



W.P.No.2321 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.2321 of 2019

and W.M.P.No.2565 of 2019

T.Balasubramanian

. . . Petitioner

Vs.

1. Deputy Director/The Authorised Officer,
ESI Corporation,
Sub-Regional Officer,
Salem-636009.

2. The Joint Director,
ESI Corporation,
Sub-Regional Officer,
Salem-636009.

3. The Recovery Officer,
Employee State Insurance Co,
39/57, 3 roads,
Salem-636 009.

. . . Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other writ or orders or directions in the nature of writ to call for the records pertains to the impugned notice dated 10.01.2019 in Ref No.63000966160000606/CP/289593 and quash the same



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passed by the 3rd respondent.

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For Petitioner : M/s.C.D.Modhi

For Respondents : Mr.C.V.Ramachandra Murthy,
for R1 to R3.

ORDER

Aggrieved by the impugned notice of recovery of the 3rd respondent, the petitioner is before this court.

2. The petitioner is engaged in electrical maintenance and housekeeping works on contract basis in Indian Oil Corporation. Alleging unaccounted wages for the period from 01.04.2013 to 31.05.2016 to the ESI corporation, the petitioner was issued with notice dated 29.11.2018 under the Employees State Insurance Act by the 1st respondent/the Authorised Officer directing the petitioner to pay a sum of Rs.20,10,894/- towards ESI contribution. Though, the petitioner submitted a detailed reply to the said notice, without considering the same as also the certificate issued by the Indian Oil Corporation certifying the contributions made by the petitioner towards the ESI for the period from 01.04.2013 to 31.08.2017, the present impugned notice of recovery has been issued by the Recovery Officer.



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Challenging the notice issued by the Recovery Officer, the petitioner has come up with this Writ Petition.

3. Learned counsel for the petitioner submitted that though the petitioner has given a detailed reply to the earlier notice issued by the Authorised Officer, and the certificate issued by the Indian Oil Corporation certifying the ESI contributions by the petitioner for the aforesaid period, without considering the same, the present notice of recovery has been issued by the Recovery Officer which is not sustainable. Hence, the petitioner may be permitted to produce all the necessary documents relating to the ESI contribution for the aforesaid period along the certificate issued by the Indian Oil Corporation before the 1st respondent which may be considered and appropriate orders may be passed.

4. On the above contention, this Court heard the learned counsel appearing for the respondents 3 & 4 and perused the materials available on record.



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5. It is seen from the records that the notice caused under the ESI

Act is the subsequent one to the earlier notice issued by the Authorised Officer for which the petitioner has given explanation. It is the case of the petitioner that without considering his explanation to the earlier notice, the present notice has been issued for recovery and no opportunity of personal hearing was granted to the petitioner despite several requests.

6. From the above, it is evident that the 1st respondent/ the Authorised Officer has failed to consider the petitioner's explanation to the his notice and the petitioner was not given an opportunity of personal hearing and without passing any orders, the present impugned recovery notice has been issued which is impermissible. Therefore, this Court is of the view that the impugned notice which is under challenge is liable to be set aside.

7. Accordingly, the present impugned notice issued by the 3rd respondent is set aside and the matter is remanded to the 1st respondent for consideration with regard to the earlier notice dated 29.11.2018. The petitioner is directed to produce all the necessary documents relating to the



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ESI contributions for the aforesaid period before the 1st respondent within a period of two weeks from the date of receipt of a copy of this order. Upon receipt of the same, the 1st respondent is directed to conduct enquiry between the petitioner and the Indian Oil Corporation and pass appropriate orders on the same and the said exercise shall be completed within a period of six weeks thereafter.

8. This Writ Petition is allowed in the above terms. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition stands closed.

28.06.2023

NHS

Index : Yes / No

Internet : Yes / No



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M.DHANDAPANI, J

NHS

To

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