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W.P. No.26384 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 10.10.2022

CORAM:

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

**W.P. No.26384 of 2022**

**and**

**W.M.P. No.25463 of 2022**

New Prince Shri Bhavani College  
of Engineering  
Rep. by its Chairman,  
K.Logan @ K.Loganathan

...Petitioner

vs.

1. The State of Tamil Nadu  
Rep. by its Principal Secretary  
to Government,  
Labour and Employment Department,  
Fort St. George,  
Chennai – 600 009.

2. Employees' State Insurance Corporation,  
Rep. by its Regional Director,  
143, Sterling Road,  
Nungambakkam,  
Chennai – 600 034.

3. Employees' State Insurance Corporation,  
Rep. by its Deputy Director,  
143, Sterling Road,  
Nungambakkam,  
Chennai – 600 034.

... Respondents



W.P. No.26384 of 2022

Prayer : Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 3<sup>rd</sup> respondent passed in No.TN/Ins.VIII/51-00-111173-000-1304/C18 Adhoc-7/17, dated 28.10.2021 and to quash the same and direct the respondents to waive / write – off the amount demanded under section 91-C of the ESI Act, 1948.

For petitioner : Mr.P.Muthusamy  
For respondents : Mr.G. Nanmaran,  
Spl. Govt. Pleader for R1  
Mr.S.P. Srinivasan,  
Standing counsel for R2 & R3

### **ORDER**

By consent of both parties, this writ petition is taken up for final disposal in the admission stage itself.

2. Mr.G. Nanmaran, learned Special Government Pleader accepts notice for the 1<sup>st</sup> respondent and Mr.S.P. Srinivasan, learned Standing counsel accepts notice for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

3. This writ petition has been filed challenging the order dated 28.10.2021 passed by the 3<sup>rd</sup> respondent under the Employees' State Insurance Act, 1948 (hereinafter referred to as “ESI Act”) directing the petitioner to pay a sum of Rs.27,50,972/- towards ESI contributions for the period of 2011-13 to 2012-2016.



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4. The petitioner has challenged the impugned order on the following grounds :

a) no opportunity of personal hearing was granted to the petitioner before passing of the impugned order under Section 45-A of the ESI Act.

b) the respondents failed to consider the representation of the petitioner dated. 17.11.2021

c) the findings of the respondents that the petitioner Institution had appointed 135 employees for wages is incorrect. According to the petitioner, during the said period, the petitioner was having only 131 employees out of which 71 had resigned. According to the petitioner only 14 of its employees were eligible for ESI contribution.

5. The petitioner claims that the amount determined by the 3<sup>rd</sup> respondent under the impugned order is incorrect. Several representations were sent by the petitioner that the determination is not based on any evidence.

6. Admittedly, there is an appellate statutory remedy available to the petitioner as against the impugned order under Section 75 of the ESI Act, before the ESI Court.



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7. The learned counsel for the petitioner would submit that if the petitioner has to exercise the statutory appellate remedy they will have to pay the mandatory pre-deposit amount of 50% under Section 75 of the ESI Act. According to him, since the petitioner is not liable to pay the determined amount as per the impugned order, they cannot be directed to approach the ESI Court under Section 75 of the ESI Act, 1948.

8. However, as seen from the provisions of Section 75 of the ESI Act, 1948, the ESI Court is having the power to waive or reduce the pre-deposit amount provided the petitioner is able to give sufficient reasons while seeking for such waiver or reduction of the pre-deposit amount. The petitioner's interest will be adequately protected if a direction is issued to the ESI Court as and when a statutory appellate remedy is exercised by the petitioner as against the impugned order before the ESI Court under Section 75 of the Act 1948 to consider the waiver/ reduction of the pre-deposit application in the light of the grounds raised in this writ petition viz., that the petitioner was not afforded sufficient opportunity by the 3<sup>rd</sup> respondent before passing of the impugned order dated 28.10.2021.

9. For the foregoing reasons, this Court is of the considered view that the petitioner has approached this Court under Article 226 of the



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Constitution of India without exercising the statutory appellate remedy available under Section 75 of the ESI Act, 1948. Therefore, the petitioner will have to necessarily approach the ESI Court, if aggrieved by the impugned order passed by the 3<sup>rd</sup> respondent.

10. In the light of the discussions referred to supra, this writ petition is disposed of by directing the petitioner to file the statutory appeal before the appropriate ESI Court as against the impugned order dated 28.10.2021 passed by the 3<sup>rd</sup> respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of the statutory appeal, the concerned ESI Court shall entertain the waiver application filed by the petitioner under Section 75 (2-B) of the ESI Act 1948 seeking for waiver / reduction of the mandatory pre-deposit amount and pass final orders on merits and in accordance with law after giving due consideration to the reasons given by the petitioner seeking for waiver / reduction.

11. No coercive steps shall be taken by the respondents for a period of two weeks from the date of receipt of a copy of this order to enable the petitioner to file the statutory appeal under Section 75 of the ESI Act.



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**WEB COPY** 12. With the aforesaid directions, this writ petition is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

**10.10.2022**

**(½)**

Index: Yes/No  
Internet: Yes/No  
Speaking Order/Non-Speaking Order  
vsi2

To :

1. The Principal Secretary  
The State of Tamil Nadu to Government,  
Labour and Employment Department,  
Fort St. George,  
Chennai – 600 009.

2. The Regional Director,  
Employees' State Insurance Corporation,  
143, Sterling Road,  
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**ABDUL QUDDHOSE, J.**

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10.10.2022

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