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W.P.No.12123 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.12123 of 2024
and WMP.No.13219 of 2024

Sarankumar T.V

...Petitioner

versus

The Deputy Director (Ins. VIII)
Regional Office,
ESI Corporation, Pachdeep Bhawan,
No.143, Sterling Road, Chennai-600034.

... Respondent

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the respondent herein to close/cancel the petitioner's ESI Account No.51001286160001099 in view of closure of the business namely "Sivagami Enterprises" and consequently release the attachments by the respondent vide proceedings No.TN/RECY/45G/51 51001286160001099 dated 24.03.2023, 17.05.2023 and 30.05.2023 in respect of the petitioner's bank account.

For Petitioner : M/s.R.Dhansekar

For Respondent : Mr.K.Prabakar
Ld. Counsel for ESI



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ORDER

This Writ Petition is filed seeking for direction to the respondent

herein to close/cancel the petitioner's ESI Account No.51001286160001099 in view of closure of the business namely “Sivagami Enterprises” and consequently release the attachments by the respondent vide proceedings No.TN/RECY/45G/51 51001286160001099 dated 24.03.2023, 17.05.2023 and 30.05.2023 in respect of the petitioner's bank account.

2. It is submitted by the learned counsel for the petitioner that the petitioner establishment was started in the year June 2019 and for purpose of providing man power to Industries located in the Kakkalur SIPCOT. He has registered the said firm with the respondent corporation for the purpose of contributing towards Employee State Insurance Scheme and also been provided with ESI.No.51001286160001099 and GSTIN Number 33EGXPS2334L1ZP with an intention to commence the business from January 2020, but he could not do it on account of personal reasons of the petitioner. He has filed Nil GST for the said period. Subsequently on account of COVID 19 Pandemic, he could not commence business.



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3. The respondent sent a communication letter dated 13.01.2023

initiating recovery proceedings alleging that he has failed to contribute for ESI to the tune of Rs.1,00,000/- along with interest at the rate of 12% per annum from 15.08.2019. Subsequently, notice under Section 45G of the ESI Act was issued to petitioner banker namely State Bank of India, Tiruvallur Branch for attachment of Rs.1,32,877/-. The petitioner has approached the respondent on 25.04.2023, then petitioner was instructed to submit a requisition for closure of his ESI Account. He has submitted a letter for closure of the account on 25.04.2023 itself. The respondent has sent a communication dated 12.05.2023 calling for certain documents regarding closure of his firm. It is also informed that the firm will be inspected and ledger verification will be conducted by the Social Security Officer before taking decision of closure of the account. The petitioner stated to have been submitted all the documents required for closure of the accounts even then account is not been closed and thereby filed this Writ Petition.

4. Learned counsel appearing for the respondent has submitted that petitioner has voluntarily opened the account under ESI Act and that there were ten employees in the petitioner establishment. Notice has been



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issued to the petitioner on 04.04.2022 under Section 40 read with Section 39 of the ESI Act stating that the contributions from July 2019 to April 2021 was not paid. Respondent got issued final show cause notice dated 01.08.2022 under Section 45(A) of the ESI Act and finally 11.01.2023 a notice for recovery of contribution under Section 45C to 45 I of the ESI Act, 1948 was also given.

5. Though it is submitted by the learned counsel for the petitioner that he has submitted all the required documents for closure of the ESI account to the respondent, the petitioner has failed to produce any material to show that the documents have been submitted to the respondent. This Court cannot give any direction to the respondents to close the petitioner's ESI account, unless there is record to show that he has produced all the document as required by the respondent for closure of the ESI Account.

6. In respect of the default committed by the petitioner in non payment of the contribution is concerned, it is submitted by the learned counsel for respondents that proceedings have already been initiated and bank accounts of the petitioner are also attached.



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7. Considering the discussions made above and on perusal of the records, this Writ Petition is disposed of permitting the petitioner to submit all required documents as per letter dated 12.05.2023 within two weeks from the date of receipt of copy of this order and on such submission of documents, within two weeks thereafter the respondents are directed to take action in respect of the application for closure of ESI Account with the respondent by following the due process and this Court is not inclined to pass any order in respect of consequential release of the attachment by the respondent vide Proceedings NO.TN/RECY/ 45G/51 51001286160001099 dated 24.03.2023, 17.05.2023 and 30.05.2023. No costs. Consequently connected miscellaneous petition is closed.

05.06.2024

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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No



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Dr.D.NAGARJUN, J.
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To

The Deputy Director (Ins. VIII)
Regional Office,
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