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W.P.No.15735 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON : 27.03.2025
PRONOUNCED ON : 09.04.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No.15735 of 2020
and
WMP No. 19567 and 19568 of 2020

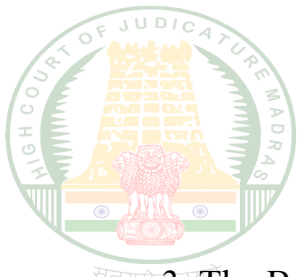
S.Dhanasingh & Sons,
Civil Engineering Contractor
Rep. by his Partner
Mr.D.Krishnan,
S/o. Dhanasingh
No.1, Market Farm, 5th Lane,
New Washermenpet,
Chennai – 600081.

....Petitioner

Vs.

1.The Recovery Officer,
ESI Corporation,
Panchdeep Bhavan,
No.143, Sterling Road,
Nungambakkam,
Chennai – 600034.

2. The Regional Officer (INS),
ESI Corporation,
Panchdeep Bhavan,
No.144, Sterling Road,
Nungambakkam,
Chennai – 600034.



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3. The Branch Manager,
Axis Bank,
George Town Branch
No.23, 1st Floor,
Rajaji Salai,
Chennai – 600001.

... Respondents

Prayer in W.P.

To issue appropriate writs, orders or direction and in particular issue a Writ of Certiorari after calling for the concern records relating to the Order No.TN/RECY/45G/51-5100107670000999/CCR.94273 dated 30.09.2020 passed by the 1st respondent herein and quash the same and pass such other orders as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.

Prayer in WMP No. 19567 of 2020

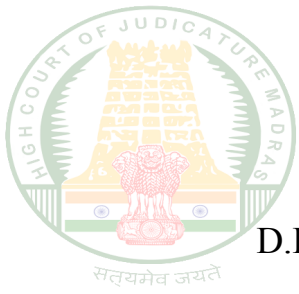
To dispense with the production of the original impugned order vide No.TN/RECY/45G/51-5100107670000999/CCR.94273 dated 30.09.2020 passed by the 1st respondent for the present.

Prayer in WMP No.19568 of 2020

To grant an order of interim stay of the operation of order No..TN/RECY/45G/51-5100107670000999/CCR.94273 dated 30.09.2020 passed by the 1st respondent during the pendency of the writ petition.

Appearance of parties:

For Petitioner : Mr.M.Gnanasekar, Advocate
For M.Gnansekar, K.Dillibabu, R.Kalaiyarasi,



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D.Pavithra And R.Bhuavaneswari, Advocates

For Respondents 1 and 2 : Mr. K.Prabakar, Advocate

For Respondent 3 : M/s. R.Palani Kumar Ramesh
and V.Lokesh Kumar, Advocates

J U D G M E N T

Heard.

2. The petitioner, a civil engineering contractor, has filed the present writ petition challenging the order dated 30.09.2020 issued by the 1st respondent—the Recovery Officer, Employees’ State Insurance Corporation—under Section 45G of the Employees’ State Insurance Act, 1948. The impugned order was issued on account of arrears of ESI contributions payable by the petitioner. The respondents, after adding interest, damages, and costs, computed the total amount due as Rs.3,27,376/-, along with further interest at the rate of Rs.72.78 per day with effect from 01.10.2020.

3. When the matter was listed on 05.11.2020, this Court directed notice to be taken by respondents 1 and 2 and further called upon the respondents to clarify whether the recovery notice issued under Section 45G was preceded by



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an order under Section 45A of the ESI Act. Subsequently, when the case was

posted on 26.11.2020, this Court directed the respondents not to initiate any coercive steps for recovery of the amount in the meantime. Thereafter, on 30.11.2020, the respondents were directed to file a counter affidavit.

4. When the matter was taken up on 16.12.2020, this Court sought clarification as to whether any order under Section 45A of the ESI Act had been passed and duly served on the petitioner prior to the issuance of the recovery notice. The matter was adjourned, and the earlier interim order was directed to continue. Subsequently, on 06.01.2021, the interim order was further extended until further orders. Thereafter, on 29.01.2021, this Court directed the third respondent bank to allow operation of the petitioner's bank account.

5. On behalf of respondents 1 and 2, a counter affidavit dated 30.11.2020 was filed. In paragraph 13 of the said affidavit, it was stated that an order under Section 45A of the ESI Act had been passed on 16.07.2019, well before the onset of the COVID-19 pandemic and the imposition of lockdown restrictions. It was further pointed out that the petitioner has not challenged the order passed under Section 45A, but has chosen to question only the recovery proceedings initiated under Section 45G and the consequential attachment notice.



