

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYASHTA, 1937

W.P.(C).No.2403 of 2009 (J)

PETITIONER(S):-

DIVINE MEDICAL CENTRE LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR,
P.O.WADAKANCHERY, THRISSUR DIST.

BY ADV. SRI.P.BHASKARAN.

RESPONDENT(S):-

1. EMPLOYEES STATE INSURANCE CORPORATION,
REPRESENTED BY ASST. DIRECTOR, REGIONAL OFFICE, KERALA,
PANCHDEEP BHAVAN, NORTH SWARAJ ROUND, POST BAG NO.2,
THRISSUR-680020.
2. THE ASST.DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION,
REGIONAL OFFICE, KERALA,
PANCHDEEP BHAVAN, NORTH SWORAJ ROUND POST BAG NO.2,
THRISSUR-680020.
3. THE ASSISTANT LABOUR OFFICER,
WADAKANCHERY, THRISSUR DISTRICT.

R1 & R2 BY STANDING COUNSEL SRI.P.SANKARANKUTTY NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1 TRUE COPY OF THE ABSTRACT OF THE REGISTER OF THE
PERSONS EMPLOYED CERTIFIED BY THE LABOUR
AUTHORITIES DATED 6.9.2007.
- EXT.P2 TRUE COPY OF THE COMMUNICATION DATED 16.7.2008
ISSUED BY THE 1ST RESPONDENT DIRECTING TO PAY
ARREARS OF CONTRIBUTION.
- EXT.P3 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER
DATED 13.8.2008 BEFORE THE 1ST RESPONDENT.
- EXT.P4 TRUE COPY OF THE COMMUNICATION DATED 1.9.2008 ISSUED
BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXT.P5 TRUE COPY OF THE CHALAN FORM FOR DEPOSIT IN
ACCOUNT NO.1 DATED 13.8.2008 EVIDENCING ENROLLMENT
UNDER THE ESI SCHEME.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.2403 of 2009-J

Dated this the 08th day of June, 2015

JUDGMENT

The petitioner challenges the show cause notice issued at Exhibit P2 in the above writ petition. The show cause notice threatened determination of contribution under the Employees' State Insurance Act, 1948 [for brevity "ESI Act"] for the period 06/09/2007 to 31/03/2008.

2. On 22/01/2009, it was directed that the Standing Counsel would get instruction as to whether any final orders have been passed pursuant to Exhibit P4 communication.

3. A counter affidavit has been placed on record by respondents 1 and 2, wherein it has been stated that the petitioner had not availed of the repeated opportunities granted to him and that final orders under Section 45A of the ESI Act has not been passed. It was stated so in paragraph 9:

"Since the issue involved is premature and the contribution due for the period had not been determined by issuing the 45-A order, the question of quashing Ext.P2 finding it arbitrary and illegal does not arise".

4. Even in the counter affidavit, the specific contention raised was that the petitioner could reply to the show cause notice issued. The learned Standing Counsel is unable to tell me as to whether any final orders have been passed. Since show cause notice has been issued and no interim orders were passed in the writ petition, the petitioner would have had to show cause and if any final orders were passed, the same had to be challenged.

The writ petition is closed, leaving open the remedy against the final orders, if any, passed, in accordance with law and if the same is available at this distance of time. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]