



W.P.No.33852 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 13.12.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.33852 of 2024
and W.M.P.No.36666 of 2024

M/s.TAMPCOL
Tamil Nadu Medicinal Plant Farms
and Herbal Medicine Corporation Ltd.,
Rep. by its Managing Director,
Anna Hospital Campus,
Arumbakkam,
Chennai - 600 106. .. Petitioner

Versus

1. The Recovery Officer,
Employees State Insurance Corporation,
Sub-Regional Office (Salem),
39/57, Theerthamalai Vaniga Valagam,
Three Roads,
Salem - 636 009.
2. Office of the Recovery Officer,
Employees Provident Fund Organization,
Ministry of Labour & Employment,
Government of India,
Regional Office, P.B.No.588, Shree Complex 'D' Block,
No.18, Madurai Road, Tiruchirapalli - 620 008.
3. New Security Force,
12, B.S.S.Complex, Trunk Road,
Rabi Nagar, Thiruvanaikovil,
Trichy - 5. .. Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari calling for the records of the 1st respondent in proceedings No.SLM/ESI/RECY/SCN/60-00-072052-000-1018 and quash the impugned notice, dated 06.09.2024.

For Petitioner : Mr.P.Raghunathan,
for M/s.T.S.Gopalan and Co

For Respondents : Mr.S.P.Srinivasan,
Standing Counsel for R1

: Mr.S.M.Deenadayalan, for R2

: R3 - Not ready in notice

ORDER

This Writ Petition is filed by the petitioner Corporation which is a state owned undertaking of the State of Tamil Nadu.

2. It has a sum of Rs.65,78,713/- to be paid to the third respondent herein namely, New Security Force, 12, B.S.S.Complex, Trunk Road, Rabi Nagar, Thiruvanaikovil, Trichy - 5. The said establishment seems to have been covered both under the Employees' State Insurance Act, 1948 and the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The said establishment also got separate code numbers in respect of their



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employees. It seems that the said organization defaulted with reference to the payment of dues under both the statutes and accordingly, both the authorities passed the orders directing the said management to pay the amount due.

3. It seems that there was a default and a Garnishee Notice was issued to the petitioner by the first respondent namely, the Recovery Officer, Employees State Insurance Corporation on 06.09.2024 under Section 45G(3)(X) of the Employees' State Insurance Act, 1948 requesting them to pay over the sums which are held by them to the ESI Corporation as the third respondent is due a sum of Rs.1,64,85,602/- to them. Similarly, the Provident Fund authorities also issued a Garnishee Order, dated 20.07.2023 directing them to pay the entire sum of Rs.65,78,713/- held by them to the Regional Provident Fund Commissioner, Trichy claiming dues more than the said amount which is due to them. Apart from the above two claims, it is also submitted that now, subsequently, the GST authorities made a claim in respect of the said amounts.



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4. *Mr.P.Raghunathan*, learned Counsel for the petitioner would submit that the petitioner is only holding the sum as a garnishee. Whichever authority the petitioner pays, subsequently, there should not be any further claim with reference to the petitioner organisation and no organisation should hold the petitioner as a defaulter and should not claim any further sum.

5. *Mr.S.P.Srinivasan*, learned Standing Counsel for the first respondent would submit that in this case, the delivery of the Garnishee Order by the ESI Corporation was first in point of time. Therefore, logically at that point of time, the amount should have been paid to the ESI Corporation and therefore, the money should be ordered to be paid to the ESI Corporation.

6. *Mr.S.M.Deenadayalan*, learned Counsel for the second respondent organisation would submit that he has received the papers only today and seeks further time to get instructions in this regard. The private notice on the third respondent management, whose money is at stake, is served and there is no appearance on behalf of the third respondent.



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7. I have considered the rival submissions made on either side and perused the material records of this case.

8. I am unable to countenance the submission made by the learned Counsel for the ESI Corporation that the Court should go only by the date of service of the Garnishee Order. When the amount is only limited, i.e., a sum of Rs.65,78,713/- that is available with the first respondent, this Court deems it fit that the same should be disbursed as per law. The learned Counsel for the ESI Corporation would rely upon Section 94 of the Employees' State Insurance Act, 1948. Section 94 is only for inclusion of the debts under the Insolvency Act or under the Companies Act, if and when the Insolvency and Bankruptcy proceedings are undertaken as against the management which is not the case in the present scenario.

9. The third respondent is not even a corporate entity. Further, Section 11(2) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 reads as follows:-

"11. Priority of payment of contributions over other debts.__



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... (2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts."

10. Therefore, when the Employees' Provident Fund Act contains a non-obstante clause that the Provident Fund dues shall be paid in priority over all the other debts, this Court has to go only as per Section 11(2). Therefore, this money, being the asset of the employer/third respondent, the Provident Fund authorities have a priority in charge over all the other debts and accordingly, I direct the petitioner to pay out the sum of Rs.65,78,713/- to the second respondent herein and upon payment thereof, the petitioner will not be held as a defaulter by the first respondent or any other authority since the payment is made as per the directions of this Court.

11. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.



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Neutral Citation : yes
grs

To

The Presiding Officer,
Labour Court,
Salem.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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