

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2020

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THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 16950 of 2020

and

W.M.P. Nos. 21041 and 21042 of 2020

Salem Textile Limited
having its registered Office at
Sellipalayam,
Attur - 636 108, Salem District.
Represented by its Authorized Personnel ...Petitioner

-vs-

1. The State of Tamil Nadu,
Represented by Principal Secretary to Government,
Labour and Employment Department,
Fort St. George,
Chennai - 600 009.
2. The Sub-Regional Office,
Employee State Insurance Corporation,
Represented by its Deputy Director,
39/57, Theerthamalai Vaniga Valagam,
Three Roads,
Salem - 639 009.
3. The Recovery Officer,
Employee State Insurance Corporation,
Ministry of Labour, Government of India,
Regional Office, Salem - 636 009. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India, praying for issuance of Writ of
Certiorari calling for the records culminated in the third
respondent's impugned notice of levy in Ref. No.
ESIC/SLM/RECY/63-00-009642-000-0101 dated 15.10.2020.

For Petitioner : Mr. R. Prabhakaran

For Respondents : Mr. Ramchandramoorthy
Standing counsel for ESI

O R D E R

The prayer sought for herein is for a Writ of Certiorari to call for the records culminated in the third respondent's impugned notice of levy in Ref. No.ESIC/SLM/RECY/63-00-009642-000-0101 dated 15.10.2020.

2. The petitioner / Salem Textile Limited has approached this Court, challenging the impugned order dated 15.10.2020 passed by the third respondent / E.S.I. Corporation, which is the order of determination passed under Section 45A of the Employees State Insurance Act, 1948.

3. Heard Mr. R. Prabhakaran, learned counsel appearing for the petitioner, who would submit that, the petitioner mill has become sick and it has also been referred to BIFR and litigations have been there and the orders have been passed by the E.S.I. Corporation. In view of the reference made in BIFR, till the issue is pending, the provisions of the Employees State Insurance Act cannot be invoked against the mill for the damages which have been proposed by the respondents / E.S.I. Corporation through the impugned order.

4. Therefore, the learned counsel appearing for the petitioner would submit that, indulgence can be shown against the impugned order. Otherwise, the respondents / E.S.I. Corporation, pursuant to the impugned order, will take coercive steps against the petitioner mill.

5. However, on the other hand, Mr. Ramachandramoorthy, learned Standing counsel appearing for the respondents / E.S.I., on instructions, would submit that, first of all, the impugned order is a determination order under Section 45A of the Act. Therefore, as against which, if at all the petitioner got any grievances, he can approach the E.S.I. Court, which is the Appellate Authority and appeal could be filed in the E.S.I. Court. When there is an alternative remedy, without exhausting the same, since the petitioner has straight away approached this Court by filing the present petition, the same can be rejected as number of such cases seeking indulgence of this Court have been rejected on the ground that the Writ Petitions have been directly filed before this Court without exhausting the appellate remedy against the order of determination under Section 45A of the Act.

6. I have considered the rival submissions made by the learned counsel appearing for both parties and have perused the materials placed before this Court.

7. It is the claim of the petitioner that, the petitioner would be entitled to get relief in view of the reference already been made to BIFR and therefore, the proposed damages could not be imposed against the petitioner and therefore, on that ground, he seeks indulgence. If at all the said legal ground is available, the same can be urged before the Appellate Forum and if the appeal is filed by the petitioner within the given time and if the legal grounds are raised, the same can very well be considered by the Appellate Authority / E.S.I. Court. Therefore, without exhausting such remedy, the petitioner since has approached this Court directly by invoking Article 226 of the Constitution of India, this Court feels that, in view of the order passed by this Court in number of cases pertaining to the orders under Section 45A of the E.S.I. Act, it is inclined that, this Writ Petition need not be fully rejected, instead, the petitioner can be given liberty to approach the Appellate Authority / E.S.I. Court as against the impugned order, which is nothing but a determination order under Section 45A, where, whatever legal grounds which are available for the petitioner to agitate, can very well be agitated and once such grounds are raised, the same can be considered and disposed of by the appellate forum.

8. In view of the aforesaid, this Court is disposing of the Writ Petition with the following orders:

"(i) That the petitioner is hereby given liberty to approach the Appellate Authority / E.S.I. Court, by filing appropriate appeal as against the impugned order dated 15.10.2020 within a period of four weeks from the date of receipt of a copy of this order.

(ii) On such appeal being filed, where, if the petitioner raised any legal / acceptable ground in the context of matter having been referred to BIFR, the same can also be decided by the Appellate Forum on merits and in accordance with law. Till such time i.e., for the period of four weeks from the date of receipt of a copy of this order, enabling the petitioner to approach the Appellate Forum, the respondents / E.S.I. Corporation shall not take any coercive or persuasive action, pursuant to the impugned order dated 15.10.2020. Since the issue raised by the petitioner on the ground that, the matter has been referred to BIFR, is the worthy ground to agitate before the Appellate Forum, the same can be given consideration to be decided on merits. The limitation if any for preferring such appeal before the Appellate Forum, shall not stand in the way in view of the four weeks time granted."

9. With the above directions, the Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vji
To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Labour and Employment Department,
Fort St. George,
Chennai - 600 009.
2. The Deputy Director,
The Sub-Regional Office,
Employee State Insurance Corporation,
39/57, Theerthamalai Vaniga Valagam,
Three Roads, Salem - 639 009.
3. The Recovery Officer,
Employee State Insurance Corporation,
Ministry of Labour, Government of India,
Regional Office, Salem - 636 009.

+1 CC to Mr.C.V. Ramachandramoorthy, Advocate sr 39261.
+1 CC to Mr.R. Prabhakaran, Advocate sr 39255.

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W.P. No. 16950 of 2020
and

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SP(25/01/2021)