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WP.No.3188 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.3188 of 2021

and

WMP.Nos.3613 & 3616 of 2021

M/s.Riththika Constructions
Represented by its Proprietor
Mr. G. Ramalingam
S/o. Govindasamy 42,
Govindasamy 42,
Thanthai Periyar Nagar Gandhinagar Post
Kurinjipadi Taluk
Cuddalore District

... Petitioner

Vs.

1.The Deputy Director
Employees' State Insurance Corporation Regional office (Tamilnadu)
143, Sterling Road, Chennai 34

2.The Recovery Officer
Employees' State Insurance Corporation Regional office (Tamil
Nadu) 143, Sterling Road, Chennai 34

3.M/s. Neyveli Lignite Corporation Limited
Central Transport Department CTO Building Neyveli 607 801

4.The Branch Manager
Indian Overseas bank Neyveli Township branch Block No. 19, Unit
No IV, Main Bazaar Neyveli Township 607 803

... Respondents



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Prayer :- Writ Petition is filed under Article 226 of the Constitution of India Calling for records and quash the recovery notices dated 27.11.2020 under Ref. No. 51001153170001019 / CP / 394423 and Ref. No. 51001153170001019 / CP / 394425 and consequently directing the 1st respondent to serve the copy of order of determination made under Sec 45A of the Employees state Insurance Act 1948.

For Petitioner : M/s.D.Baskar

For Respondent : M/s/T.N.C. Kaushik
Standing counsel for R.1 and R.2.

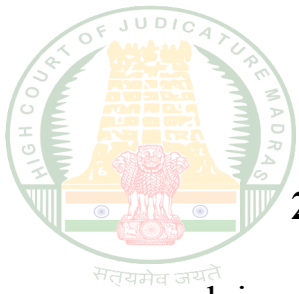
: M/s.N.Nithianandan for R.3.

: M/s. S.Sathyanarayanan for R.4.

ORDER

The Writ Petition is filed for the following reliefs:-

"Calling for records and quash the recovery notices dated 27.11.2020 under Ref. No. 51001153170001019 / CP / 394423 and Ref. No. 51001153170001019 / CP / 394425 and consequently directing the 1st respondent to serve the copy of order of determination made under Sec 45A of the Employees state Insurance Act 1948."



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2. It is the case of the petitioner proprietary concern that it is doing a contract service of various categories and is an approved contractor of the 3rd respondent. The petitioner was awarded tender for the period from March 2015 till March 2017 for the purpose of watching and guarding the cycles stands at various places. As per the terms of the tender the contractors are bound to get themselves registered under the Employees' State Insurance Act (hereinafter called as "ESI Act") and have to obtain an ESI Code and 1.75% of monthly wages from each of the workers have to be deducted towards ESI and the contractor should remit 6.5% of the monthly wages which includes 1.5% to ESI. The amounts would be reimbursed by the 3rd respondent. As per the terms, the contractor is bound to submit periodical returns under the ESI Act besides remitting the contributions regularly. Therefore, whatever amount is paid to the ESI will be reimbursed by the 3rd respondent.

3. The petitioner would submit that as per practice, the petitioner would pay the wages to the workmen and submit the details to the 3rd respondent, the 3rd respondent in turn would deduct ESI, EPF and



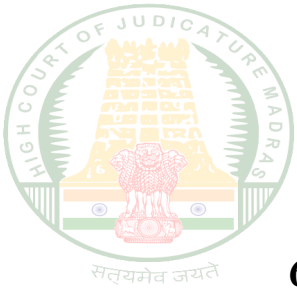
other statutory payments and pay the balance amount to the contractors.

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4. While so, the 1st respondent had issued a notice dated 08.10.2020 stating that from April 2018 there were no compliance particulars in respect of the petitioner and called upon them to submit the bank statement. On the very same day, the 1st respondent had submitted a recovery application to the 2nd respondent, the details of which are as follows:-

Application No.	Period	Amount
93020201254	January 2016 to December 2016	Rs.64350/- + Rs.32064/- = Rs.96414/-
93020201255	January 2017 to March 2018	Rs.42042/- + Rs.15274/- = Rs.57316/-
	Total	Rs.153730/-

5. Thereafter, the 2nd respondent had issued a notice of demand dated 27.11.2020 and had thereafter passed an order of attachment dated 06.01.2021 attaching the petitioner's bank account lying with the 4th respondent bank.



