



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.10160 of 2021

and

WMP No.10787 of 2021

M/s.Madha Medical College and Hospital,
Rep. by its Managing Director,
Dr.S.Madan Kumar,
Kundrathur Main Road,
Kovur (Near Porur),
Thandalam Post,
Chennai 600 122.

... Petitioner

-vs-

Assistant Director,
Regional Office (Tamil nadu)
Employees' State Insurance Corporation,
143, Sterling Road,
Chennai 600 034.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in Proceedings No. TN/Ins-VI/51-00-109774-000-1305, quash its order, dated 17.03.2021 and consequently direct the respondent to provide reasonable opportunity to petitioner and hold enquiry in terms of Section 45 A of the ESI Act.

For Petitioner : Mr.S.Ravindran, Senior counsel for
Mr.S.Bazeer Ahamed

For Respondents : Mr.S.P.Srinivasan



O R D E R

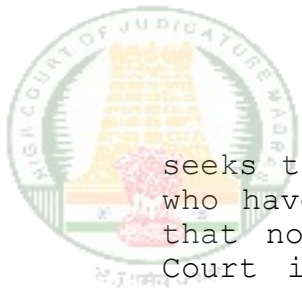
The Writ Petition is filed, to quash the Proceedings No. TN/Ins-VI/51-00-109774-000-1305, dated 17.03.2021 and for a consequential direction to the respondent to provide reasonable opportunity to the petitioner and hold enquiry in terms of Section 45 A of the ESI Act.

2. The petitioner has got an alternate remedy under Section 45 AA of the ESI Act by which the petitioner may prefer an appeal to the appellate Authority as may be provided by Regulation within 60 days of the date of such order after depositing 25 % of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation. That apart, the petitioner has also got another remedy under Section 75 of the ESI Act, 1948. When the aforesaid two remedies are available to him, the petitioner has come forward with the present Writ Petition, before this Court under the pecuniary circumstances, more so, in the pandemic situation.

3. According to the petitioner, one more opportunity may be given to them, as the petitioner/Management was not able to put forth their contention on 16.03.2021 due to Covid and the respondents without waiting for the reply, hurriedly passed an Order dated 17.03.2021, under Section 45 A of the ESI Act, 1948, despite sending an e-mail and hard copy of it to the respondent, which is ultimately not acceptable. Hence, it is assumed that the order dated 17.03.2021 has been signed after representation of the above said letter dated 16.03.2021 and without going into the facts that the petitioner's representative was affected by Covid, the respondent despatched the order dated 17.03.2021.

4. According to the Respondent, there were 304 employees engaged in the unit for wages, as per the available records, which is refuted by the petitioner Management that out of total strength of 241 employees, only 91 employees are eligible under the coverage of the ESI Act. The petitioner Management has further contended that as per second proviso to Section 45 A of the ESI Act, the respondent could pass orders determining contribution only in respect of 5 years from the date on which contribution is payable and no claim can be determined prior to 17.03.2016 in terms of ESI Act. But the respondent demanded the contribution for 10 years i.e. from January 2011 to March 2020, which is liable to be set aside. Hence, according to the petitioner management, a sum of Rs.24,94,024/- may alone is payable for 91 eligible employees for a period of 5 years.

5. Though the learned counsel for the petitioner/Management



seeks time to establish their stand with regard to 91 employees who have been employed during the period of last five years and that no contribution as demanded by the ESIC is payable, this Court is of the view that the matter may be referred to the concerned Authority for fresh consideration, after affording an opportunity of hearing to the petitioner on certain conditions.

6. Accordingly, the Writ Petition is allowed and the impugned order dated 17.03.2021 is set aside. The matter is remanded back to the respondent (Original Authority) under Section 45 (A) of the Act for fresh consideration on merits and in accordance with law, after hearing the petitioner Management and those persons who are likely to be affected. The petitioner/ Management shall deposit a sum of Rs.24,94,024/- (Rupees Twenty four lakh ninety four thousand twenty four) (as per calculation of the petitioner/ Management in respect of their 91 employees for a period of five years) to the respondent within a period of one month from the date of receipt of a copy of this order and the disputed amount shall be subject to the outcome of the decision that may be taken by the authorities concerned. The Original Authority is directed to decide the matter within a period of three months from the date of deposit of the amount by the petitioner / Management. However, the deposit of amount and the number of employees disputed by both the parties would be subject to the decision that may be taken by the authorities concerned afresh, uninfluenced by the decision already taken, as the same has been interfered with by this Court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum

To

Assistant Director,
Regional Office (Tamil nadu)
Employees' State Insurance Corporation,
143, Sterling Road, Chennai 600 034.

+1cc to Mr.S.P. Srinivasan, Advocate, S.R.No.25132

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LN(CO)
CT(15/07/2021)