

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.04.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. of 10709 of 2018

and

W.M.P.Nos. 12649 & 12650 of 2018

R.Venkatesan

..Petitioner

Vs

The Recovery Officer
Employees' State Insurance Corporation
(Sub Regional Office)
1897, Trichy Road, Panchdeep Bhavan
Ramanathapuram, Coimbatore-641 045.

... Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records of the respondent in Ref.No.56/RRC/CP/56/6240/61 dated 05.04.2018 and quash the same.

For Petitioner :Mr.S.Gunalan

O R D E R

The summons issued to the writ petitioner by the respondent in proceedings dated 05.04.2018 is under challenge in this writ petition.

2.The writ petitioner management was running their unit in the rented building in the name and style of 'Blue Mount Switch Gears' at door No.397, Patel Road, Coimbatore - 641 009. The respondent sent a recovery summon in proceedings dated 23.04.2018 to the writ petitioner.

3.The learned counsel for the writ petitioner states that the said summons had not been received by the writ petitioner and he was not aware of the ESI due period in respect of the said summons issued for recovery of the contributions due.

4.The learned counsel for the writ petitioner states that the petitioner's establishment was closed in the year 1999, thus, after closure of the establishment the respondent sent recovery summons to the writ petitioner on 05.04.2018, which is impugned in this writ petition. The writ petitioner management sent a letter to the respondent on 16.04.2018 seeking details and further, not to take any coercive action against the writ petitioner in this regard.

5.However, without awaiting for any further orders, the writ petitioner has filed the present writ petition challenging the summons issued by the respondent in proceedings dated 05.04.2018. This court is of an opinion that it is a summon issued for the personal appearance of the writ petitioner and to explain why the contributions were not paid and they have to pay the amount of contribution as stipulated in the Act, failing which, it is stated further that action will be initiated. Therefore, it is an opportunity for the writ petitioner to defend his case in accordance with law. Thus, it is left open to the writ petitioner to appear in person and submit his explanation /objections in respect of quantum of amount arrived or otherwise. By availing the opportunity the writ petitioner shall represent his case before the competent authorities.

6.This court cannot interfere during the intermittent period, in view of the fact that the authorities have not yet initiated any further action pursuant to the summons issued. The authorities competent must be permitted to continue the proceedings till the final order is passed in respect of recovery of dues under the provisions of the Act. This being the factum of the case, this court is of an opinion that the summons issued in this writ petition cannot be entertained. Thus, the writ petitioner is at liberty to respond to the summons issued on 05.04.2018 and submit his statement of defense or otherwise before the competent authority and participate in the proceedings.

7.No writ can be entertained against the notice issued by a competent authority seeking explanations / objections from the persons in a routine manner. Judicial review against a show cause notice are certainly limited and on exceptional circumstances, the writ proceedings can be entertained if any Show Cause Notice is issued by a competent authority having no jurisdiction, incompetency or the allegations of malafides. Even in case of raising allegation of malafides, the authorities against whom such an allegation is raised is to be impleaded as party respondent in the writ proceedings in his personal capacity. In the absence of any one of these legal cause, no

writ can be entertained in a routine manner.

8.In this view of the matter, the writ petitioner has not established any cause of action for the purpose of entertaining the writ petition and no further adjudication in respect of the grounds raised in this writ petition at this point of time is required. Accordingly, this writ petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

may

To

The Recovery Officer
Employees' State Insurance Corporation
(Sub Regional Office)
1897, Trichy Road, Panchdeep Bhavan
Ramanathapuram, Coimbatore-641 045.

+1 CC to Mr.S. Gunalan, Advocate sr 31402.

+1 CC to Mr.C.V. Ramachandran, Advocate sr 31849.

W.P.No.10709 of 2018

PVS (CO)
SP(10/05/2018)

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