



W.P.No.34270 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.34270 of 2018

and

W.M.P.Nos.39826 and 39828 of 2018

S.Thilakavathy
Proprietorix
EMM ESS Ultra Scan Centre
33-C/2, Hospital Road,
Kancheepuram – 631 502.

...Petitioner

Vs.

1. Employees State Insurance Corporation
Rep. By its Regional Director,
Regional Office,
143, Sterling Road,
Nungambakkam, Chennai – 34.
2. The Deputy Director,
Employees State Insurance Corporation,
Regional Office,
143, Sterling Road,
Nungambakkam, Chennai – 34.
3. The Assistant Director
Regional Office,
143, Sterling Road,
Nungambakkam, Chennai – 34.
4. Nirmal Kumar Singh,
Assistant Director,
ESI Corporation,
Panchdeep Bhavan,



W.P.No.34270 of 2018

WEB COPY

143, Sterling Road,
Nungambakkam, Chennai – 34.
5. The Social Security Officer,
Inspection Office, Vellore
ESI Corporation, Vadivel Nagar,
Vellore – 632 001.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari after calling for the records pertaining to the order dated 13.11.2008 in No.TN/INS V/51-00 110857-000-1099 passed by the second respondent for and on behalf of the first respondent, directing the petitioner to pay a sum of Rs.3,15,406/- towards ESI contributions for the period from April 2014 to December 2017, by including the salary payable to the Employees of M/s.EMM ESS clinical Lab, which is a separate and independent establishment and no way connected to her scan centre along with the salary payable to her employees who are working in the petitioner scan centre.

For petitioner : Mr.V.Porkodi

For respondents : Mr.S.P.Srinivasan

ORDER

This writ petition is filed seeking to quash the order dated 13.11.2008 in No.TN/INS V/51-00 110857-000-1099 passed by the second respondent.



WEB COPY

2. It is submitted by the learned counsel for the petitioner that the petitioner is the sole proprietor of the scan centre viz., EMM ESS Ultra Sound Scan Centre which was established in the year 1999. Since the scan centre is a small one it employed 7 employees. A Social Security Officer from the Inspection Office (Vellore) ESI corporation visited the scan centre on 10.07.2014 and stated that the employees strength increased from 7 to 10 w.e.f. 01.07.2014. The petitioner produced attendance and wage register of the scan centre to show that there were only 7 employees employed. While so, a proceedings dated 08.04.2014 were issued to the petitioner from the first respondent on 18.08.2014. Once again the petitioner has pointed out that there were not 10 employees working in his scan centre and hence, ESI Act is not applicable. Objection to the proceedings dated 08.04.2014 was submitted on 21.07.2014. The first respondent by proceedings dated 09.06.2015 demanded to pay an sum of Rs.48,263/- towards ESI Contribution for the period from July 2014 to March 2015. Again the petitioner made a representation on 10.07.2015 to the first respondent to recall the show cause notice dated 09.06.2015 and he appeared for personal hearing on 05.02.2016 with all the relevant documents. Once again the first respondent called him to appear on 15.05.2016 along with attendance register and other documents.



The petitioner has produced all the documents on the said sale.

WEB COPY

3. Subsequently, on 01.02.2018 the Social Security Officer visited his scan centre and asked to produce the attendance register and wage register and also other relevant documents. The same was verified by the Social Security Officer. However, the second respondent the Deputy Director on behalf of the first respondent has passed the impugned orders dated 13.11.2018 directing the petitioner to pay a sum of Rs.3,15,406/- towards ESI contribution for the period from April 2014 to December 2017 and assessed that the total salary paid to the employees working in the centre was Rs.48,52,400/- for the four accounting years from April 2014 to December 2017 and thereby, calculated the ESI contribution based on the total salary amount of Rs.48,52,400/-. Therefore, the petitioner sought for the relief as stated above.

4. Respondents one to five have filed counter affidavit. Preliminary objection raised by the respondent is that the petitioner has got alternative efficacious remedy under Section 75 of the ESI Act itself. Instead, the



petitioner has filed this writ petition under article 226 of the Constitution of India and sought for dismissal of the impugned order dated 13.11.2018.

WEB COPY

5. Paragraph 5 of the counter affidavit runs as under:

“In the case of Rajasthan State Road Transport Corporation vs. Union of India & Ors., 2010 II CLR 236:2010 LLR (Raj.DB), the division Bench has held as follows:

“In view of the above discussions, we are of the view that learned Single Judge was right in dismissing the writ petition of the appellant on the ground of alternative and efficacious remedy by way of appeal available to the appellant. Hence, we do not find any merit in this special appeal and the same is, accordingly, dismissed with no order as to costs.”

6. Heard both sides and perused the materials available on record.

7. During the course of submission the learned counsel for the petitioner requested this Court to close this writ petition with a liberty to the petitioner to approach the Statutory authority under Section 75 of the ESI Act. The learned counsel representing the respondent submitted in similar lines.



W.P.No.34270 of 2018

WEB COPY

8. In view of the above and considering the submissions made by both sides, this writ petition is disposed of with a liberty to the petitioner to approach the E.I. Court under Section 75 of the ESI Act by following due process within a period of four weeks from the date of receipt of a copy of this order and on filing of such petition, the E.I. Court is directed to dispose of the same as expeditiously as possible. Connected W.M.Ps are closed. No costs.

10.06.2024

vca

Index : Yes/No
Internet : Yes/No
Citation : Yes/No

To

1. The Regional Director,
Employees State Insurance Corporation
Regional Office,
143, Sterling Road,
Nungambakkam, Chennai – 34.
2. The Deputy Director,
Employees State Insurance Corporation,

Page No.6 of 8



WEB COPY



W.P.No.34270 of 2018

Regional Office,
143, Sterling Road,
Nungambakkam, Chennai – 34.

3. The Assistant Director
Regional Office,
143, Sterling Road,
Nungambakkam, Chennai – 34.
4. Nirmal Kumar Singh,
Assistant Director,
ESI Corporation,
Panchdeep Bhavan,
143, Sterling Road,
Nungambakkam, Chennai – 34.
5. The Social Security Officer,
Inspection Office, Vellore
ESI Corporation, Vadivel Nagar,
Vellore – 632 001.

Dr.D.NAGARJU,J.

Vca



WEB COPY



W.P.No.34270 of 2018

W.P.No.34270 of 2018
and
W.M.P.Nos.39826 and 39828 of 2018

10.06.2024