

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2015

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.16452 and 16453 of 2015

and M.P.Nos.1 and 1 of 2015

M/s.R.S.Infotainment Private Ltd.,
Represented by its Director,
Elred Kumar
Flat No.5, Good Villa Court,
No.16, Bhagavatham Street,
T.Nagar,
Chennai-600 017. .. Petitioner in both W.Ps.

Vs.

1.Employees State Insurance Corporation,
Rep. By its Chairman and Managing Director,
Regional Office,
ESI Corporation,
Panchdeep Bhavan,
No.143, Sterling Road,
Chennai-600 034.

2.The Recovery Officer,
Regional Office,
ESI Corporation,
Panchdeep Bhavan,
No.143, Sterling Road,
Chennai-600 034.

Respondents in both W.Ps.

Prayer in W.P.No.16452 of 2015 : Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent dated 12.05.2015 in No.TN/RECY/CP-1/51-106316/CCR70566 and quash the same and further direct the respondents to record that as on 20.04.2015, the petitioner company is not liable under the Employees State Insurance Act.

Prayer in W.P.No.16453 of 2015 : Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent pertaining to its notice dated 20.04.2015 in

No.51001063160001201/ 492015321/952/14 and quash the same and further direct the respondents to record that as on 20.04.2015, the petitioner company is not liable under the Employees State Insurance Act.

For Petitioner : Mr.C.Prabhakaran

For Respondents : Mr.P.Chandrasekaran

C O M M O N O R D E R

The petitioner would state that it is engaged in the production of cinemas and according to them, they enter into agreements with leading film making companies or firms and thereafter, they provide funds in a phased manner and get the first copy of the film and sold it to the customers. The petitioner would further state that for that purpose, it employed 5 staff members and their work is seasonal and they will not come under the provisions of the Employees State Insurance Act, 1948 [in short "ESI Act"]. It is further stated by the petitioner that to their shock and surprise, they received a notice dated 20.04.2015 from the first respondent, wherein it has been stated among other things that as per Section 40 r/w. 39 of the ESI Act, they have to submit Form No.6 under Regulation 32 under the General Regulations, 1950 and also Regulation 51 for the purpose of providing employers contribution to workmen. It is further indicated in the said notice that the petitioner has not paid their contribution from March 2014 to February 2015 and they are also liable to pay interest. The said demand notice was also followed by another notice on the same day issued by the first respondent stating that their firm is provisionally covered with effect from 02.01.2010 with a further direction to recover the amounts along with interest. Challenging the vires of the two notices, the petitioner has come forward with these writ petitions.

2. The learned counsel appearing for the petitioner would contend that since the petitioner employs only five staff members, they will not come within the ambit of the ESI Act and without due and proper application of mind, the impugned notices came to be issued and hence, came forward with these writ petitions.

3. In response to the same, Mr.P.Chandrasekaran, learned counsel appearing for the respondents has drawn the attention of this Court to the counter affidavit filed by the respondents and would submit that in terms of the provision under Section 1(5) of the ESI Act, with effect from 02.01.2010, Code No.51001063160001201 was allotted for making compliance and the coverage of the petitioner Unit was intimated vide Letter C-11 dated 25.07.2013 and the same was received and acknowledged by the petitioner on 01.08.2013 and thereafter, the petitioner had neither paid contribution nor complied anything and

therefore, a show cause notice dated 26.05.2014 was issued to the petitioner by the first respondent calling upon them to pay Rs.5,21,720/- for the period from January 2010 to February 2014 with an opportunity of being heard on 18.06.2014 and though the petitioner has received the said notices, they neither appeared for personal hearing on 18.06.2014 nor produced any records before the first respondents and therefore, the amount was determined under Section 45-A of the ESI Act, based on the information available. The petitioner did not comply with the said demand and therefore, recovery notice was issued to recover the said amounts and the petitioner woken up belatedly and made a challenge to the said order.

4. This Court has carefully considered the rival submissions and also perused the materials placed before it.

5. Section 45-A of the ESI Act speaks about determination of contribution in certain cases and Section 45-AA provides for appeal to the Appellate Authority if the employer is not satisfied with the order referred to in Section 45-A, within sixty days of the date of such order after depositing 25% of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation. Section 75 deals with matters to be decided by Employees' Insurance Court.

6. A perusal of the grounds of challenge would disclose that the writ petitioner wants factual adjudication of the issues which falls within the domain of the concerned authority situated under the provisions of the ESI Act.

7. In the light of effective alternative remedy available to the petitioner, this Court is not in a position to grant any relief to the petitioner and therefore, these writ petitions are dismissed, granting liberty to the petitioner to work out his remedy in terms of the ESI Act, 1948. No costs. Interim order already granted in favour of the petitioner stands vacated and hence, connected miscellaneous petitions are dismissed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Chairman and Managing Director,
Employees State Insurance Corporation,
Regional Office, ESI Corporation,
Panchdeep Bhavan,
No.143, Sterling Road, Chennai-600 034.

2.The Recovery Officer,
Regional Office,
ESI Corporation,
Panchdeep Bhavan,
No.143, Sterling Road, Chennai-600 034

+1 cc to M/S.C.Prabakaran, Advocate sr.41952

+1 cc to Mr.TNC.Kaushik Advocate sr.42297

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