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WEB COPY 6. The respondents also submitted that a statutory remedy is available to the petitioner by way of an appeal under Section 75 of the ESI Act before the Employees' Insurance Court, with a further right of appeal to this Court under Section 82. In support of this position, reliance was placed on the judgment of the Hon'ble Supreme Court in **E.S.I.C. v. C.C. Santhakumar, reported in (2007) 1 SCC 584**, wherein the Supreme Court held as follows:

“The Legislature has provided for a special remedy to deal with special cases. The determination of the claim is left to the Corporation, which is based on the information available to it. It shows whether information is sufficient or not or the Corporation is able to get information from the employer or not, on the available records, the Corporation could determine the arrears. So, the non-availability of the records after five years, as per the Regulation, would not debar the Corporation to determine the amount of arrears. Therefore, if the provisions of [Section 45A](#) are read with [Section 45B](#) of the Act, then, the determination made by the Corporation is concerned. It may not be final so far as the employer is concerned, if he chooses to challenge it by filing an application under [Section 75](#) of the Act. If the employer fails to challenge the said determination under [Section 75](#) of the Act before the Court, then the determination under [Section 45A](#) becomes final against the employer as well. As such, there is no hurdle for recovery of the amount determined under [Section 45B](#) of the Act, by invoking the mode of recovery, as contemplated in [Sections 45C to 45-I](#). In [Employees' State Insurance Corporation v. F. Fibre Bangalore \(P\) Ltd.](#) (1997 (1) SCC 625) it was observed that it is not necessary for the Corporation to seek a resolution of the dispute before the E.S.I. Court, while the order was passed under [Section 45A](#). Such a claim is recoverable as arrears of land revenue. If the employer



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disputes the claim, it is for him to move the E.S.I. Court for relief. In other cases, other than cases where determination of the amount of contributions under [Section 45A](#) is made by the Corporation, if the claim is disputed by the employer, then, it may seek an adjudication of the dispute before the E.S.I. Court, before enforcing recovery.”

7. The third respondent bank also filed a counter affidavit dated 08.01.2021.

In paragraphs 3 and 4 of the said affidavit, the following averments were made:

“I submit that by marking the lien for Rs.3,27,376/- as per the order of the Recovery officer of the ESIC Corporation, the 3rd Respondent has only complied with the demand made by 1st Respondent for settlement of statutory dues of the Petitioner. As far as 3rd Respondent’s role is concerned it is required to abide by such orders issued by the Recovery Officer of ESI.

I state that the Petitioner has challenged the section 45G notice by way of the above writ petition and the 3rd respondent confirms that they will abide by the outcome of the order that may be passed by this Hon’ble Court.”

8. In their eagerness to secure interim relief, the petitioner failed to disclose that they had received the order dated 16.07.2019 passed under Section 45A of the ESI Act. Instead, in paragraph 5 of the affidavit filed in support of the writ petition, they referred only to the demand notice dated 21.07.2020, wherein they were declared a defaulter.

9. Furthermore, in an attempt to obtain favourable orders, the petitioner made a misleading and incorrect statement in paragraph 9 of the affidavit, which



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reads as follows:

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“I submit that the order of attachment was not served by the 1st respondent on 30.09.2020. The copy of the attachment order is filed along with this writ petition. Hence, I am filing the Xerox copy of the same along with this writ petition. Therefore, it is just and necessary to dispense with the production of the order dated 30.09.2020 passed by the 1st respondent.”

10. To establish that the petitioner had made several false and misleading statements, respondents 1 and 2 filed a typed set of documents containing various notices and orders issued to the petitioner, along with postal acknowledgment receipts evidencing service of those notices and orders.

11. From the typed set, it is seen that a show cause notice dated 12.03.2019 was issued to two individuals, namely, M/s. S. Dhansingh & Sons and Mr. D. Krishnan. The postal acknowledgment cards confirming receipt of the notices on 14.03.2019 were also enclosed. Thereafter, a notice dated 06.06.2019, calling upon them to appear for a personal hearing, was issued and was similarly received by both individuals, as evidenced by acknowledgment cards dated 08.06.2019.

12. Pursuant to the issuance of the show cause and hearing notices, an order under Section 45A of the ESI Act was passed by the Deputy Director, ESI



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Regional Office, on 16.07.2019. As the acknowledgment cards evidencing service of this order on the petitioner were not returned, the ESI authorities lodged a complaint with the Superintendent of Post Offices, Chennai North Division, on 16.08.2021.

