution of India, for the reason of the petitioner having efficacious and alternative remedies under the Act, 1948.*

*j. The petitioners have not been able to satisfy and establish that any of the fundamental rights protected by Part-III of the Constitution of India has been violated. Though it has been alleged that the petitioners shall not come within the definition of industry under the Act, 1948, however, such determination requires adjudication of the facts which can very well be dealt by the appellate authority under Section 45AA of the Act, 1948 or by the Insurance Court. In the considered opinion of this Court, the petitioners have also failed to demonstrate that there has been a violation of principles of natural justice in the adjudicating proceeding. Admittedly notices were issued and the petitioners had also filed reply to such notices.*

*k. The point of jurisdiction in issuing the notices, can also be decided by the appellate authority or the Insurance Court inasmuch as the petitioners have not alleged that orders are wholly without jurisdiction*

*and the petitioners, had already made the payments, though according to them, under compulsion. l. There is also no challenge to the vires of any legislation in the present batch of writ petitions. Therefore, on this count also, this court is not inclined to exercise its discretion under Article 226 of the Constitution of India.”*

Likewise, in ***Chandan Sahu vs. The Employees State Insurance Corporation and others*** [WP(C) No.1687/2024, decided on 27.03.2024]; ***Narayan Prasad Chokhani vs. The Regional Director, Employees State Insurance Corporation and others*** [WP(C) No.7863/2019, decided on 01.05.2024]; ***Naba Kanta Talukdar vs. The Employees State Insurance Corporation and others*** [WP(C) No.2509/2024, decided on 15.05.2024]; ***Khasrul Islam vs. The Union of India and others*** [WP(C) No.981/2022, decided on 16.02.2022]; and ***Partha Pratim Tiwari vs. The Employee State Insurance Corporation and others*** [WP(C) No.2433/2026, decided on 11.05.2026], the Co-ordinate Benches of this Court declined interference with assessment orders under the Act on the ground that the statutory remedy under Section 75 was available.

**46.** The principle underlying those decisions is rooted not in a rigid rule of exclusion, but in sound judicial restraint where an efficacious statutory remedy exists. This Court sees no compelling reason to depart from the aforesaid view.

**47.** Consistency in judicial approach is itself a facet of institutional discipline, particularly where the statutory scheme remains unchanged and the nature of controversy falls within the same legal framework.

**48.** Much emphasis was placed by the petitioners on the argument that the initiation itself was without jurisdiction because the conditions contemplated under Section 44 were allegedly absent.

**49.** This Court is unable to accept the said formulation. The plea, in substance,

is not one of patent usurpation of power, but of erroneous assumption of facts giving rise to statutory liability.

**50.** An erroneous factual foundation, even if ultimately established, does not ipso facto convert the proceeding into one coram non iudice.

**51.** Where the statute itself provides a forum competent to test the legality, correctness, and factual sustainability of such assumption, recourse must ordinarily be had thereto.

**52.** Equally, the contention regarding reliance upon the earlier survey report does not persuade this Court to entertain the writ petition at this stage.

**53.** Whether reliance upon such material was justified, whether the assessment period was appropriately determined, whether the quantification suffers from legal or factual infirmity, and whether the petitioners are entitled to any substantive relief on merits are all matters that properly fall for adjudication before the competent statutory forum.

**54.** This Court consciously refrains from expressing any final opinion on such merits lest the same prejudice either side.

**55.** At the same time, one aspect merits clarification. Dismissal of the present writ petition ought not to be construed as affirmation of the correctness of the impugned determination on merits.

**56.** This Court has examined only the question whether writ jurisdiction ought to be exercised in the face of an efficacious statutory remedy. The merits of the controversy remain entirely open.

**57.** Having regard to the totality of circumstances, this Court is of the

considered opinion that no exceptional circumstance has been demonstrated warranting invocation of the extraordinary writ jurisdiction under Article 226 of the Constitution of India in bypass of the statutory adjudicatory mechanism under the Act.

**58.** The petitioners have failed to establish, (i) any patent lack of jurisdiction; (ii) any violation of principles of natural justice; (iii) any challenge to vires; or (iv) any circumstance of such manifest illegality as would justify departure from the settled rule of alternate remedy.

**59.** An additional aspect also merits notice. The statutory framework under the Act not only creates substantive rights and liabilities, but also prescribes the manner in which disputes arising therefrom are to be adjudicated. The petitioners, having already availed the appellate remedy under Section 45AA of the Act and suffered an adverse order, have elected not to pursue the adjudicatory remedy under Section 75 before the Employees' Insurance Court. In the facts of the present case, the invocation of Article 226 appears to be, at least in effect, an attempt to bypass the statutory forum and the conditions attached to such remedy. Extraordinary writ jurisdiction is not intended to be employed as a substitute for the statutory mechanism merely because the statutory route may be procedurally or financially burdensome, particularly where the statute itself provides a structured adjudicatory process.

**60.** Consequently, the writ petition stands dismissed on the ground of availability of an efficacious statutory remedy.

**61.** However, it is observed that the petitioners shall be at liberty to avail such remedy, as may be permissible in law before the competent forum.

**62.** If such proceedings are instituted, the same shall be considered in accordance with law, on their own merits, uninfluenced by any observations made herein touching the factual controversy.

**63.** Considering that the petitioners have been prosecuting the present proceedings before this Court, it is further provided that the period spent bona fide in prosecuting this writ petition may be considered by the competent forum in accordance with law while examining limitation, if such a question arises.

**64.** It is made abundantly clear that all contentions of both sides on merits, including those touching upon coverage, liability, validity of the show-cause notice, legality of the determination under Section 45A, correctness of quantification, and all other allied questions, are expressly kept open.

**65.** The writ petition is, accordingly, dismissed in the above terms.

**JUDGE**

**Comparing Assistant**