



W.P.(MD) No.11967 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.11967 of 2016
and
W.M.P.(MD) No.9165 of 2016

M.Subramani

... Petitioner

-vs-

The Deputy Director
Sub-Regional Officer (Madurai)
The Employees State Insurance Corporation
2nd West Street
K.K.Nagar
Madurai-625 020

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records on the file of the order of the respondent passed in 57-00-047732-000-0901/Ins.I/SRO/MDU, dated 23.05.2016, quash the same and direct the respondent to consider the petition dated 25.04.2016 filed in No. 57-00-047732-000-0599/INS.I/SRO/MDU/120/11, dated 28.03.2016.



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For Petitioner : Mr.V.O.S.Kalaiselvam

For Respondent : Mr.R.Ravikumar

ORDER

Heard the learned counsel on either side.

2. The brief facts that are relevant for the disposal of this writ petition are as under:

2.1. The establishment of the petitioner herein was inspected by the Inspector of Employees' State Insurance Corporation (ESI) on 09.11.2006 and thereafter, an inspection report dated 22.11.2006 was submitted by the Social Security Officer of the office of the respondent. Basing upon that, appropriate orders have been passed under the provisions of the Employees State Insurance Act, 1948, (in short, "the ESI Act") requiring the petitioner to remit certain amounts towards ESI contribution. The said orders, including the order dated 12.10.2007 covering the period between 09.11.2006 and March, 2007, were challenged by the petitioner before the ESI Court in



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2.2. Aggrieved by the order passed in the said ESIOP No.99 of 2007, dated 08.12.2015, the petitioner approached this Court by filing C.M.A.(MD) No.446 of 2016 and the said civil miscellaneous appeal was allowed by this Court by Judgment dated 21.03.2023 by setting aside the order passed by the ESI Court, dated 08.12.2015 as well as the order passed by the respondent dated 12.10.2007 and holding that the provisions of the ESI Act has no application to the establishment of the petitioner as the total number of employees working in the petitioner's establishment is less than ten.

2.3. The said proceedings are pertaining to the period from November, 2006 to March, 2007. Basing upon the very same inspection that took place on 09.11.2006, the proceedings in respect of the subsequent period were initiated resulting in passing an *ex parte* order dated 28.03.2016 in proceedings No. 57-00-047732-000-0599/INS.I/SRO/MDU/120/11 covering the



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period between April, 2007 to September, 2010. The said order came to be passed *ex parte*. Under those circumstances, the petitioner filed an application to set aside the *ex parte* order dated 28.03.2016 before the respondent directly. But the respondent refused to entertain the said application and rejected the same by order dated 23.05.2016. Aggrieved by the same, the petitioner has approached this Court by filing the present writ petition.

3. Learned counsel appearing for the respondent having taken note of the earlier orders passed by this Court in C.M.A.(MD) No.446 of 2016 fairly submitted that the very order dated 28.03.2016 passed *ex parte* does not stand as the very provisions of the ESI Act were held to be not applicable to the petitioner's establishment at the relevant point of time.

4. In the light of the same, though this writ petition is filed against the order dated 23.05.2016, this Court is of the considered view that it would be appropriate to put an end to the entire litigation as the very basis of the order dated 28.03.2016 has been taken away by virtue of the Judgment dated 21.03.2023, passed by this Court in C.M.A.(MD) No.446 of 2016.



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5. In the light of the above, the impugned order, dated 23.05.2016 in the proceedings bearing No.57-00-047732-000-0901/Ins.I/SRO/MDU as well as the order dated 28.03.2016 in the proceedings bearing No. 57-00-047732-000-0599/INS.I/SRO/MDU/120/11 passed by the respondent are hereby quashed. However, it is left open to the respondent to initiate appropriate proceedings against the petitioner's establishment in accordance with law. It is made clear that the orders passed by this Court in C.M.A.(MD) No.446 of 2016 as well as this order will not come in the way of the respondent in initiating fresh proceedings against the petitioner's establishment.

6. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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