13. Following the complaint, the postal authorities conducted an internal enquiry and issued a response dated 08.10.2021. In the said communication, it was stated as follows:

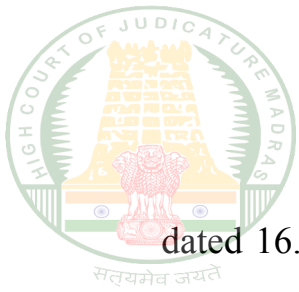
“With reference to your complaint received on the above subject, it is reported by Sub Postmaster, Tondiarpet Post Office that the following Registered Posts with ACK due

1. RT052554209IN dated 17.07.2019, 2. RT052554098IN dated 17.07.2019 delivered at Tondiarpet Post office on 18.07.2019 to one Shri. Ryad Hussan (Employee of M/s.Dhansingh and Sons, New Washermentpet)

Further, it is reported by Sub Postmaster, Tondiarpet Post Office that reply for disposal of the above RLADs was already sent to your office vide Service RL no. RT072901392IN dated 28.08.2021, the same was found delivered to ESIC, at Nungambakkam on 31.08.2021, as per Indiapost tracking.

However, the delivery slip dated 18.07.2019 of Tondiarpet SO attested by Sub Postmaster Tondiarpet is forwarded herewith as proof of delivery.”

14. Additional proof confirming that the petitioner had received the order



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dated 16.07.2019 was also filed, based on the delivery manifest maintained by the postal official, P. Kumaresan. Following this, a recovery certificate was issued on 10.02.2020 and was duly received by the petitioners, Mr. Dhanasingh and Mr. D. Krishnan, on 13.02.2020 and 14.02.2020.

15. Subsequently, by order dated 21.07.2020, a notice of demand was issued to the defaulters. It was thereafter that the impugned notice dated 30.09.2020, issued under Section 45G of the ESI Act (attachment order), came to be served.

16. Although the petitioner, in paragraph 5 of the sworn affidavit, claimed that he had not been served with the attachment order dated 30.09.2020 and was therefore relying on a xerox copy, the respondent-ESI Corporation produced two postal acknowledgment cards evidencing service of the said order on the petitioner on 19.08.2020 and 19.10.2020.

17. The conduct of the petitioner reveals a deliberate attempt to mislead this Court by suppressing material facts and making false statements on oath. Such conduct reflects a clear abuse of the judicial process and establishes the petitioner as a dishonest litigant, willing to go to any extent—including swearing to a false affidavit—to obtain interim relief, thereby evading lawful



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recovery and continuing business operations without interruption.

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18. This Court is satisfied that the petitioner was duly served with the order passed under Section 45A of the ESI Act. In such circumstances, the appropriate remedy available to the petitioner is to file an appeal under Section 75 of the Act before the jurisdictional Employees' Insurance Court, as held by the Hon'ble Supreme Court.

19. The learned counsel for the ESI Corporation referred to three decisions of this Court—one rendered by a Division Bench and two by learned Single Judges—which are as follows:

a. Blue Star Tours and Travels Vs. Employees State Insurance Corporation in W.P.No.748 of 2020 dt. 5.2.2020

b. The Deputy Regional Director, Employees State Insurance Corporation & Anr. Vs. A. Harikrishnan in W.A.No.814 of 2021 dt. 5.7.2021

c. Kalakshetra Foundation Vs. Authorised Officer / Deputy Director, Employees' State Insurance Corporation and Ors. in W.P.Nos.24200 & 24203 of 2021 dt. 5.1.2022.

20. The Division Bench in **The Deputy Regional Director, Employees State Insurance Corporation & Anr. Vs. A. Harikrishnan in W.A.No.814 of**



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2021 dt. 5.7.2021 referred to the earlier Supreme Court judgment and held as

WEB follows:-

“6....We are inclined to uphold the contention of the appellants that the consequential order cannot be challenged. In this connection, we have also taken note of the order passed by the Apex Court in **E.S.I.C. Vs. C.C.Santhakumar (Appeal (civil) No.4291 of 2000)** to the effect that without challenging the order passed under Section 45A of the Act, no challenge can be made to the consequential order.”

21. Even prior to that, this Court, in **C. Krishnan v. Employees’ State Insurance Corporation, W.P. No. 12757 of 2007, dated 16.12.2010**, had taken a similar view. The relevant portion of the said judgment reads as follows:

“Though in the affidavit in page 5 it is stated that they had no choice except to approach this Court under [Article 226](#) of the Constitution, there is no reference to their having availed the remedy in terms of the provisions of the [ESI Act](#) and also there is no reference to their moving the ESI Court in this regard. This action of the respondents is clearly reprehensible.

