



**W.P.(MD)No.10786 of 2020**

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED:13.02.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

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Food Corporation of India,  
Represented by its Divisional Manager,  
Divisional Office,  
3<sup>rd</sup> Mile, MG Complex,  
Thoothukudi – 628 008.

... Petitioner

**Vs.**

1. Employees State Insurance Corporation,  
represented by its Deputy Director,  
Panchdeep Bhavan, ESIC Complex,  
Salai Street,  
Vannarpettai,  
Tirunelveli – 627 003.
2. Employees State Insurance Corporation,  
represented by its Assistant Director, (Legal),  
Panchdeep Bhavan, ESIC Complex,  
Salai Street,  
Vannarpettai,  
Tirunelveli 627 003.

... Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the second respondent in his proceedings vide proceedings



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No.66/T/11/13/41397/Legal/SRO/TLI dated 28.02.2020 and to quash the same and consequently order refund of the sum of Rs.12,97,249/- to the petitioner in the light of the law laid down by this Court in C.M.A(MD)No.534 of 2017, dated 06.11.2017, which was affirmed by the Hon'ble Apex Court in Civil Appeal Nos.8841-8842 of 2019, dated 19.11.2019 in the case of ESI Corporation vs. FCI Workers Union.

For Petitioner : Mr.S.Vijakumar  
For Respondents : Mr.C.Karthick

### **ORDER**

This writ petition has been filed to quash the proceedings of the second respondent vide proceedings No.66/T/11/13/41397/Legal/SRO/TLI, dated 28.02.2020 and consequently, to order for refund of a sum of Rs.12,97,249/- to the petitioner in the light of the law laid down by this Court in C.M.A(MD)No.534 of 2017, dated 06.11.2017, which was affirmed by the Hon'ble Apex Court in Civil Appeal Nos.8841-8842 of 2019, dated 19.11.2019 in the case of ESI Corporation vs. FCI Workers Union.

2. The learned counsel appearing for the petitioner would submit that the petitioner is a statutory corporation engaged in the activities of



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Procurement, Movement, Storage and public distribution of food grains within the country and also to import and export of food grains when there is surplus and scarcity as entrusted by the Government of India from time to time. The activities of the petitioner Corporation was originally done by the Government of India, Ministry of Consumer Affairs, Food and Public Distribution but the same was entrusted to the Corporation after construction of Food Corporation of India in the year 1964 by an Act of Parliament. The petitioner Corporation was established under Section 3 of Food Corporation Act, 1965, having its headquarters at New Delhi having one of its Divisional Office at Tuticorin. The petitioner is not covered under the Employees State Insurance Act, 1948 as there is no separate notification, under Section 1(5) of the said Act.

3. The further case of the petitioner is that the petitioner Corporation has got several storage godowns all over the country and in Tamil Nadu. The petitioner has got two depots for handling of loading and unloading of food grains and as one at Tuticorin, within the jurisdiction of Tirunelveli District of the ESI Corporation. Wherever the



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depot of the Corporation is notified under CL(R&A) Act, 1970, the petitioner Corporation engages Departmental labours and DPS(Direct Payment System) workers as per the policy of the corporation and in non-notified depot, the Corporation engages contract labours. While so, the first respondent had invoked the provisions of Employees State Insurance Act, 1948 and brought the petitioner under the purview of the Act with effect from 01.10.2012 and consequently, allotted a code No.66000413970001020/12132080/778/13, dated 13.12.1993 for the period 10/12 to 10/13 claiming contribution in respect of 52 employees on assumed wages.

4. While the matter stood thus, the Government of India, Ministry of Labour and Employment, issued a notification, dated 20.07.2009 extending the provisions of ESI Act to casual/contractual labourers engaged in the warehousing corporation. Subsequently, the respondent Corporation issued Form C.18 claiming a sum of Rs.3,62,505/- as contribution in respect of 52 employees on assumed wages at Rs.8250/- and fixed personal hearing on 08.01.2014. Subsequently, the first respondent without providing reasonable opportunity, passed an order



