

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1994 of 2020
and

C.M.P.No.14662 of 2020

1.The Employees State Insurance
Corporation Ltd.,
rep. by its Deputy Director,
No.143, Sterling Road,
Chennai-600 034.

2.The Recovery Officer,
Employees State Insurance Corporation,
No.143, Sterling Road,
Chennai-600 034.

..Appellants/Respondents

Vs.

M/s.Prompt Logistics and Travels (P) Ltd.,
rep. by its Managing Director,
No.26, 10th Street, Lakshmi Nagar,
Porur, Chennai-600 116.

..Respondent/Petitioner

Prayer : Civil Miscellaneous Appeal filed under Section 82(2) of the Employees' State Insurance Act, 1948, against the order and decree dated 23.03.2020 on the file of the Employees Insurance Court (Principal Labour Court), Chennai in E.I.O.P.No.137 of 2006.

For Appellants : Mr.SP.Srinivasan

For Respondent : Mr.D.Abdullah

J U D G M E N T

The order dated 23.03.2020 passed by the learned Principal Judge, Labour Court, Chennai in E.I.O.P.No.137 of 2020, is under challenge in the present Civil Miscellaneous Appeal.

2.The learned counsel appearing on behalf of the appellants/ESI Corporation mainly contended that the order passed under Section 45-A of the Employees State Insurance Act, 1948 (hereinafter referred to as 'ESI Act') was quashed on the ground that adequate opportunity contemplated under the provisions of the Statute was not provided to the respondent/employer. When the ESI Court has made a finding regarding the opportunity to be provided, then the case would have been remanded back to the Authorities for fresh consideration. Contrary, the very order dated 28.03.2006 itself is set aside which will deprive the Corporation from initiating further action in accordance with the provisions of the ESI Act. In the event of non initiating of action under the provisions, the respondent would escape from the clutches of the proceedings which is a violation from the scheme of the Act itself and thus, pleaded to remand the matter back to the Original Authority for providing an opportunity to the respondent and to pass a fresh order under Section 45-A of the ESI Act.

3.The learned counsel for the respondent though disputed the grounds raised, contended that the ESI Court had rightly quashed the petition on the ground that reasonable opportunity was not provided to the respondent which is in violation of Principles of Natural Justice and thus, no interference is required and the appeal is to be dismissed.

4.This Court is of the view that undoubtedly, the findings of the impugned order indicates that sufficient opportunity was not provided to the respondent to defend their case to the Competent Authority under the ESI Act. When the Appellate Court had made a finding that opportunity contemplated under the provisions of the Act was not given to the employer then the course would be to remand back the matter to the Authorities for re-consideration and for passing fresh orders. In the event of not providing any opportunity to the ESI Corporation, the very liability of the respondent will escape from the provisions of the Act which could not be approved at all. This is the factum established in the case. Thus, the order passed in TN/INS.IV/51-76008-101/C18 (ad) 469/1-06 dated 28.03.2006 and the consequential notices dated 12.06.2006 & 28.07.2006 and the order passed in E.I.O.P.No.137 of 2006 dated 23.03.2020 passed under Section 45-A of the ESI Act are set aside and the matter is remanded back to the Original Authorities/Competent Authorities under the ESI Act to conduct an enquiry under Section 45-A of the ESI Act, by providing an opportunity to the respondent/employer and to decide the issues on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. The respondent is

directed to co-operate for the enquiry by producing all relevant documents enabling the Authorities to adjudicate the issues. Accordingly, the Civil Miscellaneous Appeal stands allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

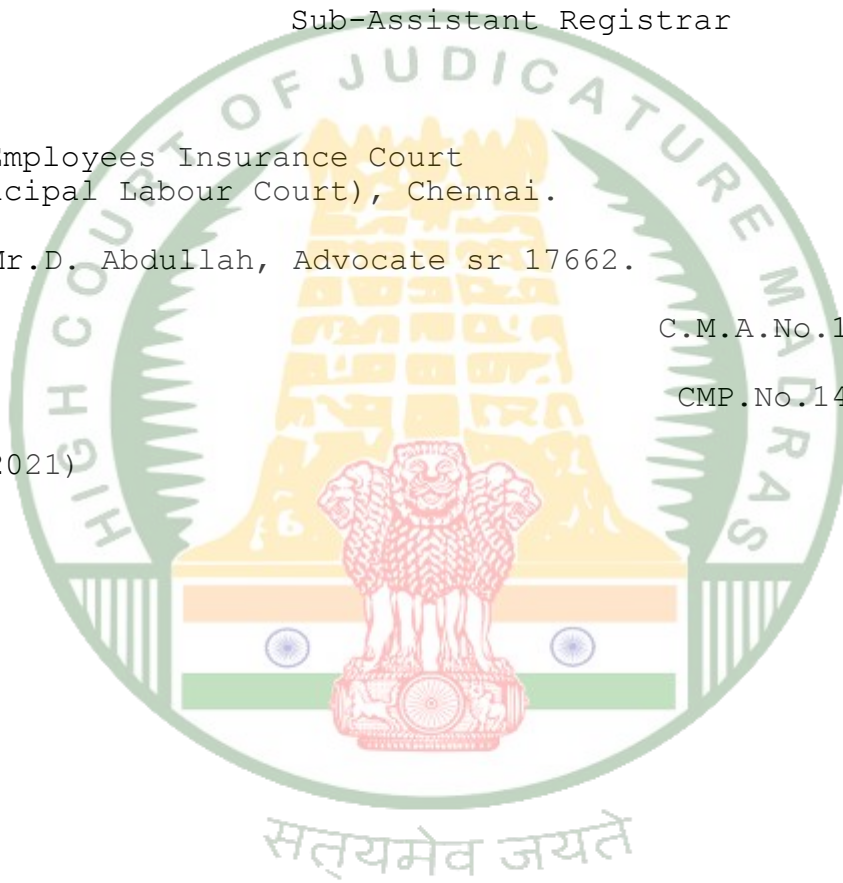
DP
To

The Employees Insurance Court
(Principal Labour Court), Chennai.

+1 CC to Mr.D. Abdullah, Advocate sr 17662.

C.M.A.No.1994 of 2020
and
CMP.No.14662 of 2020

SVI (CO)
SP(26/05/2021)



WEB COPY