

(2009) 12 AHC CK 0327**Allahabad High Court****Case No:** None

Aryan Buff Manufacturing Co.
and Another

APPELLANT**Vs**

Regional Director, E.S.I.C. and
Others

RESPONDENT**Date of Decision:** Dec. 17, 2009**Acts Referred:**

- Employees State Insurance Act, 1948 - Section 45A

Citation: (2010) 124 FLR 301 : (2010) 2 LLJ 687**Hon'ble Judges:** Sibghat Ullah Khan, J**Bench:** Single Bench**Final Decision:** Disposed Of**Judgement**

Sibghat Ullah Khan, J.

Heard Shri Mayank Agarwal, learned counsel for the petitioners and Shri Rajesh Tiwari, learned counsel appearing for respondents.

This writ petition is directed against orders dated November 4, 2009 passed by the respondents against the petitioner. The orders are exactly similar with the only difference that they relate to different periods. Orders have been passed u/s 45-A of E.S.I. Act. Learned counsel for the petitioners has argued that u/s 45-A of the Act there are only two contingencies under which provisional assessment may be made. The first contingency is that where register and records etc which are furnished so warrant and the second contingency if where Inspector is prevented in any manner by the principal or immediate employer in exercising his functions Inspection etc. while in the instant case there is no such allegation. The only thing which is mentioned in the impugned orders is that since beginning the petitioner-employer was not complying with the provisions of the Act and on the advice of the Inspector the petitioner assured the compliance but he failed to do so. Under the Act there

does not appear to be any provision under which inspector is supposed to give advice. Inspectors are required to inspect and give reports.

2. The case of the petitioner is that it is not engaging ten or more employees hence it is not covered by the Act.

3. In this regard, learned counsel for the petitioner has cited an authority of the Supreme Court in Srinivas Rice Mills v. ESI Corporation (2007) 1 SCC 705 : 2007 I LLJ 625.

4. Accordingly writ petition is disposed of with exactly similar directions which were given in the aforesaid Supreme Court judgment. The said par is quoted below at p. 633 of LLJ:

76. We, therefore, are of the opinion that having regard to the facts and circumstances of this case the interest of justice would be subserved if the appellants are given an opportunity of hearing. Keeping in view the fact that the appellants now know the allegations made against them, no fresh notice need be served. The appellants may file their returns and also all other books of accounts before the authorities under the Act within six weeks from date. The authorities shall give an opportunity of hearing to them and determine the question as to whether a jurisdictional fact existed for application of the provisions of the Act in cases of the respective employers. In the event, it is found, upon perusal of all the documents whereupon the employers may rely upon and on the basis of such information as may be sought for or directed to be furnished by the authority to the employer and upon hearing them that the provisions of the Act apply or not the authorities may proceed as against them as is permissible in law.

5. It is needless to add that until fresh decision, no recovery shall be made from the petitioners.