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W.P.No.334 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

**W.P.No.334 of 2023 &
W.M.P.No.307 of 2023**

Sri Krishna Model School,
Rep. by its Correspondent,
Elangovan,
No.6, Maya Street,
Poompuhar Nagar, Ambattur,
Chennai - 600 053.

... Petitioner

VS.

The Deputy Director
Employees State Insurance Corporation,
No.143, Sterling Road, Nungambakkam,
Chennai - 600 034.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorarified Mandamus calling for records pertaining to the impugned order issued by the respondent in TN/Ins.VIII/51-00-107670-000-1302/C18 Adhoc-1222/21 dated 06.06.2022 and quash the same and subsequently, direct the respondent not to disturb the petitioner's school management without following the due process of law.



WEB COPY

W.P.No.334 of 2



For Petitioner : Mr.M.Thamizhavel

For Respondents : Ms.S.Jayakumari,
Standing Counsel

ORDER

The petitioner has challenged the order dated 06.06.2022 passed under section 45 A of the Employees' State Insurance Act 1948 calling upon the petitioner to pay a sum of Rs.5,41,902/- towards Employees' State Insurance contributions payable by them for the period from 04/16 to 01/2021.

2. Ms.S.Jayakumari, learned Standing Counsel accepts notice on behalf of the respondent. By consent of both the parties, this writ petition is taken up for final disposal in the admission stage itself.

3. Heard Mr.M.Thamizhavel, learned counsel for the petitioner and Ms.S.Jayakumari, learned Standing Counsel appearing for the respondent.

4. If the petitioner is aggrieved by the impugned order, admittedly, an appeal remedy is available under section 45AA of the Employees' State



Insurance Act, 1948 and the said appeal will have to be filed within 60 days from the date of the impugned order. Instead of preferring the statutory appeal, the petitioner after a lapse of six months from the date of the impugned order, has filed this writ petition contending that they were not granted proper opportunity by the respondent Corporation to submit their records to substantiate their claim that they are not liable to pay Employees' State Insurance contribution as demanded by the respondent Corporation under the impugned order.

5. As seen from the impugned order, the petitioner has been granted sufficient opportunity to produce their records. The respondent Corporation under the impugned order dated 06.06.2022 has observed that the petitioner (employer) has failed to produce any statement/return furnishing the contributions actually due as worked out as per their records. It is also observed that the petitioner (employer) has been afforded with ample opportunities of hearing on 15.04.2021, 18.08.2021 and 21.09.2021. According to the respondent Corporation, the petitioner (employer) has neither replied to the notice nor appeared before the competent authority for opposing the proposed determination of contribution payable by them. Only



thereafter, the impugned order has been passed by the respondent Corporation on 06.06.2022, demanding a sum of Rs.5,41,902/- from the petitioner for the period from 04/16 to 01/2021. However, after the lapse of six months, that too, when the respondent Corporation has issued the attachment notice against the petitioner, they have approached this Court by filing this writ petition under Article 226 of the Constitution of India.

6. As seen from the conduct of the petitioner, it is clear that they have been indifferent to the various opportunities given to them by the respondent Corporation to put forward their defence with regard to the demand made by the respondent Corporation towards Employees' State Insurance Contribution payable by them for the period from 04/16 to 01/21. The respondent Corporation has passed the impugned order, only based on the materials available on record before them. Therefore, the contention of the petitioner that they were not afforded an opportunity to produce the records to disprove the claim of the respondent Corporation, has to be rejected by this Court as sufficient opportunity was granted to the petitioner and despite the same, the petitioner chose not to defend the claim on merits. Therefore, the present writ petition filed by the petitioner challenging the impugned



order cannot be entertained by this Court as Principle of natural justice has not been violated by the respondent corporation. The petitioner will necessarily have to approach the appellate authority as per the provisions of Section 45AA of the Employees' State Insurance Act, if aggrieved by the impugned order.

7. The petitioner is a School and claims that their strength is too low. They also categorically contend that the demand made by the respondent Corporation is arbitrary and illegal and that, they are not liable to pay the said amount.

8. The only limited relief that can be granted to the petitioner by this Court is to direct the petitioner to approach the Appellate Authority, if aggrieved by the impugned order passed under Section 45A of the Act. However, since the prescribed period for filing an appeal against the impugned order has already got expired, the petitioner being a School must be afforded an opportunity to file the statutory appeal. However, the petitioner must be put on terms, if they are granted such a relief by this Court.



9. This Court considering the fact that the amount demanded by the respondent Corporation under the impugned order is Rs.5,41,902/-, the petitioner must deposit a sum of Rs.1,00,000/- with the respondent Corporation to enable the petitioner to file the statutory appeal as against the impugned order under section 45AA of the Act.

10. For the foregoing reasons, this writ petition is **disposed of** by granting leave to the petitioner to file the statutory appeal before the concerned Appellate Authority under section 45AA of the Employees' State Insurance Act as against the impugned order dated 06.06.2022 passed by the respondent Corporation, subject to the condition that the petitioner deposits a sum of Rs.1,00,000/- with the respondent Corporation within a period of eight weeks from the date of receipt of a copy of this Order. However, it is made clear that insofar as the pre-deposit amount for filing the statutory appeal under section 45AA of the Act is concerned, necessarily the petitioner will have to deposit the pre-deposit amount as stipulated under section 45AA of the Act to enable the appellate authority to entertain the appeal on merits and in accordance with law. The appellate authority subject to the fulfilment of the conditions by the petitioner as stipulated supra, shall



W.P.No.334 of 2

entertain the appeal and decide the same on merits and in accordance with law, within a period of twelve weeks from the date when the petitioner deposits the 25% pre-deposit amount as stipulated under section 45AA of the Employees' State Insurance Act. No costs. Consequently, connected miscellaneous petition is closed.

09.01.2023

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Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking orders

Neutral citation: Yes/No



W.P.No.334 of 2



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To

The Deputy Director
Employees State Insurance Corporation,
No.143, Sterling Road, Nungambakkam,
Chennai - 600 034.



WEB COPY

W.P.No.334 of 2



ABDUL QUDDHOSE, J.
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W.P.No.334 of 2023

09.01.2023