IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.08.2025

PRONOUNCED ON : 17.10.2025

CORAM

THE HON'BLE Mr. JUSTICE **P.DHANABAL**

W.P.No.17839 of 2022 and
W.M.P No.17189 of 2022

R.Muthusamy .. Petitioner

Vs.

1.The Deputy Director,
Sub Regional Office, Salem,
Employees' State Insurance Corporation,
(Ministry of Labour and Employment,
Government of India),
39/57, Theerthamalai Vaniga Valagam,
Three Roads, Salem – 636009.

2.The Chief General Manager (Telecom),
BSNL, Greems Road,
Chennai.

3.The Assistant General Manager, (HR & Admn)
O/o.General Manager, BSNL,
Cantonment, Trichy 620002. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the two notices issued by the first respondent No.63000129780001001/MEC/SRO/SLM/C18(Int)/99/21 dated

06.01.2022 interest for Rs.72,453/- and subsequent notice No.6300012978001001/MEC/SRO/SLM/D-18/100/21 dated 06.01.2022 for penalty Rs.1,50,946/- totally a sum of Rs.2,23,399/- claiming the payments of ESI contributions interest and penalty from the petitioner and quash the same against the order dated 16.12.2020 of the Hon'ble Madras High Court Madurai Bench in W.P.(MD) Nos.10381 & 10382 of 2020 and order dated 28.04.2021 of the Madras High Court in W.P.Nos.34513, 34570 of 2019 and 9515 of 2020.

For Petitioner	: Mr.B.Prashanth Nadaraj
For R1	: M/s.S.Jayakumari, Senior Counsel
For R2 & R3	: Mr.S.Udhaykumar

O R D E R

This writ petition has been filed challenging the orders passed in two notices issued by the first respondent in notice No.63000129780001001/MEC/SRO/SLM/C18(Int)/99/21 dated 06.01.2022, for a sum of 72,453/- and subsequent notice No.6300012978001001/MEC/SRO/SLM/D-18/100/21, dated 06.01.2022, for Rs.1,50,946/-, totally a sum of Rs.2,23,399/- claiming payments of ESI contributions interest and penalty from the petitioner and to quash the same.

2.The learned counsel appearing for the petitioner would submit that the petitioner is having a company, namely, M/s.Sri Balaji Agency, having office at 7/12, 3rd Cross Street, V.N.Nagar, Trichy and he is one of the partner and doing business of providing services to the respondents M/s.BSNL, Officials, Karaikudi, Trichirappalli, Thanjavur, Salem, Coimbatore and Airport Authority of India, Trichy Airport, Trichy. The petitioner is the Managing Partner of M/s.Sri Balaji Agency. The service rendered by them are coming within the purview of service tax net under the category "Cleaning Activity Service" as defined under Section 65(9) of the Finance Act 1994. The petitioner's agency has entered into the present service of cleaning and activity service to various Government organizations since 2001. The agreement in question was signed and agreed by the second and third respondents during August 2004 and the contract period ended in the year 2007 and there was no agreement for payment of service tax as the service "Clearing Activity Service" was not covered under the service tax net during that time. The subject service "Clearing Activity Service" was introduced with effect from 16.06.2005. The petitioner was directed to pay the service tax. He explained the fact to the Commissioner of Customs and Central Excise, Service Tax and GST, Trichirappalli. They are not ready to accept the views of the petitioner. The petitioner also approached the other organizations. Thereafter, the petitioner made full efforts to collect the service tax from the BSNL and other organizations and also he approached other organizations, the second respondent and other M/s.BSNL Karaikudi, BSNL Thanjavur, BSNL Salem, BSNL Coimbatore and Airport Authority of India, Trichy Airport, to follow the same principles adopted by M/s.BSNL Trichy.

2.1.Thereafter, he filed several writ petitions in respect of EPF, ESI, GST and Service Tax etc. As per the orders of the Madurai Bench in W.P.(MD)Nos.10381 & 10382 of 2020, dated 16.12.2020 and W.P.Nos.34513, 34570 of 2019 and 9515 of 2020, dated 28.04.2021, the petitioner is no way connected with the payment of EPF, ESI, GST and Service Tax etc. Whileso, the petitioner has received a letter from the first respondent dated 06.01.2022 and subsequently, penalty of Rs.6,77,959/- through a letter dated 06.01.2022. The ESI contribution amount of the petitioner company should be paid by the second and third respondents directly to the first respondent as per the order of this Court. If any contributions is paid belatedly, the interest and penalty have to be paid by the second and third respondents. Therefore, the impugned notices issued against the petitioner are illegal and the same are liable to be quashed.

3.The learned counsel appearing for the first respondent would submit that the petitioner agency is covered under the ESI Act and there are belated payments for the period from July 2019 to September 2020, whereby, the first respondent authority quantified the amount of Rs.72,453/- towards interest and demanded the amount through notice dated 06.01.2022 and also issued a show cause notice as per the provisions of the Regulation 31- C of the ESI (General) Regulation, 1950 read with Section 85(B)(I) of the ESI Act for damages of Rs.1,50,946/- for the period from July 2019 to September 2020.

4.It is true that already as per the order of this Court, the contributions were paid directly by the second and third respondents on behalf of the petitioner. However, since there is a default and delay in paying the contributions, the petitioner has to pay the amount and therefore, they issued the impugned notices and the petitioner is liable to pay the amount and therefore, the writ petition is liable to be dismissed. Moreover, the petitioner ought to have approached the ESI Court in respect of the interest amount and the notice dated 06.01.2022 in respect of damages is only a show cause notice and he ought to have appeared before the authorities on 02.02.2022, but without appearing before the authorities, the petitioner has straightaway approached this Court and therefore, this writ petition is liable to be dismissed.

