

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.2141 of 2015

ORDER:

The issue arises under the Employees State Insurance Act, 1948 (for brevity, 'the Act').

The petitioner assails the order No.70000422150000102 /11282014542 dated 28.11.2014 of the second respondent under Section 45-A of the Act. Through the impugned order the second respondent directed the petitioner to contribute a sum of Rs.5,12,44,591/- towards arrears of contribution for the periods 01.11.2009 to 31.12.2013; 01.11.2009 to 31.03.2012 and 01.11.2009 to 31.03.2012. The order impugned in the Writ Petition is appealable under Section 45-AA of the Act.

The petitioner invokes the jurisdiction of this Court under Article 226 of the Constitution of India. Having regard to the peculiar and singular circumstances under which the petitioner could not respond to the notices issued by the second respondent and that the second respondent though aware of the full circumstances for not submitting the information required by the second respondent still has passed the order contrary to the mandate of law and in violation of principles of natural justice. The dates and circumstances relevant for this limited purpose are as follows:

The respondent issued notice in Form-C 18 (Adhoc) dated 23.07.2014 to the petitioner under Section 45-A of the Act. The petitioner through letter dated 11.08.2014 requested time for submitting either explanation or production of documents evidencing payment under the Act. The request of the petitioner is considered through notice No.70000422150000102 dated 30.09.2014. Through the instant notice, the second respondent granted time to the petitioner to produce documents before the SSO on or before 17.10.2014 for

inspection or else to produce records before the Sub-Regional Office, ESIC, Visakhapatnam on 20.10.2014. There is no dispute of receipt of the request dated 28.10.2014. Through the order impugned the second respondent records a finding as follows:

“In spite of the opportunities afforded to him, the employer neither paid the contributions nor submitted the documents, but continued to request for dates with an intention to drag the case for a longer time.

I have applied my mind to all relevant facts of the case and the findings are as follows:

The factory has been covered under the ESI Act, 1948. In spite of receipt of the inspection observation from the Social Security Officer, the employer did not make payment. This was followed by the notices as aforesaid, offering opportunities of personal hearing in the matter with the advice to file statements and to produce relevant records for assessment of contribution. But the employer having received the notice, neither paid the amount nor submitted any documentary proof to substantiate his case. I, therefore, hold that the employer has nothing to say in the matter.

Upon perusal of the Inspection Report of the SSO, I find that contributions are payable on various kinds of wages which has been omitted by the employer. The same has been reflected in paragraph No.3 of notice dated 23.07.2014. In spite of several opportunities and a long period of time, the employer failed to identify the same and pay contributions thereon. I, therefore, determine the contributions payable as under, after taking into account the second proviso of Section 45-A of the ESI Act.

S.No.	Period	Wages: Rs.	Contributions Payable @ 6.5% of wages Rs.
1.	01.11.2009 to 31.12.2013	8,80,69,350	57,24,508.00
2.	01.11.2009 to 31.03.2012	11,00,00,100	71,50,007.00
3.	01.11.2009 to 31.03.2012	59,03,08,855	3,83,70,076.00
		Total:Rs.78,83,78.305	5,12,44,591.00

Finally as referred to earlier the second respondent determines the amounts payable to the petitioner as Rs.5,12,44,591/-.

Heard Sri S.R.Ashok, learned Senior Counsel for the petitioner,

and Sri B.G.Ravindra Reddy, learned Standing Counsel for the second respondent.

The consideration of the Writ Petition is limited to the extent whether the order impugned in the Writ Petition violates the principles of natural justice and the statutory requirement of the Act. The second respondent has taken up entering into alleged default in payment of E.S.I.dues. The earliest request was made through letter dated 11.08.2014 for grant of time by the petitioner. Through notice dated 30.09.2014 the second respondent granted time with two alternative options for filing the documents. The explanation offered by the petitioner is that the normal life in Visakhapatnam has come to a grinding halt from 09.10.2014 till the end of first week of November, 2014. The second respondent has called upon the petitioner to produce records by 17.10.2014. It is the further grievance of the petitioner that in the cyclone the Unit has suffered extensive damage and the records were not available in order for presentation. When these aspects are well within the knowledge of the second respondent, the second respondent ought not to have passed an order by observing that the petitioner has an intention to drag the case for a longer time. Had it been a case where the petitioner has not brought the present difficulty to the notice of the second respondent, different consideration would have arisen. The difficulty to comply with the production of documents by 17.10.2014 was brought to the notice of respondent through reply dated 28.10.2014. Unfortunately even after referring to the receipt of representation/request dated 28.10.2014 without considering the reasonable request the impugned order dated 28.11.2014 is passed by the second respondent. The order impugned has serious implications under the Act. Determination of either contribution or direction to deposit in the above fashion is certainly illegal and contrary to the spirit of the Act. This Court is of the view that the order impugned is passed in violation of principles of natural

justice and ignoring the reasonable request dated 28.10.2014. On this short ground, the order impugned is set aside in exercise of the jurisdiction of this Court under Article 226 of the Constitution of India.

The matter is remitted to second respondent for consideration afresh. To avoid further delay in the matter, this Court considers it appropriate to grant six weeks' time from today to submit the documents as directed through notice dated 30.09.2014. Thereafter, the second respondent is free to pass appropriate orders.

The Writ Petition is allowed. The Miscellaneous Petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

S.V.BHATT, J

06th February, 2015.

Note:

*Furnish C.C. of the order
within three days.*

*B/o
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