

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.4518 of 2021
and W.M.P.Nos.5133 and 5134 of 2021

M/s. Mathi Leathers Pvt Ltd
rep by its Managing Director
Balasubramanian Petitioner/ Petitioner

Vs.

1. The Regional Director
Employees State Insurance Corporation
Regional Office, Panchdeep Bhawan
143, Sterling Road, Chennai-34
2. The Assistant Director
Employees State Insurance Corporation
Regional Office, Panchdeep Bhawan
143, Sterling Road, Chennai-34
3. The Recovery Officer
Employees State Insurance Corporation
Regional Office, Panchdeep Bhawan
143, Sterling Road,
Chennai-34 Respondents/ Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in his proceedings dated 19.12.2018 in TN/INS-IV/51-00-058020-000-0203/7325/09-18 and TN/INS-IV/51-00-058020-000-0203/7326/09-18 and the consequential order on the file of the 3rd respondent in his proceedings dated 10-02-2020 in 51000580200000203/CP/362331/CCR-92077 and 92078 quash the same and consequentially to direct the 2nd respondent to conduct an enquiry afresh after giving reasonable opportunity to the petitioner and pass orders considering Section 93 A of the Act.

For Petitioner : Mr.M.L.Ramesh

For Respondents : Mr.G.Bharadwaj, Standing counsel

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O R D E R

What is challenged before this Court is the order passed under Sec. 45-A of the Employees State Insurance Act, 1948 (herein after referred to as the 'Act') by the respondent on 19.12.2018 on the ground that the opportunity of personal hearing was not provided to the petitioner.

2. It is admitted by both the sides that the petitioner appeared before the authority on 23.10.2018. However, without giving ample opportunity, the authority hurriedly passed order under Sec.45-A of the Act and made him to prefer an appeal before the ESI Court. Therefore, any order which violates the doctrine of principles of natural justice can be tested by this Court under Article 226 of the Constitution of India. Therefore, the learned counsel for the petitioner seeks one opportunity to produce all the documents and order be passed after hearing him.

3. Per contra, learned counsel for the respondent would vehemently contend that once order under Sec.45-A of the Act is passed it becomes final and that only avenue available to the petitioner is to file an appeal before the ESI Court and he has every opportunity to produce all the documents which were not considered by the authority and the ESI Court can remit the matter back to the original authority for reconsideration. While the legal position is such, the petitioner cannot approach this Court directly under Art.226 of the Constitution of the India. In support of his contention learned counsel would rely on the judgment of the Hon'ble Supreme Court in ESIC vs C.C. Santhakumar and the judgment of this Court in W.P.No.748 of 2020 dated 05.02.2020.

4. I have considered the submissions.

5. It is no doubt that against an order passed under Sec. 45-A of the Act, appeal is provided under Sec.75 of the Act. It is always open to the petitioner to produce all the documents, which were not considered by the original authority and if the ESI Court finds that those documents were not considered, it can always remand the matter back to the original authority. Admittedly, both the sides agree that on 23.10.2018 the petitioner was not in a position to produce the documents and sought for time. In that event, the original authority should

have granted some more time in compliance with principles of natural justice. But, however, there is an appellate remedy available to the petitioner and the same relief can be obtained before the ESI Court.

6. I am inclined to dispose of the writ petition with a direction to the petitioner to approach the appropriate ESI Court and challenge the very same impugned order by filing an appeal. ESI Court is directed to entertain the appeal without insisting on limitation and dispose of the same on merits. No costs. Connected miscellaneous petitions are closed.

Registry is directed to return the original copies of the order or documents to the Writ Petitioner.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Kpr

To

1. The Regional Director
Employees State Insurance Corporation
Regional Office, Panchdeep Bhawan
143, Sterling Road, Chennai-34
2. The Assistant Director
Employees State Insurance Corporation
Regional Office, Panchdeep Bhawan
143, Sterling Road, Chennai-34
3. The Recovery Officer
Employees State Insurance Corporation
Regional Office, Panchdeep Bhawan
143, Sterling Road, Chennai-34

+1cc to Mr.M.L.Ramesh , Advocate SR.No. 12840

+1cc to Mr.G.Bharadwaj , Advocate SR.No. 12829

W.P.No.4518 of 2021

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A.SK(24.03.2021)