

ORDER SHEET

WPO No.121 of 2020
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

ORION SECURITY SOLUTIONS PVT. LTD.
Versus
UNION OF INDIA & ORS.

BEFORE:
The Hon'ble JUSTICE ABHIJIT GANGOPADHYAY
Date: 24th December, 2020

Appearance
Mr. Arunava Ghosh, Adv. with
Mr. Soumya Majumder, Adv.
Mr. Debashis Sarkar, Adv.
for the petitioner
Mr. Shiv Chandra Prasad, Adv.
..for the ESI Corporation

The Court : The allegation today made by the petitioner is that the ESI Corporation has not complied with the order passed by this Court on 3rd March, 2020 and secondly the amount for the period from 5th month of 2012 to 7th month of 2019 amounting to Rs.1,59,12,697/- as mentioned in annexure P-1 at page 19 of the writ application has been unilaterally raised without giving them any opportunity of hearing. In support of such submission, the learned senior Advocate, Mr. Ghosh shows Section 45A specially the two provisos of the said section.

In reply, the learned Advocate for the ESI Corporation has submitted that it is not a new case, it is a case of short payment of contribution which is mentioned in the said notice dated 24th September, 2019 which is annexure P-1. He further submits that Section 45A provisos are not applicable, as it is not a fresh case but it is a case of short payment. In respect of compliance of the order passed by this Court

dated 3rd March, 2020, the respondent shows Regulations 29, 31 and 33 of the Employees State Insurance (General Regulations), 1950.

There was no direction for exchange of affidavits. One interim order was passed directing the ESI Corporation as to not taking any coercive step in the meantime.

After hearing the parties, I find the main grievance of the petitioner is relating to not giving an opportunity of hearing. Though the learned Advocate for ESI has submitted that in case of short payment of contribution, there is no provision for giving any opportunity of hearing but it is found that this short payment is for a period spread over more than 7 years. Naturally, the question will arise what ESI was doing for last 7 years in respect of this short payment of contribution. In such situation, nobody will be prejudiced if an opportunity of hearing is granted to the petitioner. I direct the ESI Corporation particularly, the respondent no.4 to give the petitioner an opportunity of hearing which should be completed within 14th February, 2021 and the order thereon is required to be passed by two weeks thereafter. The matter is disposed of with a direction that till 28th February, 2021, the ESI Corporation will not take any coercive step against the petitioner.

I am making it clear that ESI Corporation while giving an opportunity of hearing to the petitioner will follow their letter dated 24th September, 2019 being annexure P-1 of the writ application.

There will be no order as to costs.

(ABHIJIT GANGOPADHYAY, J.)