



WEB COPY



W.P.No.965 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM :

**THE HONOURABLE MRS. JUSTICE R.HEMALATHA**

W.P.No.965 of 2021 &  
W.M.P. No.1050 of 2021

Tamil Nadu Co-Operative Milk Producer's  
Federation Limited,  
Represented by its Managing Director,  
Head Office, Aavin Illam,  
Nandanam, Chennai 600 035

... Petitioner

Vs.

1. The Assistant Director,  
Employee State Insurance Corporation  
Regional Office,  
Panchdeep Bhawan, 143, Sterling Road,  
Chennai 600 034.
2. The Employee State Insurance Corporation,  
Represented by its Recovery Officer,  
Panchadeep Bhawan, 143, Sterling Road,  
Chennai 600 034.
3. The IDBI Bank,  
Represented by its Branch Manager,  
Nelson Manickam Road Branch,  
Nelson Tower, New No.91,  
Nelson Manickam Road, Nungambakkam,  
Chennai.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the first and second respondent in Ref. No. TN / REC / 45G / 5151000551310001002 / CCR-97352 dated 07.01.2021 and the attachment notice in Ref.No.51000551310001002/CP/396322/CCR-97352 dated 07.12.2020, quash the same and consequently direct the third respondent not to release the amounts of claim by the second respondent from the bank accounts of the petitioner.

For Petitioner : Mr. R. Bala Ramesh  
For Respondents : M/s.G. Narmadha  
for Mr.G.Bharadhwaj

### ORDER

The Writ Petitioner is a registered Co-operative Apex Federation under the Tamil Nadu Co-operative Societies Act, 1983 formed with the objective of upliftment of the economy of Rural marginal Farmers by procuring surplus milk from the Primary Milk Producers' Societies.

2. According to the Writ Petitioner, the Government of Tamil Nadu in exercise of its powers conferred under Section 88 of the Employees' State Insurance Act, 1948 (hereinafter referred to as "ESI Act") exempted Marketing units of the Federation from application of



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the provisions of the Act as detailed hereunder.

| Sl.No. | <i>Name of the Unit</i>                    | <i>Date from which exemption is granted</i>       |
|--------|--------------------------------------------|---------------------------------------------------|
| 1.     | General Manager's Office                   | From 16.04.1976 (date of formation of the office) |
| 2.     | Ambattur Dairy                             | 06.07.1992.                                       |
| 3.     | Central Dairy                              | 06.07.1992                                        |
| 4.     | Madhavaram Milk Colony,<br>Chennai 600 051 | 06.07.1992                                        |
| 5.     | Ayyanavaram Dairy Unit                     | 06.07.1992                                        |
| 6.     | Transport Unit                             | 01.01.1975                                        |
| 7.     | Sholinganallur Unit                        | 01.06.1996.                                       |

The Writ Petitioner had already sent a communication to the Government seeking exemption for the period from 01.02.2016 to 31.01.2020 and the same is pending with the Government. Despite the same, a show cause notice under Ref. No.TN/Ins-VI/51-00-055131-000-1002-(MEC) was issued by the 1st respondent on 07.08.2020 to the petitioner Federation stating as to why a sum of Rs.33,76,510/- should not be recovered from them. The contention of the Writ Petitioner is that this notice was issued even without hearing the present writ petitioner and that the calculations made by them are erroneous. In this regard, the Deputy General Manager (Finance) of the Federation met the 1st respondent on 08.01.2021 and explained to him the exemptions granted to the Marketing Unit of the



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Writ Petitioner at different spells. The 1st respondent also promised the Writ Petitioner that he would correct the error in calculation and revise the recovery order. However, they sent a Recovery Notice under Ref. No. 51000551310001002/CP/396322/CCR-97352 dated 07.12.2020 and also issued an attachment notice in TN / REC / 45G / 5151000551310001002 / CCR-97352 dated 07.01.2021. Challenging the abovesaid Recovery notice and Attachment Notice, the present Writ Petition is filed.

3. Mr. R. Bala Ramesh, learned counsel for the petitioner drew the attention of this Court to the various Government Orders issued by the Government of Tamil Nadu exempting the present petitioner's Marketing Unit from the purview of ESI Act. According to him, the show cause notice was issued during COVID 19 Pandemic situation and when their petition seeking exemption from payment under the ESI Act was pending with the Government, the respondents 1 and 2 cannot initiate any recovery proceedings against them.

4. Per contra, Ms.G. Narmadha, learned counsel for the respondents would contend that as per Section 91-A of the ESI Act, any notification granting exemption under Sections 87, 88, 90 or 91 may be



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issued so as to take effect prospectively on such date as may be specified therein and that the exemption cannot be granted retrospectively.

According to her the Government of Tamil Nadu had also rejected the request made by the petitioner Federation for grant of exemption to certain number of employees of the Tamil Nadu Co-operative Milk Producers' Federation Limited, Chennai, from the provisions of the ESI Act under Section 87 read with Section 91-A of the ESI Act for the period from 01.02.2016 to 31.01.2020 and therefore, the present Writ Petition cannot be maintained. It is her further submission that the quantum/determination of the amount has not even been challenged by the present writ Petitioner and that the Government has not been made as a party in the present Writ Petition. She also filed a copy of the order of the Government in letter No.697/L1/2021-4 dated 03.06.2021 rejecting the request of the present Writ Petitioner seeking exemption from the purview of the provisions of the ESI Act for the period from 01.02.2016 to 31.01.2020.

5. At the outset it may be observed that the Writ Petitioner had contended that the amount calculated by the respondents 1 and 2 is erroneous. However, they have not challenged the same. On the



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contrary, they have challenged the very issuance of the Recovery Notice and the consequent Attachment Order passed by the respondents 1 and 2 on the sole ground that they have submitted a petition before the Government seeking exemption for certain number of employees of the Writ Petitioner Federation from the provisions of the ESI Act under Section 87 read with Section 91A of the ESI Act for the period from 01.02.2016 to 31.01.2020. The Labour and Employment Department, Government of Tamil Nadu, rejected the request made by the Writ Petitioner Federation in its proceedings in Letter No.697/L1/2021-4 dated 03.06.2021.

5.1. As rightly contended by the learned counsel for the respondents as per Section 91A of the ESI Act any notification granting exemption under Sections 87 to 91 of the ESI Act can be issued only prospectively on such date as may be specified therein and no exemption can be granted retrospectively. Moreover, in the instant case, the Government has passed an order rejecting the request made by the present Writ Petitioner. When the petitioner states that they have sent request to the Government seeking exemption, they have not made the Government as a party to the present Writ Petition. On this ground also



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the Writ Petition is liable to be dismissed. Thus viewed from any angle

the Writ Petition fails and is therefore dismissed. No costs.

Consequently connected Writ Miscellaneous Petition is closed.

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Index : yes/no

Speaking /Non speaking Order

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R.HEMALATHA, J.

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