

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.9388 of 2018

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking verbatim the following relief:

‘...to issue writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 3rd Respondent in not considering the request of the Petitioner-College to extend time for deposit of 25% of claim of the contribution made by the Respondent authorities in consequence of orders 09-10-2007 proceedings No.7000-042307-000-1303/48 dt.09-10-2017 issued by the 3rd Respondent as illegal, irregular and unconstitutional and violative of principles of natural justice and set aside the same and consequently direct the Respondent authorities’ to consider appeal of the Petitioner-College to question the orders passed U/s.45 A of the ESI Act by receiving 25% of the claim of contribution in the interest of justice and pass such other order or orders may deem fit and proper in the circumstances of the case.’

I have heard the submissions of *Sri Saripalli Subrahmanyam*, learned counsel appearing for the petitioner, and of Sri B.G. Ravinder Reddy, learned standing counsel for ESI Corporation appearing for the respondents 2 to 4. I have perused the material record.

Submissions of the learned counsel for the petitioner, in brief, are as follows:

The 3rd respondent-Assistant Director (Insurance) passed an order, dated 09.10.2017, under Section 45-A of the Employees’ State Insurance Act, 1948 [‘the Act’, for short] directing the petitioner to pay a total contribution of Rs.5,91,162/- for the period from 01.03.2014 to 30.06.2017. As per the said order, the said amount is payable within 60 days from the date of the said

order. In the said order, it is stated that if the petitioner is not satisfied with the order, it may prefer an appeal to the appellate authority as provided under Section 45-AA of the Act within 60 days of the said order, however, after depositing 25% of the above said total contribution or the contributions as per the petitioner's calculations, whichever is higher. The petitioner could not secure the said 25% amount; and, therefore, filed a letter, dated 05.12.2017, seeking extension of time for deposit of the said amount. The said request was rejected by the 3rd respondent. In the meantime, the time of 60 days, which is provided for preferring the appeal, was over. Therefore, the present writ petition is filed to permit the petitioner to prefer an appeal along with an application for condonation of delay after making a deposit of 25% of the amount of total contribution as mentioned in the order, dated 09.10.2017, of the 3rd respondent.'

Learned counsel also fairly submitted that after the lapse of 60 days time, the petitioner is entitled to approach the Court established under the provisions of the Act and that such proceedings would lie before the ESI Court, that is, a Court of a Senior Civil Judge under Section 75 of the Act. However, he seeks indulgence of the Court to permit him to prefer an appeal before the appellate authority along with an application for condonation of delay after making the necessary deposit instead of directing to go before the ESI Court as per Section 75 of the Act.

Learned Standing Counsel appearing for the respondents 2 to 4 would submit that there is no provision for condonation of delay in preferring the appeal, which is envisaged under Section 45-AA of the Act, and that the only remedy now available to the petitioner is to approach the ESI court.

Having regard to the submissions and the provisions of law, the Writ Petition is disposed of reserving liberty to the petitioner to approach the appropriate forum viz., ESI Court for an appropriate relief after complying with the statutory requirements.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M. SEETHARAMA MURTI, J

22.03.2018

Vjl

