

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.15494 of 2015

and

M.P.No.1 of 2015

Food Corporation of India,
District Office, Thirunagar,
Vellore 632 006.
represented by its
Area Manager DPS.

.. Petitioner

V.

1.The Deputy Director,
ESI Corporation,
Regional Office,
Panchdeep Bhawan,
143 Sterling Road,
Chennai - 34.

2.The Recovery Officer,
ESI Corporation,
Panchdeep Bhawan,
143 Sterling Road,
Chennai - 34.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the first respondent vide proceedings No.51511028760020099/3252015438/Ins.VI dated 21.4.15, and to quash the same.

For Petitioner .. Mr.S.Vijayakumar

For Respondents .. Mr.P.Chandrasekar
for T.N.Ckaushik

ORDER

Heard the learned counsel for the petitioner and the learned Standing counsel for the respondents and with their consent, the writ petition is taken up for final disposal.

2.The petitioner is the Food Corporation of India and has filed this writ petition challenging the proceedings dated 21.04.2015 issued under Section 45 C of the Employees State Insurance Act, 1948. The only ground on which the impugned order has been challenged by contending that without following the procedure under Section 45-A which requires an order to be passed under Section 45 A directly an order under Section 45 C has been passed. This submission supported by the decision of the Hon'ble Division Bench of this Court in Fenner Garments V. Deputy Regional Director, ESIC reported in 1994 II LLJ 754 (Mad.) and M/s.Madras Hotel Ashoka Private Limited V. Regional Director, ESI Corporation in W.A.No.703 of 2000 dated 28.09.2000 and the order passed in the writ petition filed by the Food Corporation of India in W.P.No.34625 of 2013 dated 20.12.2013. For better appreciation, it would be beneficial to refer to the operative portion of the order dated 20.12.2013 which reads as follows:

"4.It is the main submission of the learned counsel for the petitioner that the 1st respondent did not issue any notice to the petitioner, nor hear him as required by the first proviso to Section 45-A of the ESI Act 1948, before issuing the impugned demand order. In this regard, the learned counsel for the petitioner relied upon the judgment delivered by a Division Bench of this Court made in W.A.No.834 of 1993, dated 12.08.1993, and submitted that if the procedure under Section 45 of the Act is not followed, the demand order is liable to be quashed.

5.Heard Mr.S.Vijayakumar, learned counsel for the petitioner and Mr.C.V.Ramachandramurthy, the learned counsel for the respondents.

6.In view of the submission made by the learned counsel on either side, I am of the opinion that it would be appropriate to quash the prohibitory order dated 09.12.2013 issued by the 2nd respondent and to remit back the matter to the respondents with a direction to issue notice to the petitioner as required under the first proviso to Section 45-A of the ESI Act and to pass orders thereafter.

7.Accordingly, the impugned prohibitory

order dated 09.12.2013 is quashed and the matter is remitted back to the respondents, with a direction to issue notice to the petitioner as required under first proviso to Section 45-A of the ESI Act and to pass fresh orders in accordance with law.

On the above terms, this writ petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs."

3. In the counter affidavit filed by the respondents, the effect of the decisions have not been disputed and in fact, in the case of the petitioner Corporation itself, this Court has allowed an earlier writ petition and directed the authorities to proceed in accordance with the first proviso to Section 45-A of the Act and pass fresh orders.

4. In the light of the above, the case on hand is squarely covered to the earlier decisions of this Court referred above.

5. In the result, the Writ Petition is allowed and the impugned order is set aside and the matter is remitted back to the respondents with a direction to issue notice to the petitioner as required under the first Proviso to Section 45-A of the E.S.I Act and pass fresh orders in accordance with law within a period of three months from the date of receipt of copy of this order. No costs. Connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

WEB COPY

Sgl

To

1.The Deputy Director,
ESI Corporation,
Regional Office,
Panchdeep Bhawan,
143 Sterling Road,
Chennai - 34.

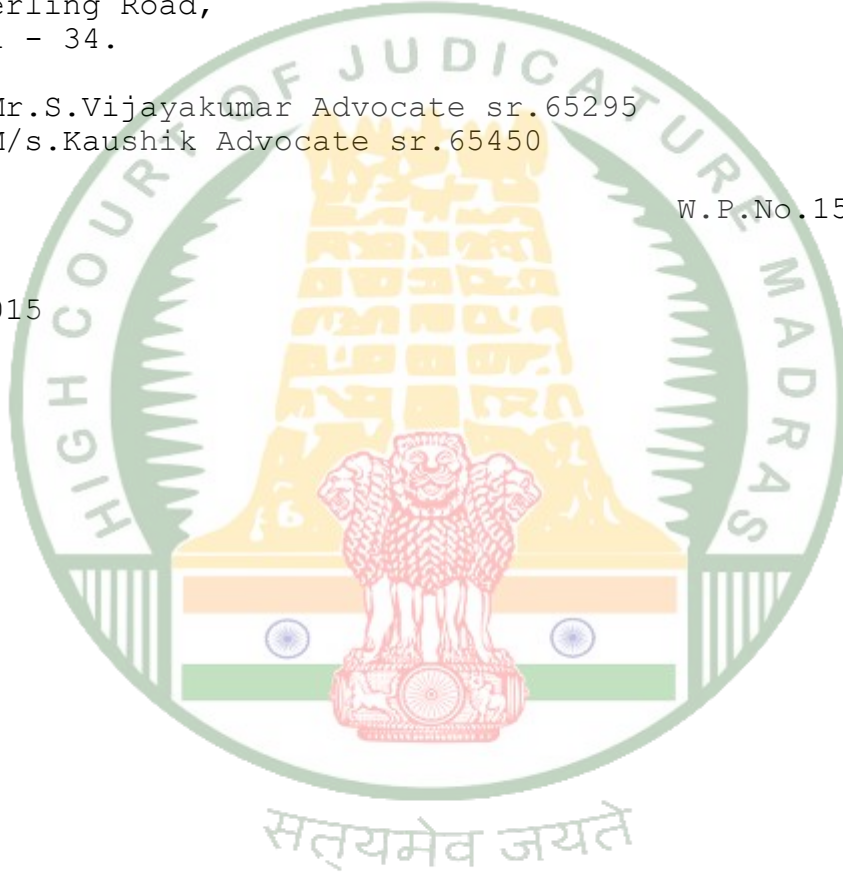
2.The Recovery Officer,
ESI Corporation,
Panchdeep Bhawan,
143 Sterling Road,
Chennai - 34.

+1 cc to Mr.S.Vijayakumar Advocate sr.65295

+1 cc to M/s.Kaushik Advocate sr.65450

W.P.No.15494 of 2015

aa15/12/2015



WEB COPY