

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.06.2019

Coram

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.8594 of 2019

K. Mariappan @ Rajendran

Petitioner

Vs

1. The Recovery Officer
Employees State Insurance Corporation
39/57, Theerthamalai Vaniga Valigam
Three Roads
Salem - 636 009

2. The Branch Manager
Union Bank of India
No.103 Madheswara Lodge
Four Roads Junction
Adhyaman By Pass Road
Dharmapuri - 636 701

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in Proceedings No.SLM/RECY/45(G)/63-000-73641-000-0699/CCR No.4243 dated 08.01.2019 issued to the 2nd respondent bank and quash the attachment order in so far as the Account No.558601010050185 of Petitioner and further direct the 2nd respondent to release forthwith a sum of Rs.4,05,542/- held by the 2nd respondent.

For Petitioner

.. Mr.Anand Gopalan

for M/s.T.S.Gopalan and Company

For Respondents

.. Mr.K.Prabakar

ORDER

The Writ Petitioner is a virtually blind person, one eye 100% blind and another eye 40% blind. He is the resident of Salem. According to the petitioner, he was engaged in Electrical and Civil Contract works for Government entities like PWD, DRDA, Anna University etc.

2. Further, the petitioner had a Bank Account bearing No.558601010050185 with the 2nd respondent/Union Bank of India at Dharmapuri. Petitioner's Cousin brother's wife namely, Mrs.Rani, who is proprietrix of one Raj Industries and Raj Electricals has also bank account with the 2nd respondent Bank. Since, the petitioner was unable to travel to Dharmapuri frequently on his own, due to his disability, he has authorised the said Mrs.Rani, to operate his account with the 2nd respondent Bank. The amount deposited by the petitioner in his account is purely his own earnings and he has no nexus with the activities of Raj Industries and Raj Electricals owned by Mrs.Rani. Whiles, the said Raj Industries and Raj Electricals were covered under the ESI Act. Since the said Companies had defaulted in payment of contribution towards ESI, proceedings were initiated against those Companies in terms of Section 45 of the ESI Act by the ESI Corporation.

3. On determination of dues, a certificate dated 27.03.2017 was also forwarded by the 1st respondent for recovering a sum of Rs.4,05,542/-. While the 1st respondent issued a recovery proceedings under Section 45 (G) of the ESI Act to the Branch Manager of the 2nd respondent to hold the funds standing in the Bank Account No.558601010050037 of Mrs.Rani, the Bank Account of the petitioner was also frozen to the tune of Rs.3,83,865.20/-. Since the petitioner had nothing to do with the business run by Mrs.Rani, he had made a representation to the 1st respondent on 28.01.2019, but the same has not evoked any response. The petitioner has been sending representations and notices to recall the action by the 1st respondent and defreeze the account, in respect of the petitioner's account. But, unfortunately, no action for the same has been taken by the 1st respondent. Therefore, the petitioner has come up before this Court challenging the order passed by the 1st respondent dated 08.01.2019 issued to the 2nd respondent towards attaching the Bank account as far as the petitioner is concerned and to realize forthwith a sum of Rs.4,05,542.00/- held by the 2nd respondent.

4. The learned Counsel Mr.Anand Gopalan appearing for the petitioner would submit that the 1st respondent Corporation, while freezing the account held by the petitioner with the 2nd respondent Bank has no way stated as to how the petitioner is connected with the business run by Mrs.Rani and how he was liable for payment of contributions towards ESI. Because of the fact that, the petitioner is the resident of Salem and he had his bank Account with the 2nd respondent Bank at Dharmapuri and due to his disability, he is unable to make frequent trips to Dharmapuri on his own so he has authorised Mrs.Rani to operate the Bank account at Dharmapuri. Other than that, the petitioner has no connection with the said Mrs.Rani, in respect of her

business. Unfortunately, the 1st respondent Corporation, without appreciating the said fact, has frozen the petitioner's Bank account while taking action against the said Mrs.Rani, towards ESI contribution.

5. The learned Counsel for the 1st respondent Corporation would submit that the 1st respondent has taken action against Mrs.Rani, in respect of the account maintained by her with the 2nd respondent Bank and one such account belongs to the petitioner but was operated by the said Mrs.Rani. Therefore, the 1st respondent Corporation had to attach that account also, in order to realise the default of payment in respect of ESI contribution.

6. A Counter Affidavit has been filed on behalf of the 1st respondent, in which, nothing has been found, whether the petitioner has any link with the said Mrs.Rani or not. He has an alternative remedy to adjudicate his dispute before the Employees Insurance Court under Section 75 (g) of Employees State Insurance Act 1948. But he has chosen to invoke Article 226 of Constitution of India.

7. The learned Counsel for the petitioner submitted that since no order has been passed against the petitioner, he would not be in a position to challenge in the action of the Corporation before ESI Court. Except the freezing of his account, no order has been passed against the petitioner. Moreover, the learned Counsel also submitted that in view of the Counter Affidavit, wherein nothing has been spelt out as to how the Writ Petitioner has any link with the business of the said Mrs.Rani and therefore the impugned action taken by the 1st respondent per se is illegal and liable to be interfered by this Court exercising its Constitutional Jurisdiction under Article 226 of the Constitution of India.

8. Heard the learned Counsels on either side.

9. As rightly contended by the learned Counsel for the petitioner that the 1st respondent Corporation has not established the factum of the petitioner having any link with the business activities of the said Mrs.Rani against whom, Corporation had proceeded for realizing the ESI contribution, when an action is taken in this nature, it is imperative that the 1st respondent Corporation has to establish any link of the petitioner with the business of said Mrs.Rani. Unless, such link is established, it is not open to the 1st respondent Corporation to freeze the account held by the petitioner, which is completely independent account, no connection with the accounts maintained by the said Mrs.Rani. Moreover, in the Counter Affidavit also, it is not mentioned that the petitioner has any link with Mrs.Rani and therefore his account is also liable to

be attached. In the absence of any such assertion by the Corporation, the impugned action of freezing the petitioner's account is unsustainable in law.

10. In the light of the above discussions, the Writ petition is allowed and the impugned Proceedings No.SLM/RECY/45 (G)/63-000-73641-000-0699/CCR No.4243 dated 08.01.2019 of the 1st respondent, issued to the 2nd respondent bank for attachment of the Petitioner's Account No.558601010050185 is quashed. Consequently, the 2nd respondent Bank is directed to release a sum of Rs.4,05,542/- held by them in respect of the petitioner's account forthwith.

11. With the above directions, the Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Recovery Officer
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No.103 Madheswara Lodge
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Dharmapuri - 636 701

+lcc to M/s.T.S.Gopalan & Co sr.47243

+lcc to Mr.K.Prabakar, Advocate sr.47206

W.P.No.8594 of 2019

nr 18/07/2019

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