

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.06.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27836 of 2017
and WMP.No.29852 of 2017

M/s.Giriguja Publications Pvt Ltd
No.56/21, Giriguja Enclave,
Sasthri Nagar First Avenue,
Adyar, Chennai 600 020,
rep by its Director Mr.S.Sundararaman

..Petitioner

vs

1. The Regional Director,
Employees State Insurance Corporation,
Tamil Nadu, Region',
14, Sterling Road, Chennai - 600 034

2. The Assistant Director,
(Authorized Officer, ESIC.,
Tamil Nadu Region,
14, Sterling Road,
Chennai - 600 034

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of impugned order No.TN/Ins-III/51-00-10126-000-1005/C18 Adh/1385/15 dated 31.08.2017 to pay Rs.2,92,793/- for the period from 02/2014 to 10/2015 passed by the second respondent and quash the same.

For Petitioner : Mr.M.Palanimuthu

For Respondents : Mr.C.V.Ramachandramurthy

O R D E R

The relief sought for in this writ petition is to call for the records in pursuant to the order passed by the second respondent in Proceedings dated 31.08.2017 under Section 45-A of the Employees' State Insurance Act, 1948.

2. Challenging the said order, the learned counsel for the writ petitioner made a submission that the writ petitioner is not liable to pay such amount demanded by the competent authorities as the petitioner company has been closed.

3. However, these grounds raised in the present writ petition cannot be adjudicated in view of the fact that the petitioner has to approach appropriate court under Section 75 of the ESI Act. No writ petition can be entertained before this Court in view of the fact that the writ petitioner at the first instance has to approach ESI Court for adjudication. This apart, Section 45-AA of the Act provides Appellate Authority. Accordingly, "if an employer is not satisfied with the order referred to, in Section 45-A, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of such order after depositing twenty five per cent of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation:

Provided that if the employer finally succeeds in the appeal, the Corporation shall refund such deposit to the employer together with such interest as may be specified in the regulation".

4. Thus, it is unambiguous that on receipt of an order passed under Section 45-A, the aggrieved person has to approach the Appellate Authority or ESI Court, because the language employed in Section 45-AA is "may".

5. Thus, it is the discretion of the aggrieved person either to approach the Appellate Authority or ESI Court as per the provisions contemplated under the Act.

6. Thus, the writ petition at this point of time cannot be directly entertained and the writ petitioner is at liberty to approach the Appellate Authority either under Section 45-AA or under Section 75 of the Act before the ESI Court.

7. With these observations, the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

lok

To

1. The Regional Director,
Employees State Insurance Corporation,
Tamil Nadu, Region',
14, Sterling Road, Chennai - 600 034

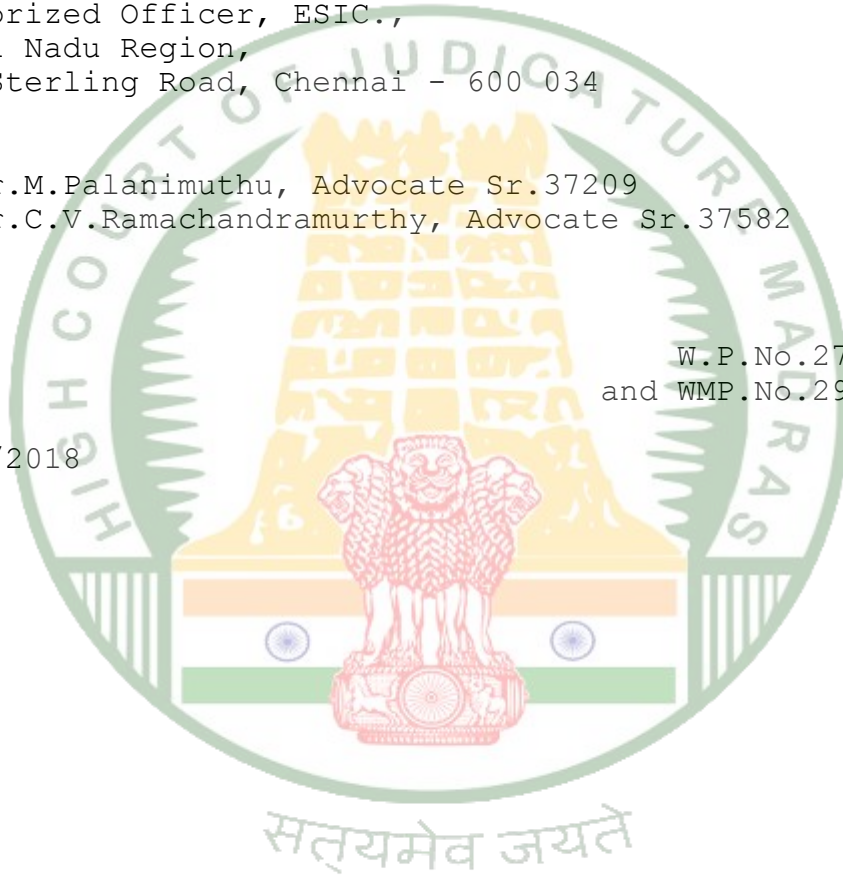
2. The Assistant Director,
(Authorized Officer, ESIC.,
Tamil Nadu Region,
14, Sterling Road, Chennai - 600 034

+lcc to Mr.M.Palanimuthu, Advocate Sr.37209

+lcc to Mr.C.V.Ramachandramurthy, Advocate Sr.37582

W.P.No.27836 of 2017
and WMP.No.29852 of 2017

srg 29/06/2018



WEB COPY