

20.02.2025
Ct. No. 30
S.L No.10
SM

WPA 3745 of 2025
Shyamal Banerjee
Vs
The State of West Bengal & Ors.

Mr. Ranjay De, sr. adv.
Mr. Nayan Rakshit
Mr. Adityajit Abel Bose
.....for the petitioner
Ms. Soumi Guha Thakurta
.....for the respondent no. 2 & 3
Mr. Naba Kumar Das
Mr. Subhabrata Das
.....for the State

1. Affidavit-of-service filed be kept with the record.

2. On hearing the learned counsels for the parties it appears that the present writ application has been preferred praying for preponing the next date before the learned ESI Court who has fixed the next date on 10.06.2025 for hearing of the restoration petition.

3. Vide an order dated 08.01.2025 in MAT 2126 of 2023 heard along with IA No. CAN 1 of 2023 the Division Bench of this Court directed as follows.

“In that view of the matter, since Mr. De, learned Senior Advocate appearing on behalf of the appellant has agreed to approach the ESI Court, as directed by the learned Single Judge of this Court, after making the pre-deposit of 25% of the quantified amount by the Corporation, he is permitted to do so. Let such pre-

*deposit be made within a period of **one month** from date and if such pre-deposit is deposited, the ESI Court shall consider the appellant's appeal in accordance with law. The said appeal shall be decided by the ESI Court within a period of **six months** from date mandatorily and positively.”*

4. It appears from the documents annexed which includes the copies of order sheet before the ESI Court that prior to the order of the Division Bench the case before the ESI Court had already been dismissed for default on 06.12.2024.

5. A prayer for restoration was made by the petitioner on 24.01.2025 along with demand drafts for making the payment as directed by the Division Bench.

6. It appears that the said demand drafts were placed before the Court along with restoration application within the period as directed by the Division Bench.

7. It appears that the ESI Court completely overlooked the direction of the Division Bench in paragraph 6 of the order and it could be due to inadvertence that the case has been fixed for hearing of the restoration application on 10.06.2025, which is not in accordance with direction of the Division Bench.

8. In view of the said facts on record the next date before the ESI Court be fixed on 10th March, 2025. vide order dated 24.01.2025 is thus set aside.

9. Parties to appear before the Court on 10th March, 2025 and the Court shall proceed with the hearing and dispose of the same as per direction of the Division Bench.

10. Regarding the compliance of payment as directed by the Division Bench, it appears that the petitioner herein has duly complied with the same and as such the same demand drafts be placed before the Court on 10th March, 2025.

11. Pending disposal of the matter before the ESI Court, the garnishee order dated 31.12.2024 issued by the recovery officer under Section 45G of the ESI Act be stayed. The outcome of the said orders shall be subject to the decision of the ESI Court.

12. WPA 3745 of 2025 stands disposed of.

13. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties expeditiously after complying with all requisite formalities.

[Shampa Dutt (Paul). J]