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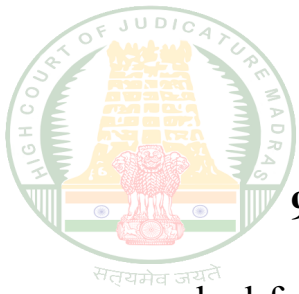
6. The petitioner's contention is that he is totally unaware of all these activities and it is only when he attempted to operate his bank account on 09.01.2021 he was shocked to know that the operation had been blocked. The petitioner had immediately got in touch with the 4th respondent. It is only thereafter that the petitioner had got the details. The petitioner would submit that he had deputed a person in his office for helping him to comply with of the Statutory requirements. He had all of a sudden left the job and thereafter the petitioner was in the dark about the non compliance and failure to contribute towards ESI. The petitioner would further submit that period of the contract was only up to March 2017 and thereafter the petitioner was working in the mines area where the ESI Act is not applicable.

7. The Petitioner would submit that in the recovery notice dated 08.10.2020, the 1st respondent had claimed that the contribution had been determination after notice and reasonable enquiry. The petitioner's contention is that he has not been issued with any notice



and had not been provided with a copy of the order passed under Section 45 A of the ESI Act. Therefore, without being served with the original order the petitioner was not in a position to challenge the same as per the provisions of the ESI Act. The petitioner had requested the 1st respondent in person to provide the copy of the order. However, there was no response. Thereafter, the petitioner had sent yet another representation calling upon the 1st respondent to provide him with the copy of the order made under Section 45A of the ESI Act. The same was not provided with and the respondents 1 and 2 are now proceeding with the recovery. Therefore, the petitioner is before this Court.

8. The respondents 1 and 2 had filed a counter enclosing certain documents wherein they would take a preliminary objection that there is an effective alternate remedy before the ESI Court and without availing the said remedy the petitioner has rushed to this Court which is unwarranted and unjustified. Therefore, they would submit that since there is no challenge to the order passed under Section 45A of the ESI Act the consequential recovery action cannot be challenged.

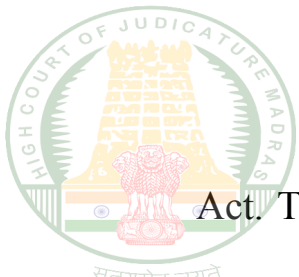


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9. The respondents would further submit that since the petitioner had failed to pay contribution as required under Section 40 read with Section 39 of the ESI Act for the period 01/2016 to 12/2016 and 1/2017 to 5/2017 & 7/2017 to 3/2018, two show cause notices dated 03.05.2018 had been issued to the petitioner proposing contribution of a sum of Rs.64,350/- and Rs.42,042/-.

10. The respondents would submit that the show cause notices were duly received and acknowledged by the proprietor, Shri G.Ramalingam. However, the petitioner had neither appeared for the personal hearing nor submitted any written objection. The respondent had afforded one more opportunity of personal hearing to the petitioner on 17.08.2018 vide their letter dated 24.07.2018. This letter was also received by the petitioner unit as well as the proprietor. However, once again, they were failed to appear.

11. The respondents would further submit that under Section 45AA of the ESI Act the petitioner has an alternate remedy of preferring an appeal to the appellate authorities within 60 days in case the party aggrieved by the order passed under Section 45A of the ESI



Act. Therefore, the respondents would seek to have the Writ Petition dismissed.

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12. Heard the counsel on either side and perused the records.

13. A mere perusal of the records would clearly indicate that the petitioner, namely, M/s.Riththika Constructions in whose name the ESI Code stands has not been served. Therefore, the petitioner has to be given an opportunity to put forth their case.

14. Considering the above, the Writ Petition is allowed. The impugned recovery notices dated 27.11.2020 are set aside and the matter is remitted back to the authority concerned for fresh consideration.

15. The petitioner shall submit his response to the notices dated 03.05.2018, which shall be deemed to have been served on the petitioner as the learned counsel for the petitioner is present before this Court, and within a period of 15 days from the date of receipt of a copy of this order response shall be given and thereafter within a period of 1 month therefrom the order shall be passed. Considering



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the fact that this Court has remitted the matter back, the attachment order shall not be proceeded with. No costs. Consequently, the connected Miscellaneous Petitions are closed.

11.06.2025

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.The Deputy Director

Employees' State Insurance Corporation Regional office (Tamilnadu)
143, Sterling Road, Chennai 34

2.The Recovery Officer

Employees' State Insurance Corporation Regional office (Tamil Nadu) 143, Sterling Road, Chennai 34



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