



W.P.(MD).No.11791 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.11791 of 2025

and

W.M.P(MD) No.8702 of 2025

M/s. Dhanasree Bus Body Builders,
SF No.578/3, Reddipalayam,
Opposite Petrol Bunk Road,
Erode Road, Athur Post,
Karur – 639 002,
Represented by its Proprietor,
K.Ulaganathan.

... Petitioner

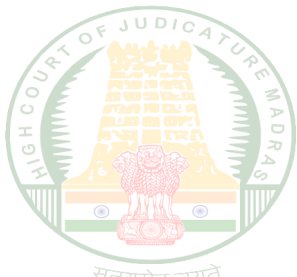
Vs.

1. The Deputy Director,
Sub Regional Office (Salem)
Employees' State Insurance Corporation,
Theerthamali Vaniga Valagam,
Three Roads, Salem – 636 009.

2. The Recovery Officer,
Sub Regional Office (Salem)
Employees' State Insurance Corporation,
Theerthamali Vaniga Valagam,
Three Roads,
Salem – 636 009.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus, calling for the



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records of the first respondent and quash its order dated 03.10.2019 in proceeding No.63000947220000704/INS-I/SRO/SLM/107/19 and further direct the first respondent to conduct a fresh enquiry under Section 45 of the Employees' State Insurance Act, 1948 by providing an opportunity to the petitioner.

For Petitioner : Mr.Annathagopalan
For M/s.Agam Legal

For Respondents : Mr.C.Karthik
Standing Counsel

ORDER

The present Writ Petition has been filed by the employer challenging the order passed by the first respondent dated 03.10.2019 under Section 45-A of the Employees' State Insurance Act and seeking a Mandamus to conduct fresh enquiry under Section 45 of the Employees' State Insurance Act.

2. It is not in dispute that the petitioner is covered under the Employees' State Insurance Act and he had been regularly making contribution up to 31.03.2015. For the period starting from April 2015 to April 2019, a show cause notice was issued to him for non-payment of contribution amount. Though, several opportunities were granted to the employer, he has not chosen to appear before the first respondent. The first



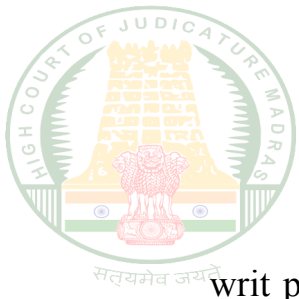
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respondent has proceeded to pass an impugned order under Section 45 -A of the Employees' State Insurance Act, on 03.10.2019 based upon the assumed wages for 15 number of employees. Challenging the same, the present Writ Petition has been filed.

3. According to the learned counsel appearing for the writ petitioner, the business itself was closed in the year 2015 and they have surrendered their Service Tax Certificate. Due to his illness and daughter's marriage they were not able to send their representation or appeared before the first respondent for enquiry. They were under the impression that in view of closure of business, no further action would be initiated as against them. In case, a fresh enquiry is conducted, the Management would be in a position to place on record, all the documents that would establish the fact that the business was closed in the year 2015.

4. Per contra, the learned Standing Counsel appearing for the respondents submitted that the petitioner's daughter marriage is not a reason for not appearing before the first respondent for enquiry. Despite receipt of notice, they have not chosen to appear. In the affidavit filed in support of the



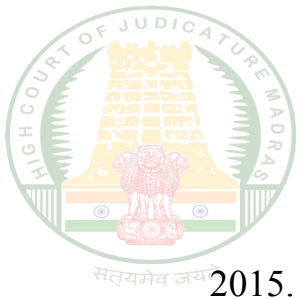
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writ petition they have submitted that the orders under Section 45 -A of the Employees' State Insurance Act, have been received by the Management and they have also received the order of recovery. Despite the order of recovery being passed in the year 2021, after lapse of two years, the present Writ Petition has been filed invoking jurisdiction under Article 226 of Constitution of India on the ground that the appeal remedy is barred by limitation. In such circumstances, the Writ Petition is not maintainable and the same may be dismissed.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. It is not in dispute that the employer has not responded to the notice issued by the Corporation. Even immediately after receipt of orders under Section 45-A of the Employees' State Insurance Act or the recovery orders, the employer has not chosen to approach the Court in time. However, the records produced before this Court establish that there are communications to the statutory authorities regarding closure of business in the year 2015. The petitioner Management had been prompt in making contribution till March



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2015. Therefore, it is clear that there is some *bonafide* belief on the part of the Management that, after closure of business, they need not pay the contribution. In such circumstances, in the interest of natural justice one more opportunity has to be provided to the employer to establish the fact that the business was closed and there was no operation after March 2015.

7. In view of the above said deliberations, the order impugned in the Writ Petition is set aside and the matter is remitted back to the file of the first respondent for fresh consideration after affording due opportunity to the petitioner.

8. Accordingly, this Writ Petition stands allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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R.VIJAYAKUMAR,J.

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