



W.P.No.27802 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>14.12.2022</i>
<i>Pronounced on</i>	<i>09.02.2023</i>

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.27802 of 2017
and W.M.P.Nos.29787, 29788 of 2017 & 16821 of 2018

The Management of
SRTC Tech Solutions Pvt. Ltd.,
2/97, 2nd Floor,
Cisons Complex, Montieth Road,
Egmore, Chennai – 600 008.

... Petitioner

Vs.

1.The Deputy Director,
Employees State Insurance Corporation,
Panchdeep Bhavan,
143, Sterling Road,
Nungambakkam, Chennai – 600 034.

2.The Recovery Officer,
Employees State Insurance Corporation,
Panchdeep Bhavan,
143, Sterling Road,
Nungambakkam, Chennai – 600 034.

3.Branch Manager,
HDFC Bank Limited,
Gopalapuram Branch,
Chennai – 600 086.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,



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praying to issue a Writ of Certiorari, calling for the records of the second respondent in proceedings No.TN/RECY/CP- 51000923260000911/CCR 18746 dated 23.05.2017 and quash the same.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S. Gopalan & Co.

For Respondents : Mr.C.V. Ramachandramurthy [R1 & R2]
Mr.C. Mohan
for M/s. King & Partridge [R3]

ORDER

The petitioner herein is an Establishment covered under the provisions of the Employees State Insurance Act, 1948 (hereinafter called as 'the Act'). In consequence to an inspection conducted by the first respondent on 04.05.2016, proceedings in Form C-18 dated 04.05.2016 was issued to the petitioner, calling upon them to pay the contribution for the period between 11/2009 to 11/2010. The petitioner, in their reply dated 10.06.2016 had stated that their establishment was covered under the ESI Act only with effect from October 2010 and hence the demand prior to that was pointless and also that the demand was barred by limitation. However, on 02.06.2017, the second respondent had issued an attachment notice



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dated 23.05.2017, for recovery of the contributions as per Form C-18 dated 04.05.2016, together with interest and other charges for a sum of Rs.1,64,598/-. Consequently, on 24.10.2017, the second respondent had issued a notice under Section 45-G of the Act, attaching the bank account of the petitioner for a sum of Rs.1,71,298/-, which was forwarded to the third respondent/Bank. The petitioner now challenges the proceedings of the second respondent dated 23.05.2017 in the present Writ Petition.

2. The learned counsel appearing for the petitioner submitted that no notice under Section 45-A of the Act, was given prior to the order of attachment under Section 45-G of the Act and therefore, the impugned proceedings requires to be quashed. Even otherwise, he would submit that Form C-18 states that in case the claim is disputed, the establishment was requested to appear before the authority and accordingly, they had also raised their objections on 10.06.2016. Since they had disputed the claim, the respondents ought to have initiated the proceedings under Section 45-A of the Act and failure to do so, vitiates the entire proceedings.



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3. The stand of the ESI counsel is that, since the documents were supplied by the establishment, no proceedings under Section 45-A of the Act is required before an attachment order is passed under Section 45-G of the Act. The second submission is that, if there is any dispute with regard to the determination of the amount of contribution, there is an appeal provided to the ESI Court under Section 75 of the Act and in view of the alternate remedy, the present Writ Petition has to be dismissed. He also placed reliance on the averments in the counter-affidavit.

4. The learned counsel appearing for the Bank would submit that the order under Section 45-G of the Act was passed on 24.10.2017 and on 27.10.2017, the balance of Rs.1,71,298/- was kept on hold, though the order of interim stay was granted later on 30.10.2017 and that, the lien over the account continues till date.

5. I have given careful consideration to the submissions made by the respective counsels.

6. It is not in dispute that pursuant to the issuance of Form C-18, the



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respondents had not determined the contribution payable by the petitioner/establishment. Form C-18 that has been issued to the petitioner herein, determines the contribution to be paid by the petitioner/establishment. The notice also refers to the consequential recovery action, as well as the payment of interest that would be taken against the establishment, if they do not pay contribution within the stipulated time. Form C-18 also gives an opportunity to give their objections. Thus, Form C-18 is deemed to be an 'Adhoc Notice', since the same was not determined after considering the objections of the petitioner establishment.

7. After issuance of Form C-18, the petitioner had also given their reply on 10.06.2016. In normal circumstances, the Corporation ought to have either accepted the objections and issued Form C-18 (actual), calling upon the establishment to pay the determined amount or in the alternate, conducted an inquiry under Section 45-A of the Act for determination of the contribution. The determination under Section 45-A of the Act is a mandatory requirement in the absence of Form C-18 (actual). The determination of Corporation under Section 45-A of the Act is also mandatory for the purpose that when the employer disputes the correctness



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under Section 45-A of the Act, he would have the opportunity to challenge the same under Section 75 of the Act before the ESI Court. Above all, Section 45-A of the Act itself clarifies that when the establishment fails to submit the returns in accordance with Section 44 of the Act or prevents the Official of the Corporation from exercising its functions under Section 45 of the Act, the Corporation would determine the amount of contributions payable in respect of the establishment's employees.