In any event, the contentions that the respondents have no right to attach the property, which does not belong to the petitioner and on the earlier action they moved against some other company are not the questions which are not gone into by this Court in exercise of [Article 226](#) of the Constitution of India. In case of improper attachment pursuant to the power exercised under the Act, the Act itself provides sufficient remedy under [Section 45-H](#) of the ESI Act. This Section incorporates the [II and III Schedule of the Income Tax Act, 1961](#). The [Income Tax Act](#) under II Schedule more particularly [Sections 10 and 11](#) clearly provides recovering officer making enquiries with reference to the ownership and in case of objection regarding ownership also, that renders a finding and if so he can release the said properties being brought under



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sale. Further, there is also a remedy regarding the liability by raising a dispute before the ESI Court under [Section 75](#) of the ESI Act and failing which, even further appeal lies before this Court under [Section 82](#) of the Act.”

22. This Court, while referring to the decision of the Hon’ble Supreme Court in **C.C. Santhakumar** (cited supra), also relied upon a subsequent judgment of the Supreme Court and reiterated the position that any grievance against orders passed by the ESI authorities must be agitated before the Employees’ Insurance Court. This view was taken in **Chennai Petroleum Corporation Ltd. v. The Deputy Director, ESIC, W.P. No. 18527 of 2010, dated 19.01.2011**. The relevant portion of the judgment reads as follows:

“The Supreme Court in [Raj Kumar Shivhare vs. Assistant Director, Directorate of Enforcement and another](#) reported in (2010) 4 SCC 772 has held that when a Statute provides for comprehensive remedy, question of entertainment of the Writ Petition under [Article 226](#) will not arise. It is necessary to refer to following passages found in paragraphs 26, 35, 37 and 38:

"26. In the instant case also when a right is conferred on a person aggrieved to file appeal from "any" order or decision of the Tribunal, there is no reason, in the absence of a contrary statutory intent, to give it a restricted meaning. Therefore, in our judgment in [Section 35](#) of FEMA, any "order" or "decision" of the Appellate Tribunal would mean all decisions or orders of the Appellate Tribunal an all such decisions or orders are, subject to limitation, appealable to the High Court on a question of law.

35. In this case, liability of the appellant is not created under any common law principle, but it is clearly a statutory liability and for which the statutory remedy is an appeal under [Section 35](#) of FEMA, subject to the limitations contained therein. A Writ Petition in the facts of this case is therefore clearly not



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maintainable.

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37. In view of such consistent opinion of this Court over several decades we are constrained to hold that even if the High Court had territorial jurisdiction it should not have entertained a Writ Petition which impugns an order of the Tribunal when such an order on a question of law, is appealable before the High Court under [Section 35](#) of FEMA.

38. The learned counsel for the respondents relied on a judgment of this Court in [Seth Chand Ratan v. Pandit Durga Prasad](#). The learned counsel relied on para 13 of [the said judgment](#) which, inter alia, lays down the principle, namely, when a right or liability is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under [Article 226](#) of the Constitution. However, the aforesaid principle is subject to one exception, namely, where there is a complete lack of jurisdiction of the tribunal to take action or there has been a violation of rules of natural justice or where the Tribunal acted under a provision of law, which is declared ultra vires. In such case, notwithstanding the existence of such a tribunal, the High Court can exercise its jurisdiction to grant relief."

23. The above decision was subsequently followed by this Court in **Tamil Nadu Petro Products Limited v. Employees' State Insurance Corporation**, reported in **2011 (1) LLJ 633 (Mad)**. As the principles laid down are identical, it is unnecessary to reproduce the relevant passages once again.

24. In view of the foregoing discussion, this Court finds that the writ petition is wholly misconceived and accordingly stands dismissed. W.M.P. No. 19568



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of 2020, seeking interim stay, is also dismissed.

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25. Insofar as W.M.P. No. 19567 of 2020, seeking dispensation of the production of the impugned order dated 30.09.2020, the same cannot be granted, as it has been clearly established that the petitioner was in receipt of the original order, as found earlier.

26. Further since the petitioner having filed a false case before this Court and having enjoyed the benefit of an interim order for over five years to avoid a legally enforceable liability, this Court is of the opinion that the petitioner is liable to be penalized with exemplary costs and inclined to impose compensatory cost payable to the respondent. Accordingly, the petitioner shall pay a compensatory cost of Rs. 1,00,000/- (Rupees One Lakh only) to the Employees' State Insurance Corporation. The said cost amount shall be paid within one month from the date of receipt of a copy of this order.

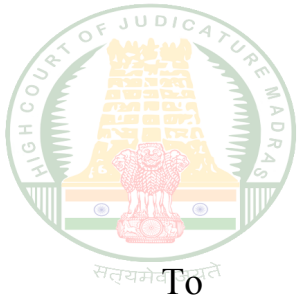
09.04.2025

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Internet : Yes / No



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To
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