

W.P.No.8669 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2025

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.8669 of 2025

and

W.M.P.Nos.9700 & 9702 of 2025

M/s. Levate Engineers,
505/4, Sivalpuri Amman Nagar,
Nallampalayam Road,
Sanganoor, Coimbatore – 641 027,
Rep. by its Proprietor Adisivan Gurusamy.

...Petitioner

Vs.

1. Deputy Director,
Employees State Insurance Corporation
(Sub Regional Office),
1897, Trichy Road, Panchdeep Bhavan,
Ramanathapuram, Coimbatore – 641 045.
2. The Recovery Officer,
Employees State Insurance Corporation
(Sub Regional Office),
1897, Trichy Road, Panchdeep Bhavan,
Ramanathapuram, Coimbatore – 641 045.
3. The Branch Manager,
IDBI Bank Ltd-Avinashi Road,
72, Mayflower E-Castle,
Dr.Balasundram Road, Off Avinashi Road,
ATT Colony, Coimbatore.

...Respondents



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Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus calling for the records of the 1st respondent and quash its order dated 19.07.2019 in proceeding No.56-00-107139-000-0699/INS.III/SRO/1489/2019 passed under section 45A of the Employees State Insurance Act, 1948 and direct the 1st respondent to conduct a fresh enquiry under Sec. 45 of Employees State Insurance Act, 1948 by providing an opportunity to the petitioner and further permit the petitioner to operate its bank accounts linked with the PAN No:AFIPA0225Q.

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

For Respondents : Mr.R.Sreedhar, for R1 and R2

ORDER

This Writ Petition has been filed by the petitioner seeking quashment of the order of the 1st respondent dated 19.07.2019 bearing proceeding No.56-00-107139-000-0699/INS.III/SRO/1489/2019, passed under section 45A of the Employees State Insurance Act, 1948 (in short 'ESI Act') and to consequently, direct the 1st respondent to conduct a fresh enquiry under Section 45 of the said Act by providing an opportunity to the petitioner and further permit the petitioner to operate its bank accounts linked with the PAN No:AFIPA0225Q.



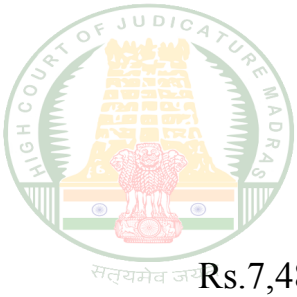
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2. Mr.R.Sreedhar, learned counsel takes notice on behalf of the 1st and 2nd respondents. In view of the consent expressed by the learned counsel on either side, this Writ petition is taken up for final disposal at the admission stage itself.

3. Since no adverse order is being passed against the 3rd respondent, notice to the 3rd respondent is dispensed with.

4. It is the case of the petitioner that, the petitioner company is into manufacture, supply and export of wide range of cranes and hoists which are utilised in construction, shipping and transportation industry and the unit was put up in the year 1999. Initially, the petitioner company had 3 to 5 employees and eventually the number of employees increased and on 27.10.2010, on the basis of an inspection, the office of the 1st respondent issued a Section C-11 Notice and in view of the same, the petitioner covered its eligible employees and the petitioner company did not pay contribution in respect of the exempted employees. While so, on 29.11.2022, a prohibitory order was issued to recover a sum of

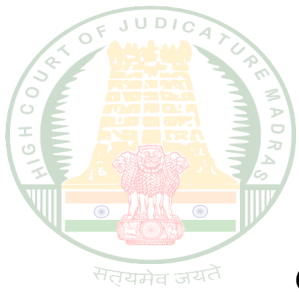


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Rs.7,48,129/- from the petitioner's bank account and when the petitioner came to know that its bank account maintained with IDBI Bank, Coimbatore was attached by the 2nd respondent based on a prohibitory order dated 20.02.2025, the petitioner approached the 1st respondent office, he was provided with an order passed under Section 45A of the ESI Act dated 19.07.2019, claiming a contribution of Rs.4,27,284/- for the period July 2014 to February 2019 in respect of 12 employees. Challenging the same, the petitioner has come up with this writ petition.

5. Learned counsel for the petitioner submitted that the 1st respondent ought to have sent proper notice and granted adequate opportunity to the petitioner and the 1st respondent had gravely erred in by-passing the principles of natural justice. Hence, the order passed by the 1st respondent is wholly misconceived. Learned counsel for the petitioner, upon instructions submitted that, the petitioner is ready to pay 25% of the demand amount before the 1st respondent and this Court may set aside the impugned order dated 19.07.2019 and remand the matter to the 1st respondent for fresh consideration.



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6. Learned counsel appearing on behalf of the 1st and 2nd respondents submitted that, since the employer has failed to pay the ESI contribution, the office of the respondents had issued a show cause notice dated 11.04.2019 and the same was Delivered to the principal employer and the same is evident from the Postal acknowledgment and the notice sent to the unit was also not returned undelivered and thereby, it is deemed to have been delivered and despite receiving the same, it is the employer who failed to send appropriate explanation and failed to appear on 15.05.2019 to substantiate its case and thereby, the impugned order cannot be said to have been passed in violation of principles of natural justice. Further, 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 dismissal of this Writ petition.

7. Heard the learned counsel on either side and perused the materials available on record.



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Act has been passed as against the petitioner directing the petitioner to pay the contribution to the tune of Rs.4,27,284/-, alleging that, the petitioner had defaulted in payment of contribution, 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 and that, the impugned order came to be passed by the 1st respondent without hearing the petitioner, this Court is inclined to set aside the order impugned in this Writ petition and accordingly, the impugned order dated 19.07.2019 passed by the 1st respondent is set aside and the matter is remanded to the 1st respondent, on condition that, the petitioner shall deposit 25% of the contribution before the 1st respondent within a period of two (2) weeks from the date of receipt of a copy of this order. Upon such payment being made, the 1st respondent shall take up the case on file for fresh consideration and shall conduct enquiry by affording opportunity of hearing to the petitioner and aggrieved persons, if any and pass appropriate orders within a period of eight (8) weeks thereafter.



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9. With the above observations and directions, this Writ petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index : Yes/No
NCC : Yes/No
Speaking Order : Yes/No

Note to Office: Issue order copy on 19.03.2025.

To

1. Deputy Director,
Employees State Insurance Corporation
(Sub Regional Office),
1897, Trichy Road, Panchdeep Bhavan,
Ramanathapuram, Coimbatore – 641 045.
2. The Recovery Officer,
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M.DHANDAPANI, J.

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