



WEB COPY



W.P. No.31484 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.31484 of 2022

and

W.M.P. Nos.30947 and 30948 of 2022

M/s.Dr.SNS Rajalakshmi College
of Arts and Science,

Rep. By its Chairman,
Dr.S.N. Subbramanian,

... Petitioner

Versus

1. The Regional Director,
Regional Office (Tamil Nadu),
Employees State Insurance Corporation,
Panchdeep Bhawan,
No.143, Sterling Road,
Chenani – 600 034.

2. The Deputy Director,
Sub-Regional Office,
Employees State Insurance Corporation,
Panchdeep Complex,
1897, Trichy Road,
Ramanathapuram,
Coimbatore – 641 045.

... Respondents

Prayer:-Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in respect of impugned demand notice vide No.56001108640001303 /102020221256, dated 20.10.2022 and quash



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the same as illegal, arbitrary, unconstitutional and consequently restraining the respondents from proceeding further without considering the petitioner's case under section 91-C of the Employees State Insurance act and thereby grant waiver amount of contribution and the interest in light of the order passed by the Hon'ble High Court.

For Petitioner : Mr.E. Vijay Anand

For Respondents : Mr. K.Prabhakar,
Standing counsel

ORDER

The grievance of the petitioner in this writ petition is that the impugned demand notice dated 20.10.2022 issued under the provisions of Employees State Insurance Act,1948 to the petitioner is arbitrary and illegal.

2. Heard Mr.E. Vijay Anand, learned counsel for the petitioner and Mr.K.Prabhakar, learned Standing counsel for the respondents.

3. The main contention of the petitioner is that beyond a period of five years as per the provisions of Section 45-A of the Employees State Insurance Act,1948, the respondents do not have any legal right to recover the alleged ESI contributions to be paid by the petitioner. The petitioner also contends that the respondents ought to have waived the demand as per the provisions of Section 91-C of the Employees State



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Insurance Act, 1948 (hereinafter referred to as “ESI Act”), in view of the inordinate delay. The petitioner apprehends that in view of the observations made in the impugned demand notice in case, they fail to defend the case, revenue recovery proceedings will be initiated against them and if that is allowed to happen, the petitioner / institution will be put to irreparable loss and hardship.

4. Admittedly, as seen from the impugned demand, no final orders have been passed by the respondents under Section 45-A of the ESI Act.

5. Section 45-A of the ESI Act enables the respondent to determine the amount of ESI contribution payable by the petitioner.

6. The petitioner has only been called for a hearing as seen from the impugned demand notice. The petitioner has to submit an explanation to the impugned demand notice and necessarily the respondents will have to consider the same on merits and in accordance with law, after affording a fair hearing to the petitioner as provided under Section 45-A of the Act. The interest of the petitioner will be protected, if the petitioner is allowed to submit an explanation raising the grounds which have been raised in this writ petition before the respondents and the respondents are directed thereafter to consider the same on merits and



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in accordance with law. However, till final orders are passed necessarily no coercive steps can be taken against the petitioner.

7. For the foregoing reasons, this writ petition is disposed of by directing the petitioner / institution to submit an explanation to the impugned demand notice dated 20.10.2022 to the respondents, raising the grounds that they have raised in this writ petition within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said explanation, the respondent shall hold a proper enquiry and after giving due consideration to the explanation submitted by the petitioner and after affording a fair hearing to the petitioner shall pass final orders on merits and in accordance with Section 45-A of the Employees State Insurance Act, 1948.

8. Till final orders are passed under Section 45-A of the ESI Act, no coercive steps shall be taken against the petitioner by the respondent /Corporation.

9. With the aforesaid direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No
Speaking Order/Non-Speaking Order

vsi2

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ABDUL QUDDHOSE, J.

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