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directing the petitioner to pay a sum of Rs.5,37,691/-. Challenging the said order, the petitioner filed E.S.I.O.P.No.2 of 2015 on the file of the Labour Court, Tirunelveli, stating that DPS workers are not on par with casual/contractual workers and hence, the notification, dated 20.07.2009, would not apply to the petitioner Corporation. However, the Labour Court, rejected the contentions of the petitioner and ultimately, came to a conclusion that the workers engaged by the petitioner would come under the Purview of the Act and that, the notification by the Government of India would apply to the said category of workers and dismissed the petition filed by the petitioner. Aggrieved by the order of the Labour Court, the FCI workers Union filed C.M.A(MD)No.534 of 2017 before this Court wherein the petitioner was also a party wherein this Court came to a conclusion that the notification, dated 20.07.2009 unambiguously states that only the casual and contract employees of the warehousing establishments are brought within the fold of the Act. Pursuant to the said order, the petitioner submitted an application for refund of the amount paid pending adjudication before the ESIOP Court as well as before this Court in C.M.A(MD)No.534 of 2017. However, the first respondent declined to refund the amount but on the other hand



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informed that the order of this Court is subject matter of a Civil Appeal before the Hon'ble Supreme Court in Civil Appeal Nos.8841 – 8842 of 2019. However, the Hon'ble Supreme Court vide order dated 19.11.2019 dismissed the appeals upholding the findings rendered in C.M.A(MD)No.534 of 2017. Thereafter, the petitioner made several representations seeking to refund the amount paid by the petitioner towards contribution. However, the second respondent passed the impugned order, dated 28.02.2020, rejecting the request of the petitioner. Hence, challenging the same the petitioner has filed this writ petition with the aforesaid prayer.

5. The counsel appearing for the petitioner would submit that when this Court passed a categorical order, it is the duty cast upon the respondents to refund the contribution made by the petitioner. However, the same was rejected on the ground that as per Regulation 40(1) of ESI (General) Regulations 1950, any contribution paid by a persons under the erroneous belief that the contributions were payable by that person under that Act may be refunded without interest by the Corporation to that person, if application to that effect is made in writing before the



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commencement of the benefit period corresponding to the contribution period in which such contribution was paid and further, there is no direction by this Court as well as by the Hon'ble Apex Court for refund of amount. Once this Court as well as the Hon'ble Apex Court held that the ESI Act is not applicable to DPS workers, any contribution made by them has to necessarily be refunded.

6. Per contra, learned standing counsel appearing for the respondent Corporation would submit that as per Regulation 40(1) of ESI (General) Regulations 1950, any contribution paid by any person under the erroneous belief that the contributions were payable by that person under that Act may be refunded without interest by the Corporation to that person, if application to that effect is made in writing before the commencement of the benefit period corresponding to the contribution period in which such contribution was paid. However, in the present case, admittedly, the DPS employees were attached with the Corporation at the relevant period and enjoyed the benefit. The refund application is filed after the order passed by this Court as well as by the Hon'ble Apex Court. Once enjoyed the medical facilities of the respondent



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Corporation, the petitioner is not entitled for refund of the amount. Further, they have stopped the contribution as per the order of this Court as well as the Hon'ble Apex Court and hence, prays for dismissal of this writ petition.

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. Admittedly, the issue whether the Employees' State Insurance Act, 1948, is applicable to DPS workers or not, was settled before this Court and the same was affirmed by the Hon'ble Apex Court, wherein this Court has held that the ESI Act is not applicable to DPS workers. However, the issue raised in this writ petition is whether the petitioner is entitled for refund of contribution made, in terms of Regulation 40(1) of ESI (General) Regulations 1950. For better appreciation, the said regulation is extracted hereunder:

*“40. Refund of contribution erroneously paid. —  
(1) Any contribution paid by a person under the erroneous belief that the contributions were payable by that person under that Act may be refunded without*



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*interest by the Corporation to that person, if application to that effect is made in writing before the commencement of the benefit period corresponding to the contribution period in which such contribution was paid.”*

9. A perusal of the above Regulation makes it clear that any contribution paid by the petitioner under the relief that the contributions were payable by that person under that Act may be refunded without interest by the Corporation to that person, if application to that effect is made in writing before the commencement of the benefit period corresponding to the contribution period in which such contribution was paid. However, admittedly, the petitioner Food Corporation paid contribution on behalf of the DPS workers from 2017 onwards and this Court rendered a decision only in the year 2017 and the same was upheld by the Hon'ble Apex Court on 19.11.2019. Admittedly, the petitioner Corporation enjoyed the benefit from the respondent Corporation. Further, the respondent Corporation is not private oriented organization and they collected contribution from the employer and spent the amount for the welfare of the employees. Hence, the claim made by the



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petitioner is not sustainable one. Once they enjoyed the benefit, they are not entitled for refund of the contribution made and hence, the prayer made by the petitioner cannot granted.

10. In the result, this writ petition is dismissed. No. Costs.

**07.02.2023**

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Index: Yes/No

NCC: Yes/No



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**M.DHANDAPANI, J.**

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