

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2021

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.Nos.3590, 3591, 3594, 3595, 3597 and 3598 of 2021
and

W.M.P.Nos.4109, 4110, 4092, 4093, 4098,
4099, 4102, 4103, 4105, 4106, 4107 and 4108 of 2021

W.P.No.3590 of 2021:

Fullerton India Credit Co. Ltd.,
Megh Towers 3rd Floor,
Old No. 307, New No.165,
PH Road, Maduravoyal,
Chennai, Tamil Nadu - 600 095.

Rep. By its Authorised signatory ...Petitioner in all W.Ps

vs.

1. The Deputy Director
Employees' State Insurance Corporation
Sub Regional Office
1897, Trichy Road
Panchdeep Bhavan
Ramanathapuram
Coimbatore - 641 045.

2. The Recovery Officer
Employees' State Insurance Corporation
Sub Regional Office
1897, Trichy Road
Panchdeep Bhavan
Ramanathapuram
Coimbatore - 641 045.

3. The Branch Manager
HDFC LTD
2nd Floor, ITC Center
760 Anna Salai
Chennai - 600 002.

...Respondents 1 to 3 in all W.Ps

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent in its Proceedings No.56510517650041099/ME, 56510517650051099, 56510517650081099,

56510517650091099, 56510517650061099 and 56510517650071099 respectively dated 10.02.2020 passed under Section 45-A of the ESI Act, quash the same and further direct the Respondent to conduct afresh enquiry by granting opportunity to the petitioner.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.

For Respondents: Mr.T.N.C.Kaushik (For R1 and R2)
(Standing Counsel)

C O M M O N O R D E R

The order passed under Section 45-A of the Employees' State Insurance Act, 1948 (hereinafter referred to as the 'Act' for short) is under challenge over violation of principles of natural justice.

2. According to the petitioner, on 12.07.2019 a notice for hearing was issued under Section 45-A of the Act. On the date, the petitioner appeared. The matter is adjourned to 09.01.2020 for the purpose of producing certain documents. On the said date, the petitioner could not appear. However, on 10.01.2020, he produced all the documents sought for by the first respondent.

3. On 10.02.2020, the authority has passed an order under Section 45-A of the Act, reads as follows:-

"Under Section 45-AA of the ESI Act, 1948, if an employer is not satisfied with the order referred to in Section 45-A, he may prefer an appeal to an appellate authority as provided under Regulation 31-D within sixty days of the date of such order after depositing twenty five percent of the contribution so ordered or the contribution as per his own calculation whichever is higher with the corporation. Under Regulation 31-D of the Employees State Insurance (General) Regulation 1950, the Additional Commissioner and Regional Director of ESI Corporation, Regional Office, 143, Sterling Road, Nungampakkam, Chennai - 600034 is the Appellate Authority."

4. Even though the petitioner has produced all the documents required by the first respondent without considering any of them and without affording opportunity of personal hearing, the authority has passed an order and therefore, the petitioner is before this Court challenging the order on the ground of violation of principles of natural justice.

5. It is well settled that if materials are placed before authority, it shall be considered and a speaking order shall be passed. Eventhough the documents were produced one month prior to the date of order, they were not considered, Even, when the noticee fails to file his objection to the demand, an opportunity of personal hearing shall be provided. The action of the respondents is violative of principles of natural justice as held by this Court in Hafeez Motor Transport vs. Deputy Regional Director reported in 2000 SCC Online Mad 1123. But, in the instant case, in spite of production of documents, neither opportunity of personal hearing was afforded nor the documents were considered.

6. Therefore, the order passed by the first respondent dated 10.02.2020 is set aside on the grounds of violation of principles of natural justice. The matter is remitted back to the authority with a direction to provide opportunity of personal hearing to the petitioner and decide the matter afresh within a period of six weeks from the date of receipt of a copy of this order.

7. In view of the impugned order being setting aside, the consequential order of recovery action also stands set aside. The respondents are directed to give suitable instructions to the banks viz., Citi Bank, HDFC Bank, Axis Bank, ICICI Bank and State Bank of India permitting the petitioner to operate their account as usual.

8. These writ petitions are disposed of with the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

dm

To

1.The Deputy Director
Employees' State Insurance Corporation
Sub Regional Office
1897, Trichy Road, Panchdeep Bhavan
Ramanathapuram, Coimbatore - 641 045.

WEB COPY

2. The Recovery Officer
Employees' State Insurance Corporation
Sub Regional Office
1897, Trichy Road, Panchdeep Bhavan
Ramanathapuram, Coimbatore - 641 045.

+1 CC to Mr.T.N.C.Kaushik, Advocate sr 9339.

+6 CC to Mr.T.S.. Gopalan & Co, sr 8988.

W.P.Nos.3590, 3591, 3594, 3595,
3597 and 3598 of 2021

VD(CO)
SP(18/02/2021)



WEB COPY