IN THE COURT OF ESI JUDGE, ESI COURT(LABOUR COURT) MADURAI

Present: Tmt.A.Muthusaratha., B.L.,P.G.D.P.M., ESI Judge,

ESI Court (Labour Court), Madurai

Wednesday, the 26th day of April 2023

ESIOP.No.51/2015

(CNR No. TNMD04-000221-2015)

M.K.G.Nursery and Primary School,
R.S.Road, Ayyalur, Vadamadurai
Dindigul
represented by its Correspondent – Petitioner

-Vs-

The Employees State Insurance Corporation
Sub-Regional Office, 2nd West Street,
K.K.Nagar, Madurai 625 020
represented by its Deputy Director -- Respondent

This petition is coming on 20-4-2023 before me for final hearing in the presence of Tr.M.Elanchezhian and Tr.K.Hemakarthikeyan, counsels for the petitioner and of Tr.G.Radhakrishan, counsel for the respondent and upon perusing the documents and on hearing the arguments and having stood over the matter for consideration till this day, this court passed the following:

ORDER:

The petitioner has filed this petition u/s. 75(i)(g) of the ESI Act, 1948 praying to set aside impugned 45A orders Nos.57/00-072108-000-1301/Ins.I/SRO/MDU/1454/12 dated 18-7-2013, No. 597/13 dated 19-8-2013 and No.597/14 dated 4-12-2014 issued by the respondent claiming a total contribution of Rs.4,30,038/- for the period from 29-12-2010 to 4/2014 as arbitrary, invalid and against the principles of natural justice and unsustainable in law and to declare that the petitioner is not come within the purview of the ESI Act, 1948 from 29-12-2010 and for costs.

2. **<u>The petitioner's case in brief is as follows</u>**:

The petitioner is a tiny nursery and primary school and at no point of time the petitioner employs 20 employees in its school and hence it is not covered under the provisions of the ESI Act, 1948. However, the Inspector of the respondent visited the school and without inspecting the statutory records maintained by the petitioner counted the heads of employees which includes the correspondent. Since the said Inspector has wrongly covered the petitioner school, the petitioner was unable to accept the same and never received the notices sent by him as well as the respondent and hence the respondent has passed three exparte 45-A orders which are unsustainable in law and the contentions made in the said orders are absolutely wrong. Hence, the coverage made by the respondent is against the provisions of the ESI Act, 1948. Hence, the petitioner has no other option except to challenge the 45-A orders dated 18-7-2013, 19-8-2013 and 4-12-2014 passed by the respondent claiming a total contribution of Rs.4,30,038/- for the period from 29-12-2010 to 4/2014.

3. **<u>The brief averments made in the reply statement filed by the respondent is as follows</u>**::-

Except the averments that are specifically admitted, all other petition allegations are denied as false and the petitioner has no locus standi to file this petition. The Employee’s State Insurance Corporation has been established only for the benefit of Labour Welfare and it collects contributions from the employees as well as the employer's share through the employers and giving plenty of service, benefits to the poor labourers and their family members. If any stay is granted for the payment of contribution, then the respondent cannot run and also no service could be provided to the poor workers and their family members and they will suffer a lot.

ii). The petitioner has filed single petition before this court as against the various orders passed by this ESI Corporation is not maintainable. The petitioner must file separate petition to seek remedy before this court since the three orders are passed by the respondent on various dates as well as various reasons and default of the petitioner. Hence, on this score alone, this petition has to be dismisses with cost.

iii). The petitioner's school was inspected on 22-2-2012 by the respondent officials and found that the petitioner has paid wages for 20 employees on the date of coverage. The petitioner establishment was served the notice in Form C-11 to register their unit under the Act with effect from 29-12-2010 based on the preliminary inspection / survey report submitted by the Social Security Officer dated 22-2-2012. There were 20 number of employees in the petitioner unit on the date of coverage under the ESI Act. Therefore, the ESI coverage of the petitioner unit is valid and legal.

iv). The petitioner has defaulted in payment of contribution for the period from 29-12-2010 to 11/2012 as required by law, a show cause notice was issued to the petitioner vide letter in No.1454/12 dated 20-12-2012 claiming contribution of Rs.2,47,713/- for the said period affording personal hearing. The petitioner ha wilfully and wantonly refused to receive the same. The assumed notional monthly wages is 55% of the wage ceiling for coverage of an employee prescribed by the Central Government and the Corporation has authorized the Director General to approve the assumed wages from time to time. Accordingly, the assumed notional wages approved by the Director General when the wage ceiling was raised to Rs.15,000/- a month from 1-5-2010 was Rs.8,250/- as per ESI Headquarters Memorandum No. T-11/13/1/2010-Rev.I dated 16-8-2010. On the basis of information from the records of the petitioner on the basis of particulars and on the basis of the findings of inspection of records the number of employees employed are 20.

