

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.10.2019

CORAM

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

W.P.No.29677 of 2018

M/s. Hexaware Technology,
Rep.by Principal Employer,
Tmt. G.Chella Thilagam
W/264, Palaniappa Nagar,
Vanagaram, Chennai - 600 095.

.. Petitioner

Vs.

1. The Commissioner,
Employees State Insurance Corporation,
"Panchdeep Bhavan",
No.143, Sterling Road,
Nungambakkam, Chennai - 600 034.

2. The Recovery Officer,
Employees State Insurance Corporation,
"Panchdeep Bhavan",
No.143, Sterling Road,
Nungambakkam, Chennai - 600 034.

....Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 24.03.2017 and consequently direct the respondents to cancel the order dated 08.09.2016 in Reference No.TN.Recy. 51001037410001999 on the file of 2nd respondent herein and to release the attachment amount of Rs.2,41,552/- in her Account No.1283201004008 in Canara Bank, T.Nagar Branch, Chennai - 17.

For Petitioner : Mr.S.L.Venkatesan

For Respondents : Mr.T.N.C.Kaushik [RR1 & 2]

O R D E R

The relief sought for in the present writ petition is to direct the respondents to consider the representation submitted by the writ petitioner on 24.03.2017 and consequential direction to direct the respondents to cancel the order dated 08.09.2016 bearing reference No. TN.Recy.

51001037410001999.

2. Admittedly, actions under the Employees' State Insurance Act, 1948 (hereinafter referred to as 'ESI Act') had been initiated against the writ petitioner for the purpose of recovering the contributions. The petitioner is a defaulter in payment of contributions and accordingly, the competent authority instituted the actions. The learned counsel for the writ petitioner states that the company is in financial stress and therefore, they are not in a position to pay the entire contribution. The actions are initiated without any notice to the writ petitioner. However, the learned counsel for the respondents produced the copy of the order passed under Section 45A of the ESI Act. Section 45A order was passed pursuant to the show cause notice issued to the writ petitioner company, thus, the issues are to be decided under Section 45A of the ESI Act.

3. In such circumstances, the aggrieved persons are bound to approach the Appellate Authority under Section 45AA of the ESI Act or before ESI Court under Section 75 of the ESI Act. The petitioner is at liberty either to prefer an appeal under Section 45AA of the ESI or under Section 75 of the ESI Act before the ESI Court.

4. Contrarily, High Court cannot adjudicate the disputed issue and such disputed issues are to be decided with reference to the original documents as well as the evidences to be produced by the respective parties.

5. This being the factum, this Court is of an opinion that the relief sought for in the present writ petition cannot be granted. However, the petitioner is at liberty to approach the Appellate Authority or the ESI Court for the purpose of redressing his grievances.

6. Accordingly, the writ petition is devoid of merits and stands dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Employees State Insurance Corporation,
"Panchdeep Bhavan",
No.143, Sterling Road,
Nungambakkam, Chennai - 600 034.

2. The Recovery Officer,
Employees State Insurance Corporation,
"Panchdeep Bhavan",
No.143, Sterling Road,
Nungambakkam, Chennai - 600 034.

+1cc to Mr.S.L.Venkatesan, Advocate SR.90028
+1cc to Mr.T.N.C.Kaushik, Advocate SR.90358

W.P.No.29677 of 2018

SSP(CO)
CB(05/12/2019)



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