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(2022) 04 TEL CK 0009

In the Telangana High Court

Case No : Writ Petition No. 21400 Of 2021

S.Ravinder Reddy APPELLANT

Vs

Employees State Insurance Corporation And 3 Others RESPONDENT

Date of Decision : 04-04-2022

Acts Referred:
Employees State Insurance Act, 1948 — Section 45, 45A, 45AA, 45G, 75

Citation : (2022) 04 TEL CK 0009

Hon'ble Judges : Dr. G. Radha Rani, J

Bench : Single Bench

Advocate : V V Rama Krishna, Pasham Srinivasulu

Final Decision : Disposed Of

Judgement

1. This writ petition is filed for the following relief:

"..to issue the writ order or direction more particularly one in the nature of Writ of MANDAMUS declaring the action of the respondents under impugned order bearing No.52Q/52143-0999 dated 05.04.2021 issued by the 3rd respondent under section 45-G of the ESI Act r/w 2nd and 3rd schedule of the Income Tax Act 1961 and Income Tax (Certificate of Proceedings) Rules 1962, as arbitrary, illegal, capricious and violative of provisions of ESI Act, and consequently set aside the same by directing the respondents not to holding of petitioners S.B. Account bearing No 52200511502 maintained with 4th respondent bank and pass.."

2. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents No.1 to 3.

3. Learned counsel for the petitioner submitted that the petitioner was an individual contractor providing manpower to the companies. During the year 2015, he applied for work with NTPC, Ramagundam. So as to get a work order from NTPC, registration with the ESI was mandatory. The petitioner applied for a code with respondents' organization and obtained code No.5200052143

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0000999. The NTPC rejected the application submitted by the petitioner, as such, the petitioner had not paid any payments to ESI as no worker or labour force was employed by the petitioner since 2015. While so, the 3rd respondent passed orders on 05.04.2021 under Section 45-G of the Employees' State Insurance Act (for short 'ESI Act'), read with Second and Third Schedule of the Income Tax Act, 1961 and Income tax (Certificate of Proceedings) Rules, 1962 directing the 4th respondent to hold an amount of Rs.3,09,242/- from the petitioner's bank account No.52200511502. No notice was served on the petitioner as contemplated under the ESI Act. No explanation was called for from the petitioner and no opportunity was provided to him to explain the said circumstances under Section 45 of the ESI Act. The petitioner approached the respondents personally several times, but they failed to provide personal hearing, as such filed the writ petition.

4. Learned Standing Counsel for the respondents No.1 to 3 submitted that the petitioner himself registered his establishment under the provisions of ESI Act online with effect from 01.08.2015 but had not paid any contributions since then. The respondent Corporation issued a notice dated 15.02.2019 advising the petitioner to pay contribution from the date of coverage. The petitioner received the notice as per the postal consignment track reports, but had not paid the contribution. As such, the Corporation issued C-18 dated 09.04.2019 proposing to determine the contribution for the period from 01.08.2015 to 31.03.2018. The C-18 notice was received by the petitioner, but he neither attended the personal hearing on 20.05.2019 nor paid the contributions for the period mentioned in the notice. After giving another opportunity to the petitioner, the respondent Corporation invoked the provisions under Section 45-A of the Act determining the contribution as Rs.2,03,776/- for the above period. The petitioner received order passed under Section 45-A of the Act, but had not availed the opportunity of appeal before the appellate Authority under Section 45 AA of the Act within 60 days. As such, the respondent issued recovery certificate in Form C-19 dated 12.03.2021 to the recovery officer to recover an amount of Rs.3,04,895/- including the interest. The recovery officer also issued a notice to the petitioner as the petitioner failed to pay the dues. The recovery officer issued an order under Section 45-G of the ESI Act, dated 05.04.2021 to the petitioner's bank endorsing a copy to the petitioner. The petitioner approached the court by filing the writ petition without availing the remedy of appeal under Section 45-AA of the ESI Act and hence, prayed to dismiss the writ petition.

5. Perused the record. Learned Standing Counsel for the respondents contended that several notices were issued to the petitioner, but he had not responded. But, the learned counsel for the petitioner submitted that the petitioner was not residing in the said address and no notice was served on him till date. He contended that no online records were generated as the petitioner was not doing any contractual services nor engaged any labour and closed his operations as a labour contractor. The contention raised by the learned Standing Counsel was that the petitioner had to challenge the notice under Section 45-A of the ESI Act,

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but without challenging the same, he was challenging the notice under Section 45-G of the ESI Act which was not permissible and relied upon the judgment of a Division Bench of this Court in Ashok Leyland Limited, Ductron, Castings Limited, R.R. District v. Deputy Tahsildar/Special Revenue Inspector (ESI) Recovery Cell, Collectorate, R.R. District, Hyderabad and another 2001 (4) ALD 96 (DB). This Court, relied on the judgment of the Hon'ble Apex Court in Employees' State Insurance Corporation v. F. Fibre Bangalore (Private) Limited [1997 SCC (L&S) 190], wherein it was held that:

"5. The Full Bench of the High Court has held that in a case where the order under Section 45-A becomes final, there is no need for the Corporation to seek adjudication before the Insurance Court. In all other cases, the Corporation is required to go to the Insurance Court, have it adjudicated and then make a demand. We are of the view that the Full Bench of the High Court is clearly in error to reach that conclusion. Though Section 75 of the Act does not envisages as to who has to approach the Insurance Court, by necessary implication when the employer denies the liability or applicability of the provisions of the Act or the quantum of the contribution to be deposited by the employer, it is for him to approach the Insurance Court and seek adjudication. It is not for the Corporation in each case whenever there is a dispute, to go to the Insurance Court and have the dispute adjudicated. Otherwise; the Act would become unworkable and defeat the object and purpose of the Act."

6. Considering the said observations, this Court in the above case held that the writ petition was not maintainable in view of the remedy available before the Employees' State Insurance Court.

7. The petitioner, without approaching the ESI Court, had directly approached this Court without availing the remedy available to him before the ESI Court. Hence, it is considered fit to dispose of this writ petition directing him to approach the ESI Court by filing appropriate application and also directing the ESI Court to dispose of the same in accordance with law.

8. In the result, the Writ Petition is disposed of directing the petitioner to approach the ESI Court by filing appropriate application and the ESI Court is directed to dispose of the said application in accordance with law. The respondents No.1 to 3 shall not take any coercive steps for recovery of the purported due amount from the petitioner for a period of sixty (60) days. No order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

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