



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2022

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) .No.9040 of 2009

and

M.P. (MD) .No.2 of 2009

AL-FIRD HOUSE International
Aayesha Complex,
by its Managing Partner,
A.M.Sathakathullah.

... Petitioner

Vs.

1.The Joint Director,
Employees State Insurance Corporation,
Sub Regional Office,
4th Main Road, K.K. Nagar,
Madurai - 625 020.

2.The Recovery Officer,
Employees State Insurance Corporation,
Sub Regional Office,
4th Main Road, K.K. Nagar,
Madurai - 625 020.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the prohibitory order dated 16.04.2009 passed by the second respondent under Ref.No.57/38556-19/393/RRC/SRO/MDU/08 followed by the demand notice for Rs.1,19,783/- dated 09.07.2009 under Ref.No.57/RRC/38556/ SRO/MDU/09 followed by another demand notice for Rs.94,380/- dated 17.08.2009 under Ref. No.57/38556/19/INS.II/SRO/MDU/09/304 followed by another show cause notice of the first respondent under Ref. No.57/38556/19/INS.II/SRO/MDU/09/134 dated 18.08.2009 and to quash the same by allowing this Writ Petition.

For Petitioner : Mr.Sathan Boopathy
for Mr.G.Aravindan

For Respondents : Mr.N.Dilip Kumar



ORDER

The matter has been pending for the past eleven (11) years before this Court. When the matter came up on 19.01.2022, the issue of maintainability was put to the learned counsel for the petitioner.

2. Mr.N.Dilip Kumar, learned counsel, takes notice for the respondents.

3. The Writ Petition has been filed in the nature of Certiorari questioning a prohibitory order dated 16.04.2009 passed by the second respondent / the Recovery Officer, Employees State Insurance Corporation, Madurai, with respect to a demand notice dated 09.07.2009 and another demand notice dated 17.08.2009 and a show cause notice dated 18.08.2009 and to interfere with all those notices.

4. The petitioner is a firm dealing in textiles. The petitioner firm had hired a godown at No.153, Santhanam Road, T.V.S. Nagar, Madurai, since the petitioner was not able to store the goods in the office. Subsequently, they had vacated the godown. However, the Insurance Inspector of the respondents Corporation, inspected the godown in 1997 and noted twelve (12) persons who were load men and women who were sweepers who stated that they were employees of the petitioner herein. Thereafter, the petitioner was called upon to pay contribution to the said twelve (12) employees for the period from June 1997 to September 1997. The petitioner, had also raised objections to the same claiming that there was no necessity for storage facilities and that they had closed down the godown.

5. Thereafter, notice was issued and the Insurance Inspector again inspected the place of business on 20.03.2006. Summons were issued to the petitioner on 11.06.2004. It was stated in the same, that notices had been served on various dates. The petitioner claimed that they were not in arrears of any amount much less the sum of Rs.1,21,645/-, as stated in the said notice. Thereafter, an order under Section 85-B of the Employees State Insurance Act was issued, demanding a sum of Rs.652/- and followed by a recovery notice dated 22.08.2006 demanding another sum of Rs.652/-. The petitioner paid the said amount. A further order under Section 45-A of the Employees State Insurance Act, was thereafter issued for the period from June 1997 to September 2000.

6. A prohibitory order was also issued to the concerned Branch Manager, Indian Overseas Bank, Madurai, stating that a sum of Rs.1,19,783/- was due by the petitioner and that the same should be debited from the account of the petitioner. A further notice was issued on 17.08.2009, claiming a further sum of Rs.94,380/- for the period from April 2007 to March 2009. Another communication was issued on 18.08.2009 demanding particulars for the period from March



1999 to March 2009. Questioning all these demand notices, the present Writ Petition has been filed.

7. The petitioner has an alternate remedy of filing an appeal under Section 77 (1-A) of the Employees State Insurance Act. It had been stated in the counter, which has also been filed, that the petitioner's unit was surveyed on 23.07.1997 and there were sewing machines which were used by twelve (12) employees. It had also been stated that the order under Section 45-A and the order under Section 85-B had been passed after issuance of proper notices and after granting personal hearings to the petitioner herein. It is also stated that notice had been issued after following proper procedure. It had been stated that the Writ Petition itself is not maintainable.

8. As had been contended, the Employees State Insurance Act is an inbuilt Act. Any notice issued under the said Act has to be questioned only before the forums as stipulated in the said Act. Labour Courts are nominated as Special Courts under the Employees State Insurance Act, and the petitioner will have to approach such Courts seeking necessary relief. The only reason why the petitioner has failed to file an appeal is that as a pre-condition for filing the appeal a deposit of 50% of the amount claimed has to be made. A Writ Court provides the benefit of filing a Writ Petition only with the Court fees as stipulated. The petitioner has avoided payment of the stipulated amount which would be automatically called upon to be paid if an appeal had been filed.

9. When there is an appeal forum available, the scope of the Writ Petition is very narrow. A Writ Court cannot sit as an appellate authority over notices issued. It is for the petitioner to either comply with the demand or refuse to comply with the demand. Keeping the Writ Petition for the past 11 years has drawn the petitioner to further liability, since the petitioner will also have to pay interest and penalty for this period of 11 years. The Writ Petition is not maintainable.

10. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.D.II)

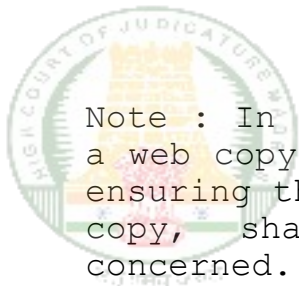
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Sub Assistant Registrar(CS)

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WEB COPY

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+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-2988[F] dated 28/01/2022)

+1 CC to M/s.G.ARAVINTHAN, Advocate (SR-3183[F] dated 31/01/2022)

W.P. (MD) .No.9040 of 2009
28.01.2022

RD/CK(10.02.2022) 4P 5C