



WEB COPY



W.A.No.2396 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2024

CORAM :

**THE HONOURABLE MR. JUSTICE M.S. RAMESH**  
**AND**  
**THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN**

W.A.No.2396 of 2024  
and C.M.P.No.16982 of 2024

Tamil Nadu Co-op Milk  
Producers' Federation Limited,  
Rep. by its Managing Director,  
Head Office, Aavin Illam,  
Nandanam,  
Chennai – 600 035.

... Appellant

*Vs.*

1.The Assistant Director,  
The Employees State Insurance Corporation  
Regional Office,  
Panchdeep Bhawan,  
143, Sterling Road,  
Chennai – 600 034.

2.The Employees State Insurance Corporation,  
Rep. by its Recovery Officer,  
ESI Corporation Office,  
Panchdeep Bhawan,  
143, Sterling Road,  
Chennai – 600 034.

3.The IDBI Bank,



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Rep. by its Branch Manager,  
Nelson Manickam Road, Branch,  
Nelson Tower, New No.91,  
Nelson Manickam Road,  
Nungambakkam, Chennai.

... Respondents

**PRAYER:** Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order made in W.P.No.965 of 2021, dated 07.11.2023 and thereby allow the appeal.

For Appellant : Mr.S.Vijayakumar,  
Senior Counsel  
for Mr.K.N.Pandian

For R1 & R2 : Ms.G.Narmadha  
for Mr.Bhardwaj

### **JUDGMENT**

(Judgment of the Court was made by *M.S.RAMESH, J.*)

**1.1.** The appellant is an Establishment covered under the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the Act'). Under Section 40 r/w. Section 39 of the Act, the principal employer is required to pay in respect of every employee, both the employer's, as well as the employee's contribution, at the rates specified in ESI (Central Rules) and in terms of the ESI (General Regulations).

**1.2.** The Establishment had defaulted to pay the contribution as



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aforesaid, for the period commencing from February 2016 to December 2019, amounting to Rs.25,02,781/-. Consequently, a certificate of recovery dated 18.11.2020 was forwarded by the Authorized Officer of ESI Corporation, Chennai, for recovery of a sum of Rs.33,34,546/-, which includes the arrears of contribution and interest under Section 39(5) of the Act. A notice of demand under Form No.ESI CP2, dated 07.12.2020, was also issued for a total sum of Rs.33,34,546/-, which included the cost also. Since the Establishment had failed to make the payment, a notice dated 07.01.2021 under Section 45G of the Act was issued for attachment of properties.

**1.3.** The Establishment had challenged the attachment notices dated 07.12.2020 and 07.01.2021, through a Writ Petition in W.P.No.965 of 2021, predominantly on the ground that, various Government Orders were issued exempting the Establishment from the purview of the Act and also by quoting Covid-19 pandemic situation as an impediment, sought for interference.

**1.4.** The learned Single Judge had dismissed the Writ Petition, through an order dated 07.11.2023, by holding that the exemption granted under Section 87 r/w. 91A of the Act for some period before the wage



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period, for which the impugned orders were issued, cannot be applied retrospectively, in view of bar under Section 91A of the Act. The said order is put under challenge in this Intra Court Appeal.

2. The grounds that were canvassed before the learned Single Judge in the Writ Petition, were once again reiterated before us. In our view, the Writ Petition itself before the learned Single Judge, challenging the orders of attachment, cannot be maintained, in view of the alternate remedy available to the Establishment for approaching the Employees' Insurance Court constituted under Section 74 of the Act.

3. The matters that are to be decided by the Employees' Insurance Court, have been spelt out under Section 75 of the Act and the grounds raised before the Writ Court, as well as in this appeal, would fall within the purview of the matters that could be decided only by the Employees' Insurance Court. When a statutory provision provides for an alternate remedy, the power of this Court under Article 226 of the Constitution of India, cannot be resorted to, except for very few exceptions like lack of jurisdiction or authority, violation of the principles of natural justice, etc.



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4. The grounds raised by the appellant both before the learned Single Judge, as well as this Court, are not any of those exceptions, which may entitle the appellant to directly approach the Writ Court, without exhausting its alternate remedy under Section 77 of the Act. In view of this, the Writ Petition itself ought to have dismissed on the ground of availability of alternate remedy.

5. The learned counsel for the appellant submitted that a considerable time has been consumed during the pendency of the Writ Petition, as well as this Writ Appeal and therefore, they may be deprived of approaching the Employees' Insurance Court, in view of the limitation provided therein. He also pleaded that the Establishment is a Federation of Milk Producer, which is not financially sound and therefore, a sympathetic approach may be extended to enable them to approach the Employees' Insurance Court.

6. Though the learned Single Judge of this Court had considered the case of the appellant/Establishment on merit and law, we are conscious of the fact that the Establishment intends to raise similar grounds before the Employees' Insurance Court and therefore, it would be appropriate to grant such liberty by excluding the time spent during the litigation before this



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7. Accordingly, the Writ Appeal stands dismissed with liberty to the appellant/Establishment to file an application, invoking Section 77 of the Employees' State Insurance Act, 1948. While filing such an application, the concerned Employees' Insurance Court may exclude the period spent by the employer, from the date of filing of the Writ Petition till the date of passing of the final order in this Writ Appeal, while calculating the limitation period. Thereafter, in case, any application is filed under Section 77 of the Employees' State Insurance Act, 1948 and is taken on file by the Employees' Insurance Court, the same shall be adjudicated, without being influenced by the observations and findings rendered in the order dated 07.11.2023 passed in W.P.No.965 of 2021, as well as the present judgment in this Writ Appeal. No costs. Connected miscellaneous petition is closed.

**J]**

**[M.S.R., J]**

**[M.J.R.,**

**14.10.2024**

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

***Sni***



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