v). The petitioner has failed to submit any statement of return furnishing the contribution actually due in respect of the wages actually paid to the employees engaged as per the wages records maintained by the petitioner. Hence the petitioner could have produced the same in the personal hearing. If the records will be produced then it clearly reveals that the petitioner had engaged 20 employees in the unit. The petitioner failed to pay the contributions and submit the returns for the period from 6/2013 to 4/2014, a show cause notice in Form C-18 dated 6-6-2014 was issued proposing to claim contribution of rs.1,17,975/- thereby affording personal hearing, but he wilfully wantonly refused the same. In the absence of any such response it would be concluded that the assessment proposed as per calculations shown in the notice is accepted by the petitioner. The petitioner did not avail the opportunities given to him. Thus despite opportunities of hearing the employer did not produce any records for precise of hearing, determination of contribution. Therefore, the assessment had to be done in the case on “Best Judgment Method” keeping in view the non – production of any records/documents. Such a method is valid in view of the rulings by the Supreme Courts in ESI Corporation Vs. M/s F.Fibre, Bangalore AIR 1997 SC 2441 and by the Karnataka High Court in a similar case in ESIC, Bangalore Vs. New Forge Company, Bangalore 2010 (4) L.L.N.669 (Kar). No proof of closure was produced to the satisfaction of the respondent corporation.

vi). It is well settled law that every employer should pay contribution as ane when it accrued and if any delay in payment of contribution attracts damages and interest which is well known to the petitioner. Hence, the petitioner is liable to pay the contribution with damages and interest and the petition has to be dismissed. The petitioner is attempted to misappropriate the respondent's money by way of abusing the process of law. Hence, the petition is liable to be dismissed.

4. **The issues framed for consideration are as follows**:

1. Whether the impugned 45-A orders dated 18-7-2013, 19-8-2013 and 4-12-2014 passed by the respondent are liable to be set aside as prayed for by the petitioner?
2. Whether the petitioner is entitled to the relief of declaration as prayed for?
3. To what other relief, the petitioner is entitled to?

5. On the side of the petitioner school, its Correspondent Tr.K.Chandrasekar has been examined as PW1 through him Ex.P1 to Ex.P7 have been marked. No oral and documentary evidence let in on the side of the respondent.

6. **Points No. 1 and 2**:

This petition has been filed by the petitioner praying to praying to set aside impugned 45A orders Nos.57/00-072108-000-1301/Ins.I/SRO/MDU / 1454/12 dated 18-7-2013, No. 597/13 dated 19-8-2013 and No.597/14 dated 4-12-2014 issued by the respondent claiming a total contribution of Rs.4,30,038/- for the period from 29-12-2010 to 4/2014 as arbitrary, invalid and against the principles of natural justice and unsustainable in law and to declare that the petitioner is not come within the purview of the ESI Act, 1948 from 29-12-2010.

7. The case of the petitioner is that the petitioner tiny nursery and primary school and at no point of time the petitioner employs 20 employees in its school and hence it is not covered under the provisions of the ESI Act, 1948; without inspecting the statutory records maintained by the petitioner counted the heads of employees which includes the correspondent which was not accepted by

the petitioner and never received the notices sent by him as well as the respondent and hence the respondent has passed three exparte 45-A orders which are unsustainable in law and the contentions made in the said orders are absolutely wrong. Hence, the coverage made by the respondent is against the provisions of the ESI Act, 1948. Hence, the petitioner has no other option except to challenge the 45-A orders dated 18-7-2013, 19-8-2013 and 4-12-2014 passed by the respondent under Ex.P1 to Ex.P3 claiming contribution of Rs.2,47,713/-, Rs.64,350/- & Rs.1,17,975/- for the period from 29-12-2010 to 11/2012, from 1/2012 to 5/2013 and from 6/2013 to 4/2014 respectively. The attendance register and salary registers computerized sheets for the year 7/2010 to 4/2014 have been marked as Ex.P4 and Ex.P5(series). The petitioner school's receipt and payment accounts and Income and expenditure accounts computerized sheets for the year 2010-2011, 2011-2012, 2012-2013, 2013-2014 (series) is marked as Ex.P6, the petitioner school's ESI contribution calculation sheets(series) is marked as Ex.P7. Further he would submit that the petitioner never engaged 20 employees in the school and without ascertaining the facts, the impugned order has been passed by the respondent which is liable to be set aside. More so, the counsel for the petitioner would request this court, that he is ready to produce the relevant records relating to strength of employees before the respondent to putforth their case if the matter may be remitted back to the ESI Corporation.

