IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

CORAM:

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.722 of 2024
and
WMP.Nos.737 & 739 of 2024

M.Kannan ... Petitioner

Vs.

1.Employees State Insurance Corporation
Rep.by its Director
Sub Regional Office, Salem
No.39/57, Theerthamalai Vaniga Valagam
Three Roads
Salem 636 009.

2.The Recovery Officer
Employees State Insurance Corporation
Sub Regional Office, Salem
No.39/57, Theerthamalai Vaniga Valagam
Three Roads
Salem 636 009.

3.The Chief Manager
State Bank of India
Mettur Dam Branch
Mettur Dam-1
Salem District. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the second respondent dated 08.12.2023 No.SLM/Recy/CP4(PO)/63-00-94220-000-0912 and quash the same, consequently, direct the respondents 2 & 3 to de-freeze the Bank account of the petitioner bearing S/B Account No.11194726629 forthwith with cost.

For Petitioner	: Mr.M.R.Jothimanian
For Respondents	: Mrs.S.Jayakumari Standing Counsel for R1 & R2 Mr.K.Chandrasekaran for R3

ORDER

This Writ Petition is filed seeking to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the second respondent dated 08.12.2023 No.SLM/Recy/CP4 (PO)/63-00-94220-000-0912 and quash the same, consequently direct the respondents 2 & 3 to de-freeze the bank account of the petitioner bearing S/B Account No.11194726629.

2. The petitioner is resident of Mettur Dam and doing various businesses including transport business. He has savings bank account with the third respondent Bank, bearing No.11194726629 (PAN.No.AOVPK6980J) from the year 2003. It is his personal savings account which is not linked to any other business concerned or with anyone.

3. On 16.12.2023, the petitioner received a message from the third respondent bank that his bank account has been freezed for the dues payable to the respondents 1 & 2 for a sum of Rs.7,19,294/- towards payment of ESI contribution of M/s.Sri Venkateswara Traders. The petitioner made a request to the third respondent bank on 16.12.2023 through email stating that he is not connected with M/s.Sri Venkteswara Traders. He has received a reply stating that his account has been put on hold for the dues and recovery of a sum of Rs.7,19,294/- as per prohibitory order dated 18.12.2023 in No.SLM/Recy/CP4(PO)/63-00-94220-000-0912. The petitioner has approached respondents 1 & 2 on 16.12.2023 and 17.12.2023 with a written request to furnish the details of the prohibitory order issued against his bank account. The second respondent has replied dated 21.12.2023 to the effect that the petitioner is the proprietor of M/s.Sri Venkateswara Traders. On verification, the petitioner found that one R.Vatchala and S.Chitra are the partners of M/s.Sri Venkateswara Traders who are the dealers of the Indian Oil Corporation and deals with the petroleum products. Since the petitioner is nothing to do with aforesaid M/s.Sri Venkateswara Traders and the business, he has requested the respondents 1 and 2 to de-freeze his bank account. However, no reply is given, thereby, the Writ Petition is filed.

4. The respondents 1 &2 have filed a counter affidavit stating that the petitioner who has an effective alternative remedy in the form of E.I. Court has rushed to this Court with this Writ Petition invoking Article 226 of Constitution of India and that since the petitioner has not approached E.I. Court under Section 75 of the ESI Act, the Writ Petition has to be dismissed. It is mentioned further in counter affidavit that in the case of Rajasthan State Road Transport Corporation Vs. Union of India & Ors., reported in 2010 II CLR 236:2010 LLR 722 (Raj.DB) and also as per the judgment of the Hon'ble Apex Court in ESIC Vs. C.C.Santhakumar, in Civil Appeal No.4291 of 2000 dated 21.11.2006 reported in 2007(1) SCC 584, the employer shall move ESI

Court and that writ petition is not maintainable. M/s.Sri Venkateswara Traders was covered under ESI Act, 1948, since 01.05.2013 and based on the survey conducted by Social Security Officer of the respondents 1 & 2 on 15.05.2013, it was found that the petitioner was an employer and has engaged 11 employees, thereby, the petitioner was asked to comply with put on dues paid from the second respondent. It is submitted that as per Section 40 read with Section 39 of the ESI Act, 1948 (hereinafter referred to as the Act), the principal employer of the factory or establishment covered under the act, is required to pay in respect of every employee both employers' contribution and the employees' contribution at the rates specified in Rule 51 of ESI (General) Rules 1950 (as amended).

