

THE HONOURABLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION NO.25393 OF 2019

The present Writ Petition is filed questioning the action of the 4th respondent in issuing warrant of attachment of immovable property of the petitioner vide proceeding 52Q/32734-005 dated 18.09.2019 prohibiting and restraining the petitioner from transferring or changing the specification of the property mentioned therein, on the ground that the same has been issued without any notice and without affording an opportunity to the petitioner, as being illegal, arbitrary and contrary to the provisions of Employees State Insurance Act, 1948 (for short 'the ESI Act').

Heard Sri C. Damodar Reddy, learned counsel for the petitioner and Sri R. Shyamsundar, Assistant Government Pleader for Labour and Employment for the 1st respondent and Sri B.G. Ravinder Reddy representing respondents 2 to 4.

It is contended on behalf of the petitioner that no notices as required under the ESI Act including order under Section 45 of the ESI Act, were served on the petitioner prior to the issuance of the Form No.ESI CP-12 viz., warrant of attachment of immovable property, vide proceeding No.52Q/32734-0005, dated 18.09.2019 and thus, indulgence of this Court is sought for on the ground of violation of principles of natural justice.

The said assertion of the petitioner has been denied by the counsel appearing for the ESI Corporation who placed before this Court, the record of proceedings from the point of preliminary

survey conducted at the petitioner's place till the impugned proceedings came to be passed.

Basing on the material placed before this Court, the learned Standing counsel submits that the order under Section 45A of the ESI Act has been passed by the authorities on 09.03.2015 for the period 01.02.2010 to 31.03.2011 and 01.04.2011 to 30.11.2013 determining the statutory liability which the petitioner is liable to discharge. The said orders passed by the authorities were also communicated to the petitioner through registered post, as evident from the postal acknowledgement card available on record. It is submitted by the learned counsel that the petitioner did not chose to file an appeal before the appellate authority as provided under the provisions of Section 45AA of the ESI Act within the period stipulated and allowed the proceedings to attain finality nor paid the amounts as determined in the orders passed under Section 45A of the ESI Act, dated 09.03.2015 to wipe out the liability. As the petitioner failed to make good the liability as determined by the aforesaid proceedings, the authorities have initiated further proceedings under the ESI Act, and issued the impugned proceedings.

The learned Standing counsel submits that even the impugned proceeding has also been served on the petitioner by registered post and the petitioner having kept silent for nearly two months has filed the present writ petition alleging violation of principles of natural justice and seeks for dismissal of the Writ Petition.

As can be seen from the material on record, the said claim of the petitioner that no notice has been issued to him prior to passing of the impugned notice and there being no determination under Section 45 of the ESI Act, on the face of it appears to be incorrect having regard to the proceedings dated 09.03.2015. However, without going into the merits of the matter or expressing any view thereon and having regard to the provisions of the Act, this Court is of the view that the petitioner be relegated to avail the remedy of appeal before the E.I. Court in terms of the provisions of Section 75 of ESI Act by seeking condonation of delay in approaching the Court under Section 5 of the Limitation Act. Upon such application being made by the petitioner before the E.I. Court, the E.I. Court shall consider the same in accordance with law and dispose of the same.

Subject to the above observations, granting liberty to the petitioner to approach the E.I. Court, the Writ Petition is disposed of. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE T. VINOD KUMAR

Date: 21.11.2019

MRKR