IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.07.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.21181 of 2025
and W.M.P.Nos.23915, 23916 and 23920 of 2025

New Prince Shri Bhavani College
of Engineering
Rep by its Chairman -
Mr.K.Logan @ K.Loganathan
Vengaivasal Main Road, Gowrivakkam,
Chennai 600 073 ... Petitioner

vs-

1. Employees State Insurance Corporation,
Rep by its Deputy Director,
143, Sterling Road, Nungambakkam,
Chennai 600 034.

2. Recovery Officer,
Employees State Insurance Corporation,
143, Sterling Road, Nungambakkam,
Chennai 600 034. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the respondents passed in No. TN / Ins.VIII/51-00-111173- 000- 1304 /C18 Adhoc -704 / 20 for the contribution demand of Rs.31,65,278/- for the peirod 01/2017 to 08/2019 dated 28.10.2021 and to quash the same and direct the respondents to waive / write off the amount demanded under section 91-C of the ESI Act, 1948.

For Petitioner : Mr. P.Muthusamy
For Respondents : Ms.G.Narmadha
Standing Counsel

ORDER

The above Writ Petition has been filed for the following relief:-

"Calling for the records relating to the impugned order of the respondents passed in No. Tn / Ins. VIII / 51-00 - 111173- 000- 1304 / C18 Adhoc -704 / 20 for the contribution demand of Rs 31,65,278- for the period 01/2017 to 08/2019 dated 28.10.2021 and to quash the same and direct the respondents to waive / write off the amount demanded under section 91-C of the ESI Act, 1948."

2. The brief facts are also follows:-

(i) The petitioner institution was established to cater to the students in the field of Engineering as a self-financing Institution with no grant or aid have been given either by the State Government or by the Central Government. The institute runs purely on a charity basis and it is a fee based institution and there is no profit motive involved. The institution is mandatorily required to maintain basic infrastructural facilities on par with Government institutions, in accordance with the legislations and guidelines framed by the State and Central Governments. By a notification of the year 2008, the Employees State Insurance Authorities had extended the applicability of the Employees State Insurance Act, 1948 (hereinafter referred to as the "ESI Act") to all the educational institutions excluding the Government and Government aided institutions.

(ii) The petitioner institution collects fees in accordance with the norms prescribed by the Government, and therefore, no allocation is made for ESI contributions. The petitioner institution was complacent as the notification was the subject matter of challenge by various Associations of the Private Educational Institutions and an interim stay has also been granted by this Court as well as the Hon'ble Supreme Court. Ultimately, by a judgment of the Full Bench of this Court in October 2020, the extension of the ESI contribution to private educational institutions was upheld. As a consequence the petitioner institution had received a show cause notice from the 1st respondent assessing ESI contribution arrears including interest at a sum of Rs.31,65,278/- from the year 2013. The petitioner did not bestow much attention on the show cause notice as they were under the genuine impression that the matter was pending before the Court. Subsequently, the petitioner was served with Section 45-A order dated 28.10.2021 directing them to pay a sum of Rs.27,50,972/- for the period from 11/2013 to 12/2016.

(iii) On receipt of the order dated 28.10.2021, the petitioner had sent a representation dated 17.11.2021 to the 1st respondent requesting the 1st respondent to waive the alleged ESI past arrears of contribution and to set aside the order dated 28.10.2021 for the reason that no provisions were made by the petitioner's institution to contribute the employer's share towards the ESI from the year 2013 as they have been collecting fees from students as per the Government norms. The petitioner had questioned the demands also on the ground that there were only a few employees who are eligible for deduction of contribution as per the salary norms fixed by the ESI Act.

(iv) It is the further contention of the petitioner that the Full Bench of this Court had mandated to exercise the power under Section 91-C of the ESI Act to waive/write off the arrears. Earlier when the writ petitions filed by the various associations were pending, the respondent had issued a notice to the petitioner to appear before them and the representative of the petitioner institution had also appeared and explained that the issues are pending before the High Court.

(v) The petitioner would further submit that in the representation dated 17.11.2021, the petitioner had specifically sought for a waiver of the ESI contribution and further opportunity of personal hearing to furnish the salary details of the employees who had left the institution. However, to a shock he came to learn that the respondent had passed an attachment order freezing the bank accounts of the petitioner institution with a direction that the amount be deposited to the credit of the ESI account. It was only when the petitioner's bank had informed them that the petitioner had come to know about the impugned order dated 28.10.2021 which was the 2nd order passed on the very same day as the earlier order which is the subject matter of the representation dated 17.11.2021. The impugned order has been passed without serving any notice of hearing and giving opportunity to the petitioner to put forth their case.

(vi) The petitioner would submit that after the order of the Full Bench, contributions are being made promptly. The representative of the petitioner institution had produced all the records for the period 2019 and 2020 and on its scrutiny, the respondent had arrived at a sum of Rs.3,00,000/- to be paid towards contribution of employer and employee. Further, the petitioner had not employed 135 employees during the relevant period.

(vii) On 22.01.2025, the Chairman of the petitioner institute had gone in person to the respondent's office and submitted a letter stating that the impugned order dated 28.10.2021 has not been served on the petitioner demanding contribution for the period 1/2017 to 8/2019. At that point in time, the respondents have served a photo copy of the impugned order.

(viii) The main grievance of the petitioner is that they have not been heard before the impugned order has been passed. The petitioner would submit that the order of attachment is causing great prejudice to the petitioner as they are unable to disburse the salary to the employees. Therefore, the Writ Petition has been filed.

3. Heard the learned counsels on either side and perused the materials available on record.

4. Admittedly, the learned counsel for the respondents would submit that both orders have been sent in the same cover. If two orders had been despatched in the same cover, there is absolutely no reason as to why the petitioner would seek to challenge one order and not the other. Further, this Court is at loss to understand as to why the respondents are despatching two different orders in a single cover, especially when the said order directs the petitioner to make payment in respect of two different periods and further would invite penal action if not complied with. The communication of the orders to the aggrieved party cannot be dealt with in a casual and cavalier manner. It is only on receipt of the order that the petitioner can challenge the same. The service of the order upon the petitioner therefore has to necessarily be proved which has not been done in the instant case. The service of orders on the aggrieved party has to be scruplously adhered to.

5. Considering the above, the petitioner is permitted to file an appeal challenging the said order dated 28.10.2021 covering the period 01/2017 to 08/2019 within a period of two weeks from the date of receipt of a copy of this order. The period from the date of the order till the disposal of this writ petition shall be excluded for the purpose of calculating the limitation. The 1st respondent shall thereupon endeavour to dispose of the appeal within a period of two months from the date of filing of the appeal. **Accordingly, this Writ Petition is allowed.** No costs. Consequently, connected miscellaneous petitions are closed.

04.06.2025

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
srn
To,

1. The Deputy Director,
   Employees State Insurance Corporation,
   143, Sterling Road, Nungambakkam,
   Chennai 600 034.

2. The Recovery Officer,
   Employees State Insurance Corporation,
   143, Sterling Road, Nungambakkam,
   Chennai 600 034.

P.T.ASHA, J.,

srn

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