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W.P. No.15669 of 2018

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

**W.P. No.15669 of 2018
and W.M.P. No. 18608 of 2018**

JJ 21, Medavakkam Urban Co-operative Credit Society,
Rep. by its Secretary,
Mambakkam Main Road,
Medavakkam,
Chennai – 600 100.

... Petitioner

-VS-

1. The Secretary,
Labour and Employment Department,
Government of Tamil Nadu,
St. George Fort, Chennai – 600 009.

2. The Deputy Director,
ESI Corporation,
143, Sterling Road,
Chennai – 600 034.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records of the second respondent passed impugned order in Ref.No. 51001112860001099/10232015346 / ins v, dated 23.10.2015 and quash the same.

For Petitioner

: Mr.B.Gopalakrishnan
for Mr.R.Manoharan

For R1

: Mr.M.S.Prem Kumar,
Government Advocate



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For R2

: Mr.C.V.Ramachandra Moorthy

ORDER

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No. 51001112860001099/ 10232015346 / ins v is challenged in the present Writ Petition.

2. The petitioner / Society, registered under the Co-operative Societies Act, 1904 is a Quasi-Governmental body started in the year 1960, which provides agricultural and non-agricultural credit to rural areas and operating as Public Distribution System outlets. In addition to that, the petitioner / Society is also providing medical allowance, and Health and Group Insurance Schemes. The Employees are availing medical facilities in par with the Employees' State Insurance Act, 1948. The second respondent has issued order dated 23.10.2015 passed in Ref. No. 51001112860001099/ 10232015346 / ins v, directing the petitioner / Society to cover the Employees' State Insurance Act, 1948 from April 2023 and in the subsequent letter dated 21.05.2018, the petitioner / Society was directed to be present before the second respondent on 30.05.2018 to assess the dues. Challenging the said order, the petitioner / Society has filed the present Writ Petition.

3. The learned counsel for the petitioner submitted that the petitioner is a



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quashi Government body registered under cooperative credit societies Act 1904

functioning under the control of Registrar of Cooperative Societies, Government of Tamil Nadu, was started in the year 1960. The main objective is to provide agricultural and non agricultural credit in rural areas. In addition, they operate public distribution system outlets, distributing essential commodities in rural areas. The petitioner is providing medical allowance of Rs.100/- per month and also all employees are covered under health insurance scheme and also group insurance scheme. So the employees are availing medical facility on par with the ESI Act. Without considering the facts, the second respondent issued a notice dated 23.10.2015 directing the society to cover the ESI Act 1948 from 04/2013 and also directing the petitioner to appear before the second respondent on 30.05.2018 to assess the dues of Rs.9,95,280/-, which is not sustainable one. Further the petitioner has already filed application before the first respondent for grant of exemption from the provision of 87 of the ESI Act and the same is still pending. When the application is pending before the first respondent, the second respondent has passed the impugned order, which is not sustainable one. Accordingly, he prays set aside the same and allow this petition.

4. The learned counsel for the second respondent has filed counter affidavit before this Court and the relevant paragraphs are extracted hereunder:



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"4. Preliminary Objection:

It is humbly submitted that the petitioner has disputed the show cause notice in this case. It is only a show cause notice and the hearings were taking place affording multiple opportunities of personal hearing to the Petitioner. No order of determination of Contribution has yet been made and the issue is yet to attain finality. In fact, the Petitioner attended the personal hearing latest by 30.05.2018 and sought adjournment. Accordingly, the personal hearing was postponed to 28.06.2018 on mutual consent. However, the Petitioner rushed to this Hon'ble Court without participating in the inquiry of the quasi-judicial authority.

The Hon'ble High Court of Madras, vide order in Regional Director, ESI Corporation v. Nizam's International, 2008 II LLJ 50: 2008 (116) FLR 386: 2008 I LLN 290 (Mad.HC), has held that it is premature to challenge a C-18 show cause notice. Hence, the Writ Petition is premature and deserves dismissal in limine.

5. PRELIMINARY OBJECTION - 2:

It is humbly stated that the Petitioner, though having an effective alternate remedy in the form of Hon'ble E.I.Court, has rushed to this Court with this Writ Petition invoking Article 226 of constitution of India. The Petitioner ought to have moved the



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E.I.Court as provided under section 75 of the ESI Act but chose to invoke the extraordinary writ jurisdiction of this Hon'ble Court which is unwarranted and unjustified.

In the case of Rajasthan State Road Transport Corporation vs Union of India & Ors., 2010 II CLR 236:2010 LLR 722 (Raj.DB), the division Bench has held as follows:

"In view of above discussions, we are of the view that learned Single Judge was right in dismissing the writ petition of the appellant on the ground of alternative and efficacious remedy by way of appeal available to the appellant. Hence, we do not find any merit in this special appeal and the same is, accordingly, dismissed with no order as to costs".

