

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:09.08.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.6714 of 2019

M/s.Arrow Shipping
Rep. By its Proprietor R.G.Srinivas
Old No.58, (Old No.31)
III Lane, North Beach Road,
Chennai - 600 001.

...Petitioner

Vs.

1.Employees State Insurance Corporation
Represented by Deputy Director,
Regional Office (Tamilnadu)
Panchdeep Bhawan, No.143, Sterling Road,
Nungambakkam, Chennai - 600 034.

2.The Additional Commissioner,
Employees State Insurance Corporation
Regional Office (Tamilnadu)
Panchdeep Bhawan, No.143, Sterling Road,
Nungambakkam, Chennai - 600 034.

...Respondents

Prayer: Petition filed under Article 226 of Constitution of India, for issuance of Writ of Certiorari to call for the related records and orders of even dated 22.02.2019 with even numbers TN/INS-V/51-00-107225-000-1006 issued by the 2nd respondent imposing damages and to quash the same.

For Petitioner : Mrs.Kanimozhi Mathi

For Respondents : Mr.K.Prabakar

ORDER

The present dispute is only in regard to levy of damages by the ESI Corporation covering two periods of contribution payable, one from February 2013 to April 2014 and the other for a period from May 2014 to April 2015. According to the ESI Corporation, the petitioner is liable to pay damages for the earlier period to the tune of Rs.96,525/- and for the later period to the tune of Rs.74,689/-.

2. According to the petitioner, the petitioner company is facing market crisis and they were unable to pay and therefore, there was a delay in making ESI contribution. According to them, the delay was neither wilful nor wanton nor deliberate.

3. The learned counsel appearing for the petitioner would submit that the Hon'ble Supreme Court of India has held that the mens rea or actus reus is a very crucial factor which needs to be taken into consideration before the authorities levy damages. In this case, there is complete absence of any intention to avoid any payment towards ESI contribution and therefore, such absence of intention has not been considered by the authority. In this regard, the learned counsel would submit that a representation has been submitted on 19.02.2019 to the respondent, but the same has not been considered. Therefore, the learned counsel would submit that the representation addressed to the respondent may be directed to be considered and one more opportunity to be given to the petitioner to put forth the case on their behalf.

4. At this, the learned counsel for the respondent Corporation would submit that the petitioner has an effective remedy and it is always open to them to file a EIOP before the Court concerned under Section 75 of the Employees' State Insurance Act, 1948. Without exhausting such remedy, the petitioner has approached this Court by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

5. Considered the submissions made on behalf of the learned counsels. Although there is an effective remedy available under Section 75 of the ESI Act, however, in view of the representation being made by the petitioner on 19.02.2019 expressing certain difficulty in the payment of ESI contribution for the period in question, this Court, in the fitness of things, is of the opinion that the authorities are to be directed to consider and dispose of the representation after giving one more opportunity to the petitioner of personal hearing.

6. In view of the same, the Writ Petition is disposed of, with the following directions:

(i) The respondents are directed to consider the representation said to have been submitted by the petitioner on 19.02.2019 on merits and in accordance with law, by affording a personal hearing to the petitioner and pass appropriate orders on the representation within a period of eight weeks from the date of receipt of a copy of this order.

(ii) The respondents are also directed to issue

notice to the petitioner Company calling for personal hearing and then shall pass orders, after taking note of their objections for levy of damages in this case. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

Sgl
To

1.The Deputy Director,
Employees State Insurance Corporation
Regional Office (Tamilnadu)
Panchdeep Bhawan, No.143, Sterling Road,
Nungambakkam, Chennai - 600 034.

2.The Additional Commissioner,
Employees State Insurance Corporation
Regional Office (Tamilnadu)
Panchdeep Bhawan, No.143, Sterling Road,
Nungambakkam, Chennai - 600 034.

+1 CC to Mr. Kanimozhi Mathi, Advocate sr 68517
+1 CC to Mr.K.Prabakar, Advocate sr 68333.

W.P.No.6714 of 2019

SV(CO)
SP(13/09/2019)