8. Per contra, the counsel for the respondent would contend that the impugned order has been passed for wilful non-payment of contributions; the order and notices have been passed after giving opportunities of hearing to the petitioner; as there was non-production of records by the petitioner, the orders and notice have been passed as per the Best Judgment Method which is valid in law. Therefore, notice in Form C-18 dated 30-1-2014 to the petitioner proposing to claim contribution by providing personal hearing and the same was not responded by the petitioner; hence 45-A orders dated 18-7-2013, 19-8-2013 and

4-12-2014 claiming contribution of Rs.2,47,713/-, Rs.64,350/- & Rs.1,17,975/- for the period from 29-12-2010 to 11/2012, from 1/2012 to 5/2013 and from 6/2013 to 4/2014 respectively; the petitioner only did not avail the opportunities and hence the respondent ESI corporation has no other option to initiated recovery proceedings which are all legally valid.

9. On careful analysis of impugned orders u/s 45(A) of the ESI Act dated 18-7-2013, 19-8-2013 and 4-12-2014 it is mentioned that the employer has failed to submit any statement of return furnishing the contribution actually due in respect of the wages actually paid to the said employees engaged as per the wages records maintained by the employer and the employer has not availed the opportunity given to him; therefore the orders have been passed after giving due opportunities. In this aspect the petitioner has argued that without providing sufficient opportunities to the petitioner, the ESI Corporation has passed impugned orders and he requested this court to remit back the matter to the respondent for production of records in respect of coverage issues raised by the petitioner before the ESI Corporation. In this regard the respondent did not produce any oral and documentary evidence to prove their contention.

10. On careful analysis of petitioner side documents and arguments putforth by both side before this court, it is seen that the respondent ESI Corporation has not given sufficient opportunities to the petitioner to submit their representation and for production of relevant documents to establish their contention. In such circumstances, this court has no hesitation to remit back the matter to the respondent for fresh disposal according to law. In these circumstances, there is no necessity to decide whether the petitioner is having right to file single petition challenging various orders or not. The petitioner is directed to produce relevant records before the respondent and the respondent is directed to pass the order on merits after affording reasonable opportunity to the

petitioner and to determine the contribution. Therefore, the impugned orders u/s 45(A) of the ESI Act dated 18-7-2013, 19-8-2013 and 4-12-2014 are unsustainable in law and the same are liable to be set aside and there is no necessity to decide whether and the point no.1 & 2 are answered accordingly.

11. **Point No. 3 :-**

In view of the above findings recorded in point no. 1 and 2, the petitioner is not entitled to get any other relief and the point no.3 is answered accordingly.

In the result the and the impugned 45-A orders Nos.57/00-072108-000-1301/Ins.I/SRO/MDU/1454/12 dated 18-7-2013, No. 597/13 dated 19-8-2013 and No.597/14 dated 4-12-2014 issued by the respondent claiming a total contribution of Rs.4,30,038/- for the period from 29-12-2010 to 4/2014 are declared as null and void and unsustainable in law and the same are set aside and the case is remanded back to the respondent for conducting enquiry afresh. The respondent is hereby directed to provide sufficient opportunity to the petitioner to take part in the enquiry and to produce the entire documents and then to conduct enquiry and pass orders according to law. No costs.

Dictated directly to the Steno-typist, recorded by her in computer, corrected and pronounced by me in Open Court, this the 26th day of April 2023.

Sd/-Tmt.A.Muthusaratha
ESI Judge,
ESI Court(Labour Court)
Madurai.

Petitioner side oral evidence :

PW1 Tr. K.Chandrasekar

Petitioner side documents :-

Ex.P1	18-7-2013	Respondent's order u/s 45-A of the ESI Act – copy
Ex.P2	19-8-2013	Respondent's order u/s 45-A of the ESI Act – copy
Ex.P3	4-12-2014	Respondent's order u/s 45-A of the ESI Act – copy
Ex.P4	6/2010 to 4/2014	Petitioner's school's attendance register- computerized sheets
Ex.P5	7/2010 to 5/2014	Petitioner's school's wage register- computerized sheets
Ex.P6	series	Petitioner school's receipt and payment accounts computerized sheets for the year 2010-2011, 2011-2012, 2012-2013, 2013-2014
Ex.P7	series	Income and expenditure accounts computerized sheets for the year 2010-2011, 2011-2012, 2012-2013, 2013-2014

(Ex.P6 and Ex.P7 have been marked with other side objection)

Respondent side oral and documentary evidence :

Nil

Sd/-Tmt.A.Muthusaratha
ESI Judge,
ESI Court(Labour Court)
Madurai.

Sd/-Tmt.A.Muthusaratha., B.L.,P.G.D.P.M., ESI Judge,

ESI Court (Labour Court), Madurai

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Labour Court, Madurai

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Draft / Fair / Order

Dated: 26-4-2023

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