

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 4649 of 2018

and

W.M.P. No. 5834 of 2018

1. M/s.Sankar Textiles
No.31/1, Nanjappa Thevar Nagar
Kannamapalayam
Coimbatore - 641 405.
 2. Smt. A.Thangamani
Proprietorix of M/s.Sankar Textiles
No.23/1, Nanjappa Thevar Nagar
Kannamapalayam
Coimbatore - 641 405. Petitioners
- vs-
1. Presiding Officer
Labour Court
Coimbatore.
 2. The Deputy Director
Sub-Regional Office (Coimbatore)
ESI Corporation
Coimbatore - 641 045.
 3. The Assistant Director
Authorized Officer
Sub-Regional Office (Coimbatore)
ESI Corporation
1897, Trichy Road
Ramanathapuram, Coimbatore.
 4. Social Security Officer
Inspection Division - Ondipudur
ESI Corporation
Coimbatore - 641 016. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records ending with the order of First Respondent dated 17.08.2017 and made in I.A. No. 727/2017 in unnumbered ESI O.P. Of 2015, and to quash the same and consequently direct the First Respondent to pass orders to waive

50% of contribution to be paid to prosecuting the ESI O.P.

For Petitioners: Mr. N.Ishtiaq Ahmed

For Respondents: Mr. T.N.C.Kaushik (For R3)

R1- Labour Court

No appearance (R2 & R4)

O R D E R
(through video conference)

Heard Mr. N.Ishtiaq Ahmed, Learned Counsel for the Petitioner and Mr. T.N.C.Kaushik, Learned Counsel for the Third Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent by order No.56001093750000101/9250151011 dated 30.09.2015 determined that contributions totalling Rs. 77,220/- under the provisions of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the Act' for short) has to be recovered from the Petitioner. An appeal under Section 75 of the Act against that order was preferred by the Petitioner before the Employees' Insurance Court, which is the First Respondent. In terms of clause (2-B) of Section 75 of the Act, the Petitioner was required to deposit 50% of the amount due from him as claimed by the Second Respondent as condition for entertaining that appeal. The Petitioner made an application in I.A. No. 727 of 2015 under the proviso thereto for waiver of such deposit. The First Respondent was of the view that the loss in business of the Petitioner due to the medical expenses incurred on her son and husband explained in her affidavit filed in support of that application were not acceptable circumstances to grant any waiver to the Petitioner and required her to deposit the required 50% of the amount due by 30.08.2017 in the order passed on 17.08.2017. Long thereafter, the Petitioner on 27.02.2018 has filed this Writ Petition challenging the said order rejecting the application for waiver.

3. Learned Counsel for the Petitioner submits that the First Respondent, while refusing to waive the deposit, has not given any reason for the same in the impugned order. As already noticed, the First Respondent has found that the explanation given by the Petitioner for waiver of deposit could not be

accepted. That apart, it must be pointed out that the deposit of the 50% of the amount due is a statutory requirement and the First Respondent was under an obligation to record reasons in writing only if it was intended to waive or reduce that amount and not when it is refused. As such, there does not appear to be any infirmity in the impugned order requiring interference by this Court in the exercise of discretionary powers under Article 226 of the Constitution.

4. In response to a specific query, Learned Counsel for the Petitioner expressed that the Petitioner is not willing to comply with the order of the First Respondent to deposit the required amount of 50% of the amount due even now, though nearly three years has lapsed from the date of passing of the impugned order. As such, the Petitioner does not deserve any indulgence from this Court.

5. In the result, this Writ Petition sans merits is dismissed . No costs. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

Maya

To

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RJI (CO)
GN(07/08/2020)



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