

W.P.No.4407 of 2025

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.4407 of 2025

and

W.M.P.No.4918 of 2025

The Management of M/s.Lakshmi Narayana Vishalakshi
College of Arts and Science
LMS Garden, Podhanur Chettipalayam Road,
Coimbatore – 641 201

Represented by its Correspondent.

...Petitioner

Versus

1. The Deputy Director,
(Sub Regional Office)
Employees State Insurance Corporation,
1897, Trichy Road, Panchadeep Bhavan,
Ramanathapuram,
Coimbatore – 641 045.

2. The Recovery Officer,
(Sub Regional Office)
Employees State Insurance Corporation,
1897, Trichy Road, Panchadeep Bhavan,
Ramanathapuram,
Coimbatore – 641 045.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus calling for the records of the first respondent and quash its order dated 30.08.2019 in Proceeding No.56-00-110872-000-1303/INS.IV/SRO/under Section 45A



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of the Employees State Insurance, Act, 1948 and direct the 1st respondent to provide an opportunity to the petitioner to enable it to place the records and conduct a fresh enquiry.

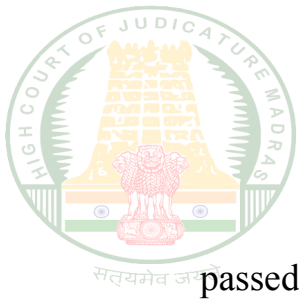
For Petitioner : Mr.Anand Gopalan
for M/s.Agam Legal

For Respondents : Mr.Dwarakesh Prabhakaran
for R1 and R2

ORDER

This Petition has been filed under Article 226 of the Constitution of India seeking to quash the order dated 30.08.2019 passed by the first respondent in Proceeding No.56-00-110872-000-1303/INS.IV/SRO/under Section 45A of the Employees State Insurance, Act, 1948 and to consequently direct the first respondent to provide an opportunity to the petitioner to enable it to place the records and conduct a fresh enquiry.

2. It is the case of the petitioner that the petitioner is an educational institution functioning under the affiliation of Bharathiyar University, Coimbatore, commenced in the year 1990. Though initially the petitioner was having sufficient number of students enrolled in the academic years, at present it has got only about 176 students. However, without affording any opportunity to the petitioner, an order dated 30.08.2019 under Section 45A of the Employees State Insurance Act, 1948 (in short 'the Act') came to be



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passed claiming a sum of Rs.9,88,918/- for the period from 01.08.2014 to 30.06.2019 by the first respondent. Challenging the same, the present writ petition has been filed seeking the aforesaid relief.

3. The learned counsel for the petitioner submits that the first respondent ought to have sent proper notice and granted adequate opportunity to the petitioner and has gravely erred in bi-passing the principles of natural justice. Hence, the order passed by the first respondent is wholly misconceived. The learned counsel appearing for the petitioner upon instructions submits that the petitioner is constrained to pay 25% of the demand amount before the first respondent and upon such payment, this Court may set aside the impugned order dated 30.08.2019 and remand the matter to the first respondent for fresh consideration and pass appropriate orders within the time frame that may be stipulated by this Court.

4. The learned counsel for the respondents submits that since the employer has failed to pay the ESI contribution, the office of the respondents has issued a compliance letter dated 17.08.2016 informing the



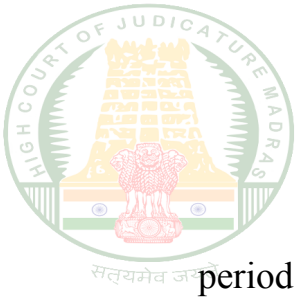
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employer to pay the contribution for defaulted period. Though the said letter was duly acknowledged by the employer, the petitioner / employer has failed to furnish any reply. Moreso, a show cause notice to the employer as well as to the employer unit was issued on 21.05.2018 for non-compliance. However, both the notices were returned as refused. Though, there is an effective appeal remedy available before the Appellate Tribunal, however, without resorting to such remedy, filing the present petition seeking the aforesaid relief is wholly unsustainable. Accordingly, he prayed for passing appropriate orders.

5. Heard the learned counsel for the petitioner and the learned counsel for the petitioner and the learned counsel for the respondents.

6. Admittedly, an ex-parte non-speaking order u/s.45A of the Act has been passed as against the petitioner, without affording any opportunity to the petitioner, assailing which the present writ petition has been filed. Though the facts stand as such, in view of the stand taken by the learned counsel for the petitioner that the petitioner is ready to deposit 25% of the contribution as per 45A order, this Court directs the petitioner to deposit 25% of the contribution before the first respondent within a



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period of two (2) weeks from the date of receipt of a copy of this order and the impugned order dated 30.08.2019 passed by the first respondent is set aside on the ground of the order being a non-speaking order. Upon such payment being made, the matter is remanded to the first respondent for fresh consideration and to conduct an enquiry by affording opportunity to all the aggrieved parties and pass appropriate orders within a period of eight (8) weeks thereafter.

7. This writ petition is allowed with the above terms. No costs. Consequently, connected miscellaneous petition is closed.

12.02.2025

Note to Office: Issue order copy on 13.03.2025

Index : Yes/No
NCC : Yes/No
RAP



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M.DHANDAPANI, J.

RAP

To

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