

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.26437 of 2017
and
W.M.P.No.28134 of 2017

Cognizant Technology Solutions India Pvt. Ltd,
Menon Eternity, 7th Floor,
No.165, St. Mary's Road,
Alwarpet, Chennai 600 018.
Represented by its Director - Legal

... Petitioner

Vs

Deputy Director,
Employees State Insurance Corporation,
Regional Office, 143, Sterling Road,
Nungambakkam, Chennai.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to to issue a Writ of Mandamus directing the respondent to reopen the proceedings No.TN/INS-VI/51-000-76614-000-0911/C-18 Adhoc, direct the respondent to issue notices to the third party contractors on behalf of whom it seeks to make a claim, grant sufficient opportunity to the petitioner to defend.

For Petitioner : Mr.G.Anand
for M/s.T.S.Gopalan and Co.

For Respondent : Mr.C.V.Ramachandramoorthy

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O R D E R

This writ petition has been filed seeking writ of mandamus directing the respondent to reopen the proceedings No.TN/INS-VI/51-000-76614-000-0911/C-18 Adhoc, direct the respondent to issue notices to the third party contractors on behalf of whom it seeks to make a claim, grant sufficient opportunity to the petitioner to defend their case.

2.learned counsel appearing for the petitioner submitted

that while the respondent initiated proceedings under Section 45A of the Employees State Insurance Act 1948, no notice whatsoever has been issued. When the petitioner/management is entrusted work to their contractors, the question of payment of employer contribution from the petitioner side is out of subject. Hence, the respondent cannot proceed against the petitioner by initiating proceedings under Section 45(A) of the Act. Secondly, no notice whatsoever has been given and all of a sudden the proceeding was closed on 06.10.2017 with an indication that final order would be passed. The petitioner repeatedly stated that they are not liable to make any contribution as employer, as there is no employer and employee relationship exists due to the work assigned by the petitioner to their contractors. The respondent has to necessarily issue notice to the contractors, who are not even made as party in the 45(A) proceedings and thirdly, the entire details of payment as to which payments/bills are being treated as wages, are not even furnished to the petitioner. Therefore, the petitioner is not even able to know what is the claim made by the respondent. Moreover, initially, without any basis, a sum of Rs.582,44,22,547/- was claimed as ESI contribution to be paid by the petitioner. Subsequently it was reduced to Rs.7,06,25,767/-. Now, the question is, even the claim of Rs.7,06,25,767/- towards employer's contribution, is also without any basis, because there is no bill or payment voucher was issued by the respondent. For all these reasons, on notice to the contractors, Section 45A proceeding has to be reopened, he pleaded.

3.The learned counsel appearing for the respondent submitted that since the petitioner has got effective alternative remedy by preferring an appeal against the order passed under Section 45(A) of the Act, by approaching ESI Court/the appellate authority. Besides, the petitioner has also raised the issue that, without issuing notice to the petitioner, proceeding under Section 45(A) of the Act has been initiated against the him, therefore, this matter may be closed with a direction to the petitioner to approach the concerned authorities conducting under Section 45(A) of the Act.

4.In view of the submission made by the petitioner that entire proceeding under Section 45(A) was initiated, without any notice to the contractors, who are necessary parties to the proceedings, the learned counsel for the respondent requested this Court to direct the petitioner to furnish the proper address of the contractors appointed by them and if they provide such details, necessary notice will be definitely issued to the contractors.

5. Therefore, this Court directs the petitioner to furnish a copy of the address pertaining to the contractors, who were appointed during that relevant period. The respondent is also directed to furnish the copies of relevant break up details of the amount payable, based on which Section 45(A) proceeding was initiated. After receiving all the above details, the respondent shall initiate the proceedings under Section 45(A) of the Act and conclude the proceeding, in the manner known to law.* **It is made clear that the Petitioner cannot claim Limitation.**

With the above directions, this Writ Petition is closed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

***Corrected as per order
of this court dated 13/03/2018
and made herein
-s/d-
Assistant Registrar(CSIII)
dt 23/03/2018**

//True Copy//

Sub Assistant Registrar

sai / gya

To

The Deputy Director,
Employees State Insurance Corporation,
Regional Office, 143, Sterling Road,
Nungambakkam, Chennai.

To be Substituted order
already despatched on
12/03/2018

+1cc to M/s.T.S.Gopalan and Co., Advocate, S.R.No.*19173

+1cc to Mr.C.V.Ramachandramoorthy, Advocate, S.R.No.*19730

SS(CO)
CS/05/03/18
aa23/03/2018

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