

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.9658 of 2021
and WMP.Nos.10227 & 10229 of 2021

V.M.Parthasarathy

... Petitioner

..Vs..

1. The Assistant Director,
Employees State Insurance Corporation
Panchdeep Bhawan,
143, Sterling Road,
Chennai 600 034.

2. Recovery Officer,
Employees State Insurance Corporation
Panchdeep Bhawan,
143, Sterling Road,
Chennai 600 034

... Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for records of the impugned order dated 05.12.2020 bearing ref.No.TN/Ins-V1/51-00-023666-000-1001 passed by the first respondent to quash the same and further direct the 1st respondent to pass a fresh order after providing an opportunity of personal hearing to the petitioner .

For Petitioner : Mr.R.Anish Kumar

For Respondents: Mr.S.P.Srinivasan

ORDER

This writ petition has been filed, seeking to call for records of the impugned order dated 05.12.2020 bearing Ref.No.TN/Ins-V1/51-00-023666-000-1001 passed by the first

respondent to quash the same and further direct the 1st respondent to pass a fresh order after providing an opportunity of personal hearing to the petitioner and together with the consequential relief.

2. Mr.S.P.Srinivasan, learned counsel takes notice on behalf of the respondents. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

3. It is the case of the petitioner that it is a proprietary concern and an establishment with Code No.51000236660001001 covered under Employees State Insurance Corporation Act, 1948 (ESI Act) w.e.f. 13.12.2002 and is contributing to the 1st respondent promptly without any delay. The issue in the present writ petition is that the petitioner failed to pay the alleged contribution for the period from 09/2017 to 06/2019 as required by the law. It is further averred that the Proprietor viz., V.M.Parthasarathy died on 21.05.2017. After the death of the said Proprietor, his Son V.P.Sundaramoorthy and also the Manager of the petitioner has intimated to the 1st respondent's office and the Provident Fund's Office and surrendered the originals of Allotment Code Certificate and the same was acknowledged by the said offices. The said V.P.Sundaramoorthy transferred the employees from the petitioner's company and started to pay the contributions to the ESI and PF since September 2017 and the same was intimated to both the offices.

4. It is further stated that on 09.07.2018, the petitioner also submitted a letter to the Deputy Director, Industrial Safety and Health, Vellore together with license requesting to cancel the registration certificate and return the deposit and the same was acknowledged by the said officer in the closure report permanently. Without considering the above facts, the 1st respondent passed the impugned non-speaking order dated 05.12.2020 under Section 45(A) of the ESI Act, 1948 for the recovery of alleged contributions totalling to Rs. 16,35,134/- for the period from September 2017 to June 2019 merely on the ground of non-appearance whereas the petitioner is not aware of the said order as well as proceedings. Following the impugned order, the petitioner received the recovery notice dated 10.03.2021 from the 2nd respondent and came to aware of the

impugned order. On 22.03.2021, the petitioner submitted a letter to the 1st respondent requesting a copy of impugned order and personal hearing notice. The said request letter was acknowledged by the 1st respondent and furnished copies as requested. The Manager/ Authorized Signatory of the petitioner has shifted his residence to Chennai since 2017 and operating the establishment by travelling to Chennai and Sholinghur. Hence, the impugned order and its personal hearing notice were not properly communicated to the petitioner. Therefore, the present Writ Petition has been filed.

5. It is stated across the bar by the learned counsel for the petitioner that no opportunity was afforded to the petitioner before passing the impugned order and there is a violation of principle of natural justice.

6. In view of the above submission, this Court, while interfering with the order impugned in this writ petition, directs the respondents to pass a fresh order after providing an opportunity of hearing to the petitioner within three months from the date of receipt of the order.

7. With the above observation and direction, the writ petition is disposed of. No costs.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

dpq

To

1. The Assistant Director,
Employees State Insurance Corporation
Panchdeep Bhawan,
143, Sterling Road,
Chennai 600 034.

2. The Recovery Officer,
Employees State Insurance Corporation
Panchdeep Bhawan,
143, Sterling Road,
Chennai 600 034.

+1 CC to Mr. R. Anish Kumar, Advocate Sr 25764
+1 CC to Mr. S.P. Srinivasan, Advocate Sr 25133

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RLD(CO)
LS(13/07/2021)



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