



W.P.No.36474 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 08.01.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

WP. No. 36474 of 2023

and

WMP.No. 281 of 2024

M/s. EVIAR Infrastructure (P) Ltd,
Rep. by Managing Director,
Mr. Anish Prakash,
No. 26, Kothari Nagar,
1st street, Ramapuram,
Chennai 600 059.

...Petitioner

Vs

1. The Deputy Director,
Employees State Insurance Corporation (ESI),
No. 143, Sterling Road,
Chennai 600 034.

2. The Assistant Director (Ins. II)
Employees State Insurance Corproation (ESI),
No 143, Sterling Road,
Chennai- 600 034.

...Respondents



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Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order passed by the 2nd respondent in No.TN/Ins.II/51-00-114316-000-0699 / BMLr, dated 30.10.2023 and quash the same and consequently direct the 2nd respondent to taken on the file petitioner appeal u/s 45AA of ESI Act, 1948 by accepting the fee amount of the petitioner Rs. 72,684/-.

For Petitioner : Mr.N.Stalin

For Respondents : Mrs.S. Jayakumari
Standing Counsel

ORDER

Writ petition is filed challenging the order dated 30.10.2023 rejecting the petitioner's appeal filed under Section 45AA of the ESI Act.

2. The petitioner is covered under the ESI Act and his code Number is 51-00-114316-000-0699. Whiles, the 1st respondent passed an order dated 18.10.2022 under Section 45(A) of the Act fixing the contribution payable



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by the petitioner for the period from 09/17 to 03/21 at Rs.2,90,735/-. As the claim was found to be excess, the petitioner preferred an appeal before the 2nd respondent along with 25% contribution of Rs.72,684/- against the order dated 18.10.2022. The appellate Authority, the 2nd respondent herein vide order dated 30.10.2023 dismissed the appeal on the ground that it was filed beyond 60 days. Aggrieved by the impugned order dated 30.10.2023, the above writ petition is filed.

3. The learned counsel for the petitioner relying on an order passed by this Court on 28.01.2015 in W.P.No.1933 of 2015 submits that similar order may be passed giving an opportunity to the petitioner to contest the appeal on merits. The learned counsel for the respondent does not dispute the order passed in W.P.No.1933/2015.

4. On facts it is seen that the impugned order was passed on



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18.10.2022 and the same was received by the petitioner on 21.10.2022 and the appeal was filed on 20.12.2022. If the delay is calculated from the date of the order the delay is only 2 days and under the circumstances, I am of the view that the petitioner should be given an opportunity to contest the case on merits. The impugned order is set aside and the petitioner is given opportunity to file an appeal within a period of three (3) weeks from the date of receipt of a copy of this order along with 25% deposit amount, which amount was admittedly returned at the time of rejection of the appeal.

5. The petitioner is therefore directed to file an appeal along with the 25% deposit amount of Rs.72,684/- within three (3) weeks from the date of receipt of this order. The 2nd respondent is directed to decide the appeal on merits and pass orders in accordance with law.

Accordingly, writ petition is allowed. There shall be no order as to



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costs. Consequently connected miscellaneous petition is closed.

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Index: Yes/No

Neutral Citation: Yes/No

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To

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N.MALA,J.



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