

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2020

CORAM

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

W.P. No. 9300 of 2020
and

W.M.P. Nos. 11343 and 11345 of 2020

M/s. DP Foam Private Limited
Rep. by its Managing Director
D.P. Vasudevan
'Seethala'
No.7, Jawaharlal Nehru Street
Puducherry - 605 001. Petitioner

-vs-

1. The Assistant Director
Employees State Insurance Corporation
Bouvankare Street
Mudaliarpet
Puducherry - 605 004.
2. The Recovery Officer
Regional Office-Puducherry
Employees' State Insurance Corporation
ESIC Complex
Bouvankare Street
Mudaliarpet
Puducherry - 605 004. 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 on the file of the Second Respondent in his proceedings in No.PDY/RECY/EC-15/55-00-021518-000-1099 and quash the impugned Recovery Proceeding dated 12.10.2018 as highly illegal and violative of the Employees State Insurance Act, 1948 and further for a direction, directing the First Respondent to consider the representation of the Petitioner dated 10.09.2019 and pass orders on the same on merits and in accordance with law.

For Petitioner : Mr. J. Ashok

For Respondents: Ms. Jeyakumari, Standing Counsel

O R D E R

(through video conference)

Heard Mr. J.Ashok, Learned Counsel for the Petitioner and Ms. Jeyakumari, Learned Counsel for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. It is pointed out by the Learned Standing Counsel for the Respondents that the order No.PDY/RECY/EC-15/55-00-021518-000-1099 dated 12.10.2018, which is impugned in this Writ Petition, is a consequential order for recovery in furtherance to the order No.55000133310000304/D-19/7495 dated 26.12.2019 passed by the First Respondent assessing the amount of contribution payable by the Petitioner under Section 85-A of the Employees State Insurance Act, 1948 (hereinafter referred to as 'the Act' for short) and in the absence of any challenge to that parental order, the Petitioner cannot prosecute this Writ Petitioner for the relief claimed. She relies on the decisions of this Court in Saidapet Co-operative Milk Producers Society Ltd., -vs- Deputy Director, ESI Corporation Regional Officer (Tamil Nadu) (Order dated 04.08.2017 in C.M.A. No. 469 of 2015) and M/s. Hexaware Technology -vs- Commissioner, Employees State Insurance Corporation, Chennai (Order dated 30.10.2019 in W.P. No. 29677 of 2018) to buttress that proposition of law.

3. In view of the aforesaid legal position, Learned Counsel for the Petitioner seeks permission of this Court to withdraw the Writ Petition with liberty to challenge the order No. PDY/RECY/EC-15/55-00-021518-000-1099 dated 12.10.2018 by approaching the Employees Insurance Court under Section 75 of the Act along with an application to condone the delay in filing the same under Rule 17 of the Tamil Nadu Employees Insurance Court Rules, 1951, and he has also sent a confirmatory e-mail dated 07.08.2020 to that effect, which is placed on record. It is made clear that the Petitioner is not precluded from making any application for interim relief including that related to enforcement of the order impugned in this Writ Petition, before the Employees Insurance Court in the said proceedings, and that no view is expressed by this Court on the correctness or otherwise on the merits of the claim made by the Petitioner in that regard.

4. Accordingly, the Writ Petition is dismissed as withdrawn granting such liberty with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Director
Employees State Insurance Corporation
Bouvankare Street
Mudaliarpet
Puducherry - 605 004.
2. The Recovery Officer
Regional Office-Puducherry
Employees' State Insurance Corporation
ESIC Complex
Bouvankare Street
Mudaliarpet
Puducherry - 605 004.

+lcc to M/s.S.Jayakumari, Advocate Sr.26357

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srg 14/08/2020

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