5. According to the Social Security Officer's survey report, the ESI Code number is registered under the name of the principal employer Mr.Kannan (Partner). The respondents 1 & 2 vide their letter No.63000942200000912/Ins-I/SRO/SLM/NONCOMPLIANCE dated 19.06.2018 have issued notice to the petitioner. On 31.08.2018 again another letter No.63000942200000912/INSI/SRO/SLM/SCN-D5, in the form of show cause notice was issued to the petitioner as to why he cannot be prosecuted for Non-Payment of contribution for the period from May 2013. Though the petitioner has received the same, he has not replied.

6. The respondents 1 & 2 have issued C-18 (Adhoc) notice dated 12.11.2018 claiming an amount of Rs.4,03,474/- for the period from 10/2013 to 09/2018. The petitioner employer was provided with an opportunity of personal hearing on 12.12.2018, but the employer failed to attend the personal hearing. The respondents 1 & 2 have issued another opportunity to the petitioner employer to represent his case on 22.01.2019 by way of another notice dated 31.12.2018. The petitioner employer failed to appear before the authorized officer to represent his case. Hence, the Authorized officer of ESI Corporation has no other alternative but to determine the contribution based on the Adhoc basis as provided under Section 45A of the ESI Act, 1948. Thereby, the order has been issued under Section 45A of the ESI Act, to the petitioner employer on 18.02.2019, claiming an amount of Rs.3,79,879/-. Even after issuance of the said order, the petitioner employer was provided with an opportunity to make an appeal before the Appellate Authority under

Section 45 AA by remitting 25% of the amount. But the employer has not considered the above opportunity. Therefore, prayed for dismissal of the writ petition.

7. The 3rd respondent/Chief Manager, State Bank of India, has filed an independent counter affidavit, the relevant portion of which reads as follows :

"The petitioner is maintaining a savings bank account bearing No.11194726629 with this respondent, and the petitioner is operating the account since 2003. It is mentioned further that the savings bank account is only in the individual name of the petitioner, viz., M.Kannan. The third respondent is not aware as to whether the petitioner has got any connection whatsoever with M/s.Sri Venkateswara Traders and that whether SB account was linked to any other business concern or with anyone.

The third respondent has received a prohibitory order No.Slm/Recy/CP4(PO)/63-000-94220-000-0912 dated 08.12.2023 from the second respondent on

13.12.2023, issued by the second respondent under Rule 26(1)(i) of the II Schedule of the Income Tax Act, 1961 read with Section 45C to 451 of the ESI Act, 1948.

The third respondent further states that the second respondent has directed to transfer forthwith a sum of rs.7,19,294/- with further interest upto 07.12.2023 from and out of any account held by S Kannan and M/s.Sri Venkateshwara Traders by an account payee demand draft in favour of ESI fund Account No.1 payable at Salem.

8. Heard Mr.M.R.Jothimanian, learned counsel for the petitioner, Mrs.S.Jayakumari, learned Standing Counsel for the respondents 1 & 2 and Mr.K.Chandrasekaran, learned counsel for the third respondent.

9. The short point falls for the consideration of this Court in this Writ Petition is whether the petitioner is in any way connected to M/s.Sri Venkateswara Traders, Mettur and thereby issuance of the impugned notice by the respondents 1 & 2 to the petitioner and freezing of the S/B Account of the petitioner by the third respondent bank, on the proceedings of the second respondent is appropriate or not.