This Hon'ble Court has also held so in various cases, more recently in the case of Shalimar Tanning Company -vs- ESIC - Writ Petition No. 11041/2012, dismissing the same on the ground that an efficacious alternate remedy is available to the Petitioner in the form of E.L.Court.

Hence, on this ground alone, this writ petition deserves to be dismissed in limine.

6. Without prejudice to the above mentioned facts, the Respondents respectfully submit that the Writ Petition fails on



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merits also. The details of the case are submitted as follows.

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7. A Social Security Officer of the Second Respondent conducted survey/preliminary inspection of the Petitioner unit on 25.07.14. The Social Security Officer verified the Attendance Register of the Petitioner unit who observed that the Petitioner had employed 64 number of Employees in the month of April, 2013 and hence the unit is coverable under the ESI Act with effect from 01.04.2013. The Social Security Officer furnished a visit note, dated 25.07.2014, to the Petitioner informing them that their unit is coverable under section 1(5) of the ESI Act from 01.04.2013. The visit note was duly received and acknowledged by the Petitioner. Copy of the Attendance register, duly attested, was also taken by the Social Security Officer who furnished the same to the Respondent Corporation with the recommendation that the Petitioner establishment is coverable under the ESI Act with effect from 01.04.2013.

8. Based upon the report of the Social Security Officer, the Second Respondent covered the Petitioner unit with effect from 01.04.2013 and intimated the same to them vide letter dated 09.03.2014 in form C11. It was also intimated vide the said letter that the number of Employees are 64 and the Petitioner was further requested to take immediate steps for registration of their employees and payment of Contribution, etc. This letter was also



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duly received and acknowledged by the Petitioner. It is pertinent to note that the Petitioner did not raise any objection on receiving the code number allotment letter.

9. It is humbly submitted that the Petitioner failed to take any further action and remained silent after receiving the C-11 notice dated 09.03.2014. The Respondent, therefore, issued show cause notice in form C18(adhoc) dated 23.10.2015/04.11.2015 proposing Contribution of 9,95,280/- for the period from 04/2013 to 08/2015. Vide the said show cause notice, the Petitioner was also afforded an opportunity of personal hearing on 16.12.2015 for furnishing their records and to raise their objections, if any. The Petitioner appeared on 16.12.2015 and sought adjournment. The quasi-judicial authority acceded to the Petitioner's request and fixed next personal hearing on 20.01.2016.

10. The Petitioner once again appeared on 20.01.2016 and sought adjournment for producing records. The quasi-judicial authority accepted their request and fixed next personal hearing on 19.02.2016 with mutual consent. However, the Petitioner failed to attend the hearing on 19.02.2016.

11. Rather, the Petitioner submitted letters dated 09.03.2016 and 11.04.2016 stating that they are not liable to pay Contribution. The Second Respondent issued a reply, dated



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06.01.2017 informing the Petitioner that unless they are exempted by the 'Appropriate Government', they are liable to pay Contribution. The Petitioner was also informed that retrospective exemption is not permissible as per the provisions of ESI Act. Hence, the petitioner was afforded another opportunity of personal hearing on 08.02.2017 for submitting records. However, the petitioner failed to attend the personal hearing on 08.02.2017."

5. Heard the learned counsel for the petitioner and the learned counsel for respondents and perused the materials available on record.

6. The facts of the case are not in dispute. The petitioner society is covered under the ESI Act. The petitioner claimed that they have provided medical facilities to the employees on par with the ESI Act. In the meanwhile, the second respondent issued notice dated 23.10.2015 directing the society to cover the ESI Act 1948 from 04/2013. The above said notice is not sustainable since the petitioner society are providing benefits to their employees in par with the ESI Act so the question of coverage of ESI Act to the petitioner does not arise.



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7. The petitioner has to obtain appropriate exemption from the first respondent by adducing evidence for deducting the contribution from their employees. Though the petitioner submitted that they made application to the first respondent on 07.06.2018 in terms of Section 87 of the ESI Act and till date, the said application is pending. Further, the second respondent passed the impugned order directing the petitioner to pay the ESI contribution, which cannot be interfered with on the ground that till date, they have obtained exemption from the first respondent. Hence, without obtaining exemption, failed to pay the contribution to the second respondent is non sustainable one. Therefore, the order passed by the second respondent is perfectly in order and the same does not warrant any interference.

8. For the aforesaid reasons stated, the writ petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs. However, liberty is granted to the petitioner to pay the ESI contribution as ordered by the second respondent by way of four installments on or before 5th of every succeeding English Calender month, commencing from January, 2024.

12.09.2023



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Index: Yes/No

NCS: Yes/No

M.DHANDAPANI, J.

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To

1. The Secretary to Government of Tamil Nadu,
Labour and Employment Department,
Government of Tamil Nadu,
St. George Fort, Chennai – 600 009.
2. The Deputy Director,
ESI Corporation,
143, Sterling Road,
Chennai – 600 034.

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