

HON'BLE SRI JUSTICE P.NAVEEN RAO

**WRIT PETITION No.46714, 46692, 46740, 46743, 46745
46746, 46748, 46760, 46767 & 46802 of 2018**

Date:14.02.2019

W.P.No.46714 of 2018

Between:

M/s. Sanghi Synthetics Private Limited
Regd. & Administrative Office:
Sanghinagar P.O., Abdullapurmet Mandal
Ranga Reddy District,
Telangana State-501 511,
Rep. by its Director

.. Petitioner

AND

Employees State Insurance Corporation
5-9-23, Hill Fort Road,
Hyderabad-500 063
Rep. by its Regional Director
and 2 others.

.. Respondents

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO

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COMMON ORDER:

Since the subject matter of these writ petitions is one and the same, all are heard together and are disposed of by this common order.

1. The Writ Petition Nos.46714, 46692, 46740, 46743, 46745 46746, 46748, 46760, 46767 are filed challenging the order dated 09.10.2018 and W.P.No.46802 of 2018 is filed challenging the order dated 10.10.2018 where under restraint is imposed for making transfer of shares in the Sanghi Industries Limited standing in the names of Shri Sudheer Sanghi, Shri Amit Sanghi and Shri Ravi Sanghi or from receiving payment of any dividend thereon. In WP.No.46746 of 2018 challenge is against order dated 09.10.2018 where under M/s.Maruti Fasteners Pvt Ltd, Sanghinagar, Hyderabad is prohibited and restrained from making transfer of shares in the aforesaid corporation standing in its name or from receiving payment of any dividend. It is further ordered that Shri Ravi Sanghi, Managing Director, M/s. Sanghi Industries Ltd is prohibited and restrained from permitting any such payment.

2. According to petitioners, they have sustained losses and were not able to run the Units and have shutdown their operations from year 2009-2011 and all the employees earlier employed left the Units. Since the Units were closed and employees left the Units, the question of payment of contribution

to ESI Corporation under the ESI Act, 1948 (for short 'the Act') would not arise. The closure of the Units was intimated to ESI Corporation as early as in the year 2010 and since the Units are not functioning, the payment of arrears under the ESI Act does not arise.

3. It is the firm submission of the learned Senior Counsel appearing for the petitioners that no orders are passed by the ESI Corporation fixing liability to pay the amounts which are to be received by them before the impugned proceedings are issued. Without following the due procedure and without serving the orders made under Section 45-AA of the Act, no further steps could have been taken.

4. According to learned Senior counsel if an opportunity was afforded to petitioners, they would have placed before the competent authority the factum that the Units were closed in the year 2009-10 and employees left the organization in the year 2009 itself and in the event of not accepting the contention and passing orders, the petitioners would have availed the remedy of appeal available to them under Section 45-AA of the Act.

5. In regard to specific assertion of the learned senior counsel that no proceedings were served on them before passing the said restraint order, learned Standing counsel placed on record the proceedings passed by the competent authority passed against the respective Units from the year 2007 and acknowledgment slips. The copies of the same were also served on the counsel on record. The petitioners filed reply stating that none of the orders were served on them as the Companies have closed their

operations, the question of serving notices to the Company premises would not arise. In the year, 2010 itself, the office of the Companies was shifted to Bank Street at Hyderabad. Therefore, no penal action can be taken even before the orders are served.

6. Learned senior counsel seeks leave of the Court to avail the remedy as available in law including the remedy under Section 45-AA of the Act. Learned senior counsel sought to contend that the orders passed by the competent authority are brought to the notice of the petitioners now itself and those orders were never served earlier and even according to the acknowledgments filed by them it is not clear as to when they were served and on whom they were served. He contends that they came to know about the orders for the first time when the learned Standing counsel placed them on record of this Court on 29.01.2019.

7. Section 45-AA of the Act vests right in a person to prefer the appeal to the appellate authority aggrieved by any decision made under Section 45-A of the Act. However, the Section prescribes 60 days limitation to prefer the said appeal. To contend that appeal under Section 45-AA of the Act is preferred within time, petitioners have to satisfy the appellate authority that the proceedings earlier passed under Section 45-A of the Act were not communicated to them and they were communicated to them during the proceedings in the Court.

8. Though senior counsel sought to contend that these proceedings are served only on 29.01.2019, the Court is not

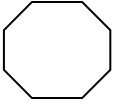
entering into that arena. It is for the petitioners to satisfy the appellate authority with the fact that proceedings are only served on them for the first time on 29.01.2019 and not earlier and there is no delay. Subject to satisfaction of the appellate authority, the appellate authority shall consider the said plea and pass appropriate orders as warranted by law. If petitioners are aggrieved by any decision made by the appellate authority, it is open to them to avail the remedies available under law. Subject to petitioners preferring appeals within two weeks from the date of receipt of copy of this order, interim order granted on 22.01.2019 shall operate for a period of two (02) months from today.

9. With the above observations, these writ petitions are disposed of. No order as to costs.

10. As a sequel, Miscellaneous Petitions, if any pending, shall stand dismissed.

P.NAVEEN RAO, J

Date: 14.02.2019
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