8. The object of Section 45-A of the Act was dealt with by the Hon'ble Supreme Court in the case of '**Bharat Heavy Electricals Ltd. Vs. Employees' State Insurance Corporation**' reported in '**(2008) 3 SCC 247**', in the following manner:-

..... “20..... In the proceedings initiated under Section 45A of the Act, an immediate employer or principal employer may also show that they are not liable to deposit any contribution on behalf of the employees as the establishment in question did not come within the purview thereof. The purpose of the proceedings, both under the Act as also the Employees Provident Fund Act, is to determine the amount due from any employer in respect of the employees under



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the statutory schemes. Both the Acts envisage compliance of principles of natural justice. The proviso appended to Section 45A of the Act provides for a statutory mandate of giving a reasonable opportunity of being heard.

22. Section 45A of the Act enables the appropriate authority to recover such dues both from the principal as also the immediate employer. It provides for an opportunity of hearing to both of them.....”

(emphasis supplied)

9. Prior to incorporation of Section 45-A of the Act, the only resort available to the Corporation for recovery of the contribution was under Section 75 of the Act through the ESI Court. On incorporation of this provision, it has enabled the Corporation to have determination of the question binding on the principal employer, without resorting to the ESI Court. Thus, Section 45-A of the Act, contemplates a summary method to determine contribution in case of deliberate default on the part of the employer.

10. In the case of '**Madras Hotel Ashoka (Private), Ltd. Vs.**



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Regional Director, Employees' State Insurance Corporation, Madras'

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reported in '**2004 (2) L.L.N. 1071**', it was held as follows:-

..... *“We do not agree with the learned Single Judge that there was no necessity of holding any enquiry under S.45A of the Act. It is an admitted position that what was done was only the inspection under S.45 of the Act. We should naturally expect an enquiry thereafter under S.45A of the Act.....”*

(emphasis supplied)

11. To sum up, when a Form C-18 'Adhoc' Notice is sent to the establishment, calling upon them to give their objections and when such objections are raised, the only procedure required to be undertaken by the Corporation is for determination of the contributions under Section 45-A of the Act. In the absence of such determination under Section 45-A of the Act, the consequential proceedings initiated for attachment under Section 45-G of the Act would be illegal.

12. In the case of '**Employee's State Insurance Corporation Vs. Rajkot Municipal Corporation**' reported in '**2015 SCC OnLine Guj 6338**', such a recovery in the absence of order under Section 45-A of the Act, was



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held to be illegal in the following manner:-

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..... *“9. Thus, C-18 notices were issued to the respondent informing that order under Section 45-A of ESI Act would be passed. However, no such order determining the liability of the respondent is passed by the appellant. No such order is placed on record and directly C-19 notices were issued to the respondent for recovery of the amount and accordingly after issuance of the recovery notices, total amount of Rs.97,517/- was recovered from the bank account of the respondent. Thus, in the opinion of this Court, appellant was obliged to pass an order under Section 45-A of the Act determining the liability of the respondent for the payment of their contribution and in absence of such order, the appellant ought not to have issued the recovery notices and recovered the amount from the respondent.”*

13. The other infirmity in the impugned Form C-18 dated 04.05.2016 is that the demand of contributions has been sought for a period between 11/2009 to 11/2010. After the ESI Amendment Act, 2010, came into force with effect from 01.06.2010, no order for determination of the contribution shall be passed by the Corporation in respect of the period beyond 5 years from the date on which the contribution shall become payable. This limitation prescribed under the Proviso to Section 45-A would equally be



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applicable to a demand through Form C-18 since this notice is a preliminary approach, preceding Section 45-A proceedings. Apparently, the present demand for the period between 2009 to 2010 is more than five years from 04.05.2016 when the Form was issued. Thus, the claim emanating from Form C-18 itself is clearly barred by limitation and on this ground also, the consequential action initiated, cannot be sustained.

14. The learned counsel for the respondents also submitted that the appropriate remedy available to the petitioner would be to approach the ESI Court under Section 75 of the ESI Act and in view of availability of the alternate remedy, the Writ Petition is not maintainable. I am not in agreement with such a submission. Only when there is a dispute in the correctness of an order passed under Section 45-A of the Act, disputing the contributions payable by the principal employee, would the establishment be able to invoke Section 75. Apparently, when no orders have been passed under Section 45-A of the Act, the petitioner may not be in a position to invoke Section 75 and approach the ESI Court. Furthermore, the authorities under the Act, have violated the provisions of the ESI Act and in view of such violation, a decision of the establishment to invoke



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Article 226 of the Constitution of India, would squarely found under the exceptions to the General Rule of alternate remedy.

15. In the case of '**Commissioner of Income Tax & others Vs. Chhabil Dass Agarwal**' reported in '**(2014) 1 SCC 603**', the exceptions to the Rule of alternate remedy were discussed in the following manner:-

.... “15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in **Thansingh Nathmal case, Titagarh Paper Mills case** and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field.....”

16. The aforesaid extract is self-explanatory. As such, the Writ



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Petition filed by the petitioner questioning the notice of demand dated 23.05.2017, on the ground of statutory violation, would be maintainable, even without exhausting the alternate remedy under Section 75 of the ESI Act.

17. For the foregoing reasons, the impugned proceedings dated 23.05.2017 passed by the second respondent, is hereby quashed. Accordingly, the Writ Petition stands allowed. No costs. Connected miscellaneous petitions are closed.

09.02.2023

Speaking Order
Neutral Citation: Yes
Index : Yes
Internet: Yes

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To



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M.S.RAMESH,J.

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