

24.06.2025
Item No.6
Ct. No. 30
Aloke

WPA 13987 of 2025

M/s. M.M. Enterprises & Ors.
Vs.
Union of India & Ors.

Mr. Pratik Mazumdar
Mr. Ayan Chakraborty
Ms. Sohini Mukherjee
... for the petitioners

Mr. Bodhisatta Biswas
... for the respondents

Mr. Sahasranghu Bhattacharjee
Mr. Loknath Chatterjee
... for the Union of India

1. Affidavit-of-service filed be kept with the record. On being served the learned counsel for the ESI is present.
2. The writ application has been preferred challenging the notices dated 10th December, 2024, 13th February, 2025 and demand notice dated 10th June, 2025 issued by the Deputy Director of the Employees' State Insurance Corporation, Kolkata Region.
3. Learned counsel for the respondent/ESI submits that the order challenged has been passed under Section 45A of the ESI Act and is appealable under Section 45AA of the ESI Act and, as such, the petitioners should approach the appropriate forum.
4. Learned counsel for the petitioners submits that the company herein are not covered under the

ESI Act and the same has been upheld by the Hon'ble Supreme Court in **C.E.S.C. Limited vs. Subhash Chandra Bose** reported in **(1992) 1 SCC 441**.

5. It appears that the said judgment of the Supreme Court was placed before the authority concerned, who passed the order under Section 45A of the ESI Act. The authority concerned has given specific findings regarding the applicability of the judgment of the Supreme Court relied upon by the petitioners and, as such, the said findings of the authority who passed the order under Section 45A of the Act is to be agitated before the appellate forum under Section 45AA of the ESI Act.

6. The petitioners' contention is that he has approached the High Court as the authority has overlooked the fact that he is not covered under the ESI Act.

7. From the order agitated herein, it is clear that the authority has not only considered the said submission but has also considered the judgment of the Supreme Court relied upon and the said matter was adjudicated by the authority under Section 45A of the Act and an appeal is to be preferred before the appellate authority under Section 45AA of the Act.

8. Learned counsel for the petitioners has also relied upon a judgment of a Coordinate Bench in the case of **M/s. Imperial Construction Company vs.**

Employees State Insurance Corporation in ***C.O. No. 2135 of 2018*** passed on *11.09.2019*.

9. It appears that the said writ application was preferred against an order passed in appeal under Section 45AA of the Act.

10. It is further submitted by the petitioners that in case he prefers an appeal he is to deposit a certain amount with the authority before his appeal is admitted and as he does not admit being liable, he shall be prejudiced.

11. Considering that it is a statutory provision which is mandatory in nature, the said fact cannot be taken into consideration by this Court.

12. Accordingly, the relief of the petitioners lies before the appellate authority under Section 45AA of the ESI Act and not before the writ Court.

13. Considering the said facts and materials on record and in the interest of Justice, the writ application is disposed of with a direction that the writ petitioners herein are at liberty to file an appeal under Section 45AA of the ESI Act within 30 days from the date of this order, which the appellate authority shall consider in accordance with law, and by passing a reasoned order decide the same within 30 days thereafter.

14. The period of limitation is thus extended for a period of 30 days, in the interest of justice and the

order challenged be also stayed for a period of 30 days to enable the petitioners to prefer an appeal.

15. The writ petition (WPA/13987/2025) stands disposed of.

16. Application, if any, connected thereto stands disposed of consequently.

17. It is made clear that this Court has not gone into the merits of the case while considering the maintainability of the writ application.

18. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Dutt (Paul), J.)