10. It is the consistent plea of the petitioner that he has stated all the proceedings are in the name of M/s.Sri Venkateswara Traders, Mettur, and the account which was frozen by the third respondent is nothing to do with the business of M/s.Sri Venkateswara Traders. The learned counsel for the respondents 1 & 2 on the other hand submit that, from the inspection report they found that the petitioner is one of the partners of M/s.Sri Venkateswara Traders and he was an occupier of the premises of M/s.Sri Venkateswara Traders and that the respondents 1 & 2 has made several correspondence with the petitioner only and therefore, the issuance of the impugned orders are justified.

11. The documents filed by the respondents 1 & 2 and the contents of the counter affidavit go to show that M/s.Sri Venkateswara Traders as employer is liable to pay contributions of employee and employer as per the ESI Act and according to the respondents 1 & 2, an amount of Rs.7,19,294/- have to be paid by M/s.Sri Venkateswara Traders to the respondents 1 & 2. M/s.Sri Venkateswara Traders is not before the Court. Further issuance of notice in favour of the M/s.Sri Venkateswara Traders under various provisions of ESI Act is also not the subject matter of the petition. Therefore, those aspects need not be dealt with in this Writ Petition.

12. According to the petitioner, R.Vatchala and S.Chitra are the partners of M/s.Sri Venkateswara Traders and the petitioner is nothing to do with them. The respondents 1 & 2 have not filed any documents before the Court to show that the petitioner is one way or other connected to M/s.Sri Venkateswara Traders. Some of the documents filed by the respondents would show that the petitioner M.Kannan is a proprietor and in some documents the petitioner M.Kannan is shown as an occupier. M/s.Sri Venkateswara Traders is a firm. It is not difficult for the first respondent to obtain the details of the partners in the said firm from the concerned Sub- Registrar. But no attempt was made in the direction.

13. The petitioner has filed this Writ Petition specifically mentioning that R.Vatchala and S.Chitra are the partners of M/s.Sri Venkateswara Traders. After filing of the Writ Petition, the respondents should have investigated as to whether the petitioner is connected with M/s.Sri Venkateswara Traders in any manner. The respondents should have also made an attempt to implead M/s.Sri Venkateswara Traders and its partners R.Vatchala and S.Chitra. They would have participated in the proceedings to say as to whether the petitioner is having any connection with M/s.Sri Venkateswara Traders. At least the respondents should have given notice to the said partners asking them to inform whether the petitioner is having any connection with the said business and as to who actually has to deal with the business of M/s.Sri Venkateswara Traders. Notice could have been given at least to the occupier of M/s.Sri Venkateswara Traders to inform as to who is the real owner of the said premises.

14. The only ground on which the respondents have connected the petitioner to M/s.Sri Venkateswara Traders, is that the Inspection Officer of the ESI has visited M/s.Sri Venkateswara Traders premises and found the petitioner. According to the said report, apart from the petitioner, there were other persons. It does not mean that all the persons who were present at that time are partners or owners of the said business. The respondents must have made due diligence prior to the issuance of notice and prior to directing the third respondent to freeze the bank account pertaining to the petitioner.

15. In any case, the respondents have failed to file any records connecting the petitioner to M/s.Sri Venkateswara Traders business. Therefore, the freezing of the bank account of the petitioner is totally irregular, and that the issuance of proceedings for freezing the petitioner bank account is also irregular. This writ petition is filed for the limited purpose to de-freeze the account of the petitioner bank account with the third respondent bank, on the ground that the petitioner is no way connected with liability of M/s.Sri Venkateswara Traders to the respondents 1 & 2. Therefore, any observations made in this order shall not be treated as exonerating the liability if any, M/s.Sri Venkateswara Traders to the respondents 1 & 2.

16. In view of the above, the petitioner succeeds, thereby the impugned order issued by the respondents 1 & 2 to the third respondent asking the 3rd respondent to freeze the account of the petitioner, is hereby set aside. Third respondent is directed to de-freeze the petitioner bank account No.11194726629 forthwith. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

04.04.2024

Index : Yes / No
Internet : Yes / No
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Dr.D.NAGARJUN, J.

dna

To

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No.39/57, Theerthamalai Vaniga Valagam
Three Roads
Salem 636 009.

2.The Recovery Officer
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