



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2020

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THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD) No. 4646 of 2019 and
WMP(MD).Nos. 3699 and 3700 of 2019

S. Jeyachandran

: Petitioner

Vs.

1.The Recovery Officer,
Sub Regional Office (Madurai),
Employees State Insurance corporation,
No.2 West Street, K.K. Nagar,
Madurai.

2.The Authorized Officer,
ESI Corporation,
Sub Regional Office (Madurai),
Employees State Insurance Corporation,
No.2 West Street, K.K. Nagar,
Madurai - 20.

: Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for records relating to the impugned order passed by the 1st respondent under Form No.26 in his proceedings in No.57/RRC/00/073965/000/-0304/SRO/MDU/19, dated 14.02.2019 and quash the same.

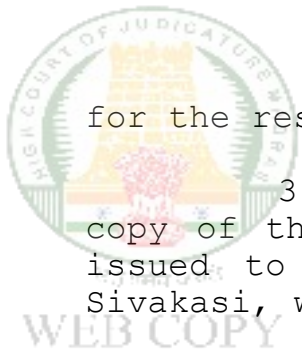
For Petitioner : Mr.B. Prahalad Ravi
For respondents : Mr. I. Pinaygash
Standing Counsel

O R D E R

(This Petition was heard through Video Conferencing)

This Writ Petition has been filed challenging the show cause notice issued by the first respondent under the Employees State Insurance Act, 1948, for recovery of arrears from the petitioner and interest payable under Section 39(5)(a) of the Employees State Insurance Act, 1948 (**hereinafter referred as ESI Act, 1948**).

2. Heard Mr. B. Prahalad Ravi, learned counsel appearing for the petitioner and Mr. I. Pinaygash, learned counsel appearing
<https://hcservices.ecourts.gov.in/hcservices/>



for the respondents.

3. The only ground raised in this Writ Petition is that the copy of the impugned show cause notice, dated 14.02.2019 has been issued to the Inspector of Police, Thiruthangal Police Station, Sivakasi, which the first respondent is not empowered under law.

4. According to the petitioner, the impugned show cause notice has been issued without authority under law. Admittedly, no First Information Report has been registered by the Inspector of Police, Thiruthangal Police Station, Sivakasi, against the petitioner, subsequent, to the date of of the impugned show cause notice. The impugned show cause notice has been issued to the petitioner under Section 45(D) (2) of the ESI Act, 1948, for recovery of the alleged arrears from the petitioner and the interest payable by him under Section 39(5) (a) of the ESI Act, 1948.

5. Admittedly, the first respondent is empowered to issue the impugned show cause notice to the petitioner under Section 45(D) (2) of the ESI Act, 1948. When the impugned show cause notice has been issued by the authority under law, it is settled law that the Writ Petition is not maintainable under Article 226 of the Constitution of India. It is also to be noted that despite a copy of the impugned show cause notice, dated 14.02.2019, having been sent to the Inspector of Police, Thiruthangal Police Station, Sivakasi, till date no First Information Report has been registered against the petitioner by the Inspector of Police, Thiruthangal Police Station, Sivakasi. This being the case, the apprehension raised by the petitioner in this Writ Petition is uncalled for.

6. A counter affidavit has been filed by the respondents reiterating that they are empowered to issue the impugned show cause notice under law.

7. For the foregoing reasons, this Court is of the considered view that absolutely there is no merit in this Writ Petition. However, the interest of the petitioner will have to be protected by permitting him to send a reply to the impugned show cause notice, dated 14.02.2019.

8. Accordingly, this Court directs the petitioner to submit his reply to the impugned show cause notice, dated 14.02.2019 through the first respondent, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the first respondent shall pass final orders on merits and in accordance with law, after affording sufficient opportunity to the petitioner, including granting him right of personal hearing, within a period of eight weeks, thereafter.



9. With the aforesaid direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

trp

To

1.The Recovery Officer,
Sub Regional Office (Madurai),
Employees State Insurance corporation,
No.2 West Street, K.K. Nagar,
Madurai.

2.The Authorized Officer,
ESI Corporation,
Sub Regional Office (Maudrai),
Employees State Insurance Corporation,
No.2 West Street, K.K. Nagar,
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