

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2021

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.Nos. 19665 and 19668 of 2020
and

W.M.P.Nos.24304 and 24307 of 2020

Sri Venkateswara Silks and Readymades

Represented by its Proprietor

Mr.K.V.Bhoopathy

No.50, Gandhi Road,

Stuartpet, Arakkonam - 631 001,

Ranipet District.

... Petitioner
(in both WPs)

vs.

1.The Government of Tamil Nadu

Represented by its Principal Secretary,

Labour and Employment Department,

Secretariat, Fort Saint George,

Chennai - 600 009.

2.The Employees State Insurance Regional Corporation

Represented by its Deputy Director / Authorized Officer,

ESI Corporation, Panchdeep Bhawan

143, Sterling Road,

Chennai - 600 034.

... Respondents
(in both WPs)

Common Prayer: Writ petitions filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Notice of Demand to Defaulter dated 13.10.2020 in Ref Nos.51001092450001002/CP/385492 issued by 2nd respondent and quash the same.

For Petitioner : Mr.S.Vijayanand
(in both WPs)

For Respondent : Mr.B.Anand
(in both WPs) Government Advocate (For R1)
For R2 : Mr. Ramachandra Murthy

C O M M O N O R D E R

The petitioner has preferred the above Writ Petitions against the recovery order passed by the second respondent pursuant to the order passed under Section 45 of the Employees' State Insurance Act, 1948, on the grounds of violation of principles of natural justice.

2.The petitioner would complain that no notice was served to him before passing the order under Section 45 of the Employees' State Insurance Act, 1948.

3.On the other hand, the learned Government Advocate appearing for the first respondent produced the notices, proof of service and the acknowledgment made by the petitioner by way of typed-set of papers.

4.From the materials placed before this Court, it is seen that the second respondent has issued two notices, on two occasions, i.e., one in the name of the petitioner / establishment, namely, Sri Venkateswara Silks and Readymades and other in the name of the Proprietor of the above establishment. The postal seal found on the acknowledgment card reveals the fact that letters have been received by the same person on both the occasions. All the four acknowledgments bears the same signature. Therefore, it can be inferred that the notices were delivered to the petitioner.

5.It is well settled that service of notice, shall be on the addressee or an authorised agent in respect of a commercial establishment or any adult member of the family. In the instant case, the person who receives the letter at the Shop owned by the petitioner shall be his employee, who would be in-charge of running the business. He may be a Manager or Accountant or even a Despatch Clerk. It is not the case of the petitioner that the person signed is not known to him. Therefore, I am not inclined to accept the technical plea raised by the petitioner that it is not personally served on the Proprietor or the authorised agent of the concern. Therefore, it leads to irresistible conclusion that notices were served on the petitioner and he failed to appear before the authority in response to the same.

6.When an order is passed under Section 45 of the Employees' State Insurance Act, 1948, it is always open to the petitioner to approach the ESI Court under Section 75 of the Employees' State Insurance Act, 1948, to set aside the same. It is also submitted that the limitation period is three years.

7.Be that as it may, even in the case of delay, the petitioner is entitled to file a petition to condone the delay. Therefore, it is not that the petitioner is left with no other remedies or that the respondents have acted in violation of principles of natural justice. Therefore, the above Writ Petitions cannot be entertained without exhausting the alternative remedy. It is open to the petitioner to approach the ESI Court for appropriate remedies.

8.The Registry is directed to return the original impugned order to the petitioner forthwith.

9.On such return of the original impugned order, the petitioner may approach the ESI Court, if he is so advised. If such appeal is filed, the ESI Court is directed to dispose of the same within a period of three months from the date of resumption of physical hearing.

10.The Writ Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dm/tk

To

- 1.The Principal Secretary
Government of Tamil Nadu
Labour and Employment Department,
Secretariat, Fort Saint George,
Chennai - 600 009.
- 2.The Deputy Director / Authorized Officer
The Employees State Insurance Regional Corporation
ESI Corporation, Panchdeep Bhawan
143, Sterling Road, Chennai - 600 034.

+4ccs to Mr.Vijay Anand, Advocate, S.R.No.3536,3537.
+1cc to Mr.Ramachandra Murthy, Advocate, S.R.No.3650.
+1cc to the Government Pleader, S.R.No.4031.

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MG (CO)
NRA (17/02/2021)