



W.P.No.74 of 2023

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

**DATED: 10.01.2023**

**CORAM :**

**The Hon'ble MR.JUSTICE ABDUL QUDDHOSE**

**W.P. No.74 of 2023  
and W.M.P.Nos.62 and 63 of 2023**

M/s.Vijay Diabetes & Speciality  
Centre (A Unit of Sristi Fertility  
Centre, Vijay Institute of Paramedical  
Centre), Rep. by its Head-Operations  
Mr.Giridhar Reddy, 1st Floor, Shiv Complex,  
Old Bangalore Road, Opp: Vijay Hospital,  
Hosur - 635 109.

.. Petitioner

-VS-

The Employees State Insurance Corporation,  
Rep. by its Deputy Director (i/c),  
Sub-Regional Office (Salem),  
No.39/57, Theerthamalai Vaniga Valagam,  
Three Roads, Salem 636 009.

.. Respondent

Petition filed under Article 226 of the Constitution of India  
praying for issue of Writ of Certiorari to call for the records of the  
respondent in Ref.No.630009360800014101/Ins.I/SRO/SLM/196/20  
dated 25.02.2021 and quash the same.

For Petitioner : Mr.R.Manoharan

For Respondent : Ms.S.Jayakumari  
Stdg. Counsel

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W.P.No.74 of 2023

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## **ORDER**

The petitioner is aggrieved by the impugned communication dated 25.02.2021 issued by the Authorised Officer to the Recovery Officer of the ESI Corporation. In the impugned communication, it is noted that the petitioner establishment is liable to pay ESI contributions amounting to a total sum of Rs.68,86,191/-, which includes interest amount of Rs.21,88,301/-.

2. On the last hearing date, this Court had directed the learned standing counsel appearing for the respondent Corporation to get instructions as to whether any order is passed by the respondent Corporation under Section 45-A of the ESI Act or not, for determining the ESI contributions payable by the petitioner, which enables them to take further steps for enforcement of the determination order.

3. Today, the learned standing counsel appearing for the respondent Corporation would submit that no order has been passed against the petitioner under Section 45-A of the Employees' State Insurance Act, 1948 (in short 'the ESI Act') determining the amount of ESI contributions payable by the petitioner. Therefore, it is clear



W.P.No.74 of 2023

that even without passing a determination order under Section 45-A of the ESI Act, the recovery proceedings has been initiated against the petitioner under Sections 45-C to 45-I of the ESI Act by the respondent Corporation. The said exercise made by the respondent is impermissible in law as per the provisions of the ESI Act.

4. Necessarily, the respondent ought to have granted the petitioner an opportunity to produce the relevant records with regard to the ESI contributions demanded by the respondent Corporation. Even without passing an order under Section 45-A of the ESI Act for determination of the ESI contributions payable by the petitioner, the respondent Corporation has taken coercive steps against the petitioner as per the provisions of Sections 45-C to 45-I of the ESI Act, as seen from the impugned communication, which is not permissible under law.

5. For the foregoing reasons, the impugned communication dated 25.02.2021 has to be necessarily quashed and the matter remanded back to the respondent Corporation for fresh consideration on merits and in accordance with law, after affording a fair hearing to the petitioner by enabling them to produce all relevant records in



W.P.No.74 of 2023

support of their defence. Accordingly, this Court directs the respondent Corporation to pass an order under Section 45-A of the ESI Act, after affording a fair hearing to the petitioner including permitting them to produce all relevant records in support of their defence, within a period of twelve weeks from the date of receipt of a copy of this order.

6. With the aforesaid direction, the writ petition is disposed of. No costs. Consequently, W.M.P.Nos.62 and 63 of 2023 are closed.

10.01.2023

Index : Yes/No

Speaking/non-speaking order

sra

To

The Deputy Director (i/c),  
Employees State Insurance Corporation,  
Sub-Regional Office (Salem),  
No.39/57, Theerthamalai Vaniga Valagam,  
Three Roads, Salem 636 009.



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W.P.No.74 of 2023

Abdul Quddhose, J.

(sra)

W.P.No.74 of 2023

10.01.2023