



W.P.(MD)Nos.17581 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2024

CORAM:

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.17581 of 2020

and

W.M.P.(MD)No.14706 of 2020

1.M/s.Maria Aquacon (P) Ltd,
Through its Managing Director,
Joseph Fernando.

2. Joseph Fernando

Vs.

... Petitioners

1.The Assistant Director,
Employees State Insurance Corporation,
Municipal Complex, Sindhu Poondurai,
Tirunelveli District.

2.The Recovery Officer,
Employees State Insurance Corporation,
Municipal Complex, Sindhu Poondurai,
Tirunelveli District.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India, to to call for the records in 66/00/030737/000/0009/RRC/SRO/TLI Recovery Notice dated 23.10.2020 on the file of the 2nd nd respondent and issue a Writ in the notice of Writ of Certiorari and quash the recovery notice 66/00/030737/000/0009/RRC/SRO/TLI dated 23.10.2020 on the file of the 2nd respondent.

For Petitioners : Mr.Ka.Ramakrishnan

For Respondents : Mr.R.Ravindran

ORDER

This Writ Petition has been filed by the petitioners challenging the recovery notice issued by the respondents under Sections 45-C to 45-I of 'The Employees' State Insurance Act, 1948' (hereinafter referred to as 'the Act 1948'), bearing No.66/00/030737/000/0009/RRC/SRO/TLI, dated 23.10.2020.



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2. Through the said notice, the respondents demanded the petitioners to pay an amount of Rs.17,63,017/- purported to be the amount due under various orders numbering 10 passed under Section 45-A of the Act 1948. The details of the orders that are passed under Section 45-A of the Act 1948 against the petitioners were furnished in the impugned notice and the respective amounts were also mentioned. The said orders passed under Section 45-A of the Act 1948 are during the period 21.04.2011 to 06.12.2017, have not been challenged by the petitioners and the said orders have attained finality. Without challenging the principal orders that are passed under Section 45-A of the Act 1948, the petitioners have approached this Court by simply challenging the consequential notice dated 23.10.2020 issued by the respondents, alleging that the petitioners were not afforded reasonable opportunity before issuing the impugned notice.

3. The respondents have filed a counter affidavit stating that the orders that are passed under Section 45-A of the Act 1948 against the petitioners have attained finality as the petitioners have not chosen to avail the remedy of appeal provided under the statute nor challenged the said order before this Court. The



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factum of the said 10 orders having become final is not in dispute. Once the orders that are passed under Section 45-A of Act 1948 have become final and are operating against the petitioners, the petitioners are bound to pay the amount that are due under the said orders. Through the impugned notice, it is only the amounts that are due and payable by the petitioners under the said 10 orders passed under Section 45-A of the Act 1948 is demanded. As the principal orders have become final, the petitioners are not entitled to challenge the consequential impugned notice issued by the respondents. Therefore, there is nothing for this Court to interfere with the impugned demand notice.

4. At this stage, the learned counsel for the petitioners contended that the petitioners intend to avail the remedy of appeal provided under the statute under Section 45-AA of the Act 1948 r/w Regulation 31-D of the Employees' State Insurance (General) Regulations, 1950 against the orders passed under Section 45-A of the Act 1948.



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5. As it is already concluded that the petitioners are not entitled to challenge the impugned notice without challenging the principal orders passed under Section 45-A of the Act 1948, this Court is not inclined to entertain this Writ Petition and accordingly, the same is dismissed. However, in case if the petitioners intend to avail the remedy of appeal provided under Section 45-AA of the Act 1948, it is open to the petitioners to avail such remedies. In case, if any such appeals are filed, the same shall be dealt with by the appellate authority strictly in accordance with law. There shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

13.02.2024

Neutral Citation: Yes / No
Index : Yes / No
vsm



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MUMMINENI SUDHEER KUMAR, J.

vsm

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