

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.148 of 2016

Kanchi Silk Palace,
No.103/1A, Pondy Bazaar,
T. Nagar, Chennai 17
rep. By its Proprietor,
PKMS Mohamed Beevi

..... appellant/Petitioner

versus

The Employee's State Insurance Corporation,
No.143, Sterling Road,
Chennai 600 034,
rep. by the Assistant Director

.... Respondent/Respondent

Appeal filed against the order passed by this Court dated
17.12.2015 passed in W.P.No.30311 of 2013.

WP.NO.30311/2013:

Writ Petition filed under Article 226 of the Constitution of
India for a Writ of Certiorarified Mandamus calling for the
records of the respondent in his notice No. TN/INS V/51-00-
085173-000- 1002/ C-18 Adhoc dated 17.9.2013 and quash the same
and direct the respondent to issue an individual notice to the
petitioner.

For appellant : Mr.AR.L.Sundaresan, Senior Counsel,
Ms.AL.Gandhimathi

For Respondents : Mr.K.Prabakar

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The learned Single Judge in the earlier round of litigation
in W.P.No.24452 of 2007, quashed the notice issued by the ESI
Corporation, Chennai and gave liberty to issue individual
notices to the six concerns, allegedly owned by the appellant.
However, in total disregard of the said direction, once again,
the ESI Corporation issued a comprehensive notice to the
appellant, without issuing individual notices. Feeling
aggrieved, the appellant filed a Writ Petition. The Writ

Petition was dismissed by the learned Single Judge. The order is under challenge at the instance of the appellant.

2. We have heard the learned counsel for the appellant. We have also heard the learned Standing Counsel for the ESI Corporation.

3. The ESI Corporation treated the six firms owned by the appellant as a single establishment and made an attempt to levy the contribution. Notice issued to the appellant was challenged in W.P.No.24452 of 2007. The learned Single Judge taking into account the contention taken by the appellant that it is a separate unit and the other units have nothing to do with M/s.Kanchi Silk Palace, allowed the Writ Petition. However, liberty was given to the Corporation to issue fresh notice to the establishments separately.

4. The ESI Corporation once again issued a consolidated notice to the appellant. The said notice dated 17 September 2013 was challenged in W.P.No.30311 of 2013. The learned Single Judge without addressing the primary issue raised by the appellant, dismissed the Writ Petition.

5. The core question is as to whether the ESI Corporation was correct in issuing a consolidated notice in spite of the direction given by the learned Single Judge in the earlier Writ Petition in W.P.No.24452 of 2007.

6. The question as to whether these establishments have anything in common or they are separate establishments are issues to be decided by the ESI Corporation. The Corporation was expected to issue notice to the individual units taking into account the direction given by the learned Single Judge. Even after issuing such individual notices, it is always open to the Corporation to arrive at a finding that all the establishments are part of a single concern. However, the Corporation cannot be heard to say that they would not issue notice individually to the establishments, notwithstanding the direction given by the learned Single Judge. We are therefore of the view that the appellant must succeed.

7. The notice dated 17 September 2013 is set aside. We permit the respondents to issue separate notices to the establishments indicated in the earlier notice. The establishment must be given reasonable opportunity to submit response. Thereafter, it is for the ESI Corporation to pass appropriate orders on merits. We make it clear that we have not considered the issue regarding the separate identity of the establishments and it is a matter for the Corporation to decide on merits.

8. The intra Court appeal is allowed to the extent indicated above. No costs. Consequently, connected M.P.s, are closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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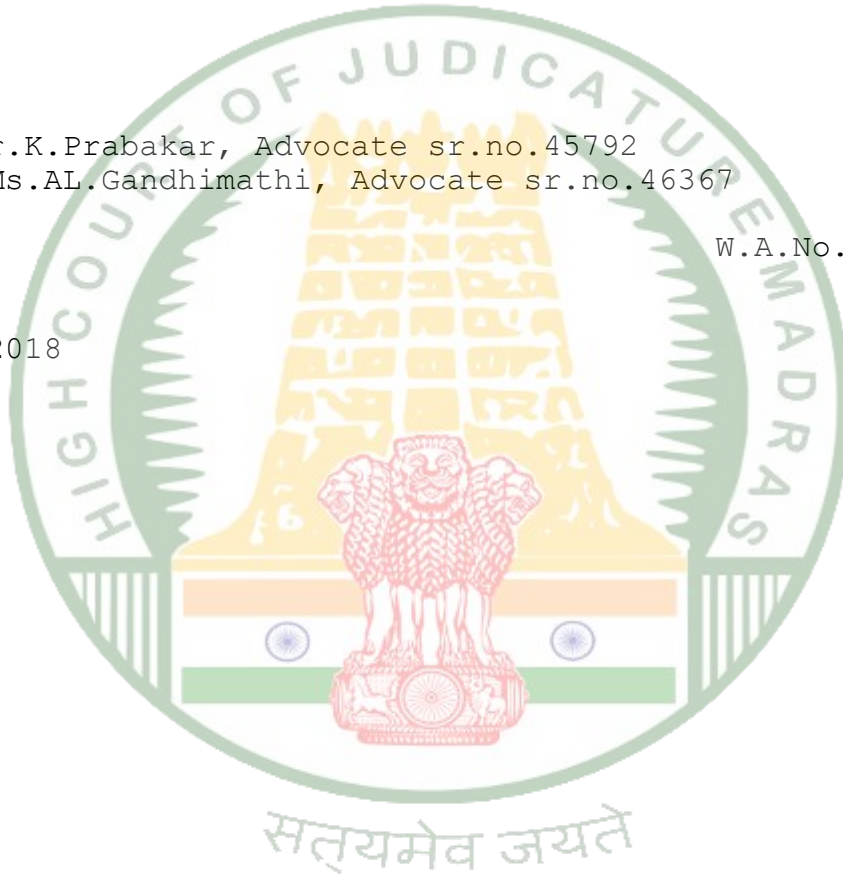
To

+1cc to Mr.K.Prabakar, Advocate sr.no.45792

+1cc to Ms.AL.Gandhimathi, Advocate sr.no.46367

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cnr(co)
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