



W.P.(MD).No.114 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.(MD).No.114 of 2023

M/s. Tamil Isai Sangam,
represented by its Manager,
A.S.Palaniappa,
S/o.A.P.Shanmugam,
having office at
Raja Muthaiah Mandram,
Melur Road,
Madurai 625 020.

... Petitioner

vs.

1.The Appellate Authority /
The Additional Commissioner /Regional Director,
Office of the Regional Director,
Employee's State Insurance Corporation,
Panchdeep Bhawan,
No.143, Sterling Road,
Chennai 600 034.

2.The Deputy Director (Rev.III) Authorised
Officer,
Employee's State Insurance Corporation,
Sub Regional Office,
2nd West Street,
K.K.Nagar,
Madurai 625 020.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records from the 2nd respondent in his proceedings in 57-00-076746-000-0999/REV.III/SRO/MDU dated 23.12.2022 and to quash the same and consequently direct the 1st respondent to take the statutory appeal dated 07.12.2022 and 10.12.2022, filed by the petitioner under Section 45AA of the Employees State Insurance Corporation Act, 1948 against the order passed by the 2nd respondent in his proceedings in U-10362, U-10363 and U-10364, on the file and dispose of the same within a period stipulated by this Court.

For Petitioner : Mr.N.Sathish Babu

For Respondents : Mr.I.Pinaygash

ORDER

This writ petition has been filed challenging the impugned proceedings of the 2nd respondent dated 23.12.2022 and to quash the same and consequently direct the 1st respondent to take the statutory appeal dated 07.12.2022 and 10.12.2022, filed by the petitioner under Section 45AA of the Employees State Insurance Corporation Act, 1948, against the order passed by the 2nd respondent and dispose of the same within a stipulated period as fixed by this Court.



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2. The case of the petitioner is that he is working as a Manager in Tamil Isai Sangam, Madurai. There were 17 staffs working in the petitioner Sangam. While so, the second respondent has conducted an inspection in the petitioner Sangam and submitted a report on 20.01.2021, stating that the petitioner Sangam failed to pay contribution as per Section 40 of the Employees State Insurance Corporation Act, 1948 r/w. Regulations 29 and 31 of the Employee's State Insurance (General) Regulations 1950 framed under the Act. Hence, the petitioner has submitted his explanation. However, without considering the explanation, the second respondent has passed three orders on 21.09.2022. Against which, the petitioner has filed an appeal before the first respondent on 07.12.2022 and 10.12.2022. The second respondent has rejected the appeal on 23.12.2022, on the ground that the petitioner has submitted his appeal only on 16.12.2022, beyond the time limit of 60 days.

3. The learned counsel appearing for the petitioner would submit that the second respondent has rejected the appeal only on the ground of delay, which is not sustainable one. Hence, this Court may issue a



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direction to the first respondent to dispose of the appeal filed by the petitioner dated 07.12.2022 and 10.12.2022 on merits within a reasonable time as fixed by this Court.

4. The learned counsel appearing for the respondents would submit that the petitioner has not filed the appeal within a reasonable time and the appeal has been filed belatedly and hence, he prayed for dismissal of this writ petition.

5. The facts in the present case are not in dispute. The petitioner claimed that he is working as a Manager in Tamil Isai Sangam and along with him 17 staffs are working in the Sangam. During the inspection conducted by the second respondent, it is found that the petitioner Sangam has failed to pay contribution, as per Section 40 of the Employees State Insurance Corporation Act, 1948 r/w. Regulations 29 and 31 of the Employee's State Insurance (General) Regulations 1950 framed under the Act. The second respondent has passed the order, against which the petitioner has preferred an appeal before the first respondent. The said appeal was rejected on 23.12.2022, on the ground of delay, however, not on merits. After the original authority, there is an



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alternative and efficacious remedy available to the petitioner by way of appeal before the fact finding authority and that cannot be denied on the ground of delay. Hence, the dismissal made is said to be in violation of principles of natural justice. The authorities ought to have considered the reasons for delay and thereafter dispose the appeal on merits and in accordance with law and on the sole ground, the impugned order passed by the second respondent dated 23.12.2022 is set aside. The matter is remanded back to the first respondent for fresh disposal and the first respondent is directed to dispose of the appeal filed by the petitioner dated 07.12.2022 and 10.12.2022, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

6. In the result, this Writ Petition is allowed. No costs.

10.01.2023

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M.DHANDAPANI,J.

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