5.The learned counsel appearing for the second and third respondents would submit that there is a dispute between the petitioner, the second and third respondents in respect of payments and thereby, the petitioner approached this Court by filing writ petitions. As per the orders passed by this Court in W.P.Nos.34513, 34570 of 2019 and 9515 of 2020, dated 28.04.2021, this Court had directed the respondents to disburse the EPF, PF contributions of the labourers and this Court permitted BSNL to deduct the statutory dues payable by the contractors to various authorities like EPF, ESI and GST and these dues can be paid directly to those statutory authorities and it was made clear that while making such payments by BSNL to various statutory authorities, the said payments shall be made only through the Permanent Account Number maintained by each of the contractors not otherwise and due intimation shall be given to the contractors concerned that, the statutory dues payable to the various authorities with quantified amount and other details have been paid through the account number of the contractors and those details to be intimated then and there to the contractors concerned in writing. Therefore, based on the abovesaid order, the BSNL made payments to the authorities. If there is any delay in payments, the petitioner alone is liable to pay the interest and damages and if there is any delay on the side of the BSNL, the same has to be decided by the appropriate forum and not through this writ petition. Therefore, the writ petition is liable to be dismissed.

6.This Court heard both sides and perused the records.

7.In this case, it is an admitted fact that the petitioner is an agency contractor under the second and third respondents and the petitioner agency is covered under the ESI Act and there is a dispute between the petitioner agency, second and third respondents in respect of the payment and thereby, the petitioner approached this Court for payments and this Court passed orders to make some payments and as per the order of this Court, the second and third respondents were directed to pay the statutory deductions like EPF, PF and ESI contributions to the concerned officers. As far as the order passed by this Court in W.P.(MD) Nos.10381 & 10382 of 2020 dated 16.12.2020 are concerned, the said writ petitions were filed to consider the representations of the writ petitioner therein on his individual capacity for release of arrears of balance amount for the service labourers of the respondents, as per the bills dated 01.07.2019 to 01.07.2020 and 16.02.2019 to 01.10.2019 respectively and this Court had passed order directing the respondents therein to dispose of the representation of the petitioners dated 06.07.2020 and while disposing of the said representation of the petitioners, the respondents shall take into consideration of the grievances addressed by the Regional Labour Commissioner. As per the directions in W.P.Nos.34513 and 34570 of 2019 in case, if the respondents are willing to dispose of the representation of the petitioners and pay the amount, in such case, the respondents ensure that the amount will go to the labourers as well as EPF and PF contribution of the labourers and in which case, if any particulars are required, the respondent may call for with regard to the total arrears of the salary and the petitioners are liable to pay the labourers EPF, PF contributions etc., arrears and accordingly, out of this claim made by the petitioners, the respondents can directly disburse the same, so that, the matter will provide quietus to all sorts of the issues pending before this Court as well as before the Principal Bench of this Court.

8.In the order dated 16.12.2020, in W.P.(MD) Nos.10381 & 10382 of 2020, there is no reference about the ESI contribution and the dispute is with respect to the payment due from the General Managers of BSNL, Virudhunagar, Madurai and Tirunelveli. The impugned notices were issued by the ESI authorities from July 2019 to September 2020. As far as the other writ petitions in W.P.Nos.34513 and 34570 of 2019 and W.P.No.9515 of 2020 are concerned, those writ petitions have been filed by the workers Union who are members/contract workers engaged in various private contracts in BSNL at various places. In respect of the grievance regarding wages payable to its members, it had not been paid for more than one year, wherein, this Court in W.P.Nos.34513 and 34570 of 2019 and W.P.No.9515 of 2020 dated 28.04.2024, in paragraph No.45 held as follows:

> *45. Insofar as the statutory dues are concerned, the plea made by BSNL is accepted. Accordingly they are permitted to deduct the statutory dues payable by these contractors to various authorities like EPF, ESI and GST and these dues can be paid directly to those statutory authorities. It is made clear that, while making such payment by BSNL to various statutory authorities, the said payment shall be made only through the permanent account number maintained by each of the contractors not otherwise and due intimation shall be given to the contractors concerned that, the statutory dues payable to various authorities with quantified amount and other details have been paid through the account number of the contractors and those details shall also be intimated then and there to the contractor concerned in writing.*

9.Therefore, as per the order of this Court, the BSNL was permitted to deduct the statutory dues payable to the contractors to various authorities like EPF, GST and PF and those dues can be paid directly to those statutory authorities. That belated payment is for the period from January 2019 to October 2019. Now, the impugned notice was issued for the period from

July 2019 to September 2020. While so, it is not appropriate to ascertain in this writ petition as to whether the second and third respondents paid the contributions for those period from July 2019 to September 2020 without any records and therefore, it has to be adjudicated by the appropriate authorities. Moreover, as far as the interest is concerned, as discussed by this Court in the previous paragraph that whether the period mentioned in the impugned notice dated 06.01.2022 for the period from July 2019 to September 2020, payments paid by whom has to be ascertained. As rightly contended by the learned counsel for the first respondent that has to be decided by the appropriate forum and if there is any grievance between the petitioner and the third respondent that has to be adjudicated separately. As far as the first respondent is concerned, it is his duty to act in accordance with law and therefore, he issued notice for the belated payments and interest. If there is any grievance in the order, the petitioner has to challenge that order in the manner known to law. Therefore, the writ petitioner is not entitled to any relief in respect of interest through this writ petition.

10.As far as the show cause notice dated 06.01.2022 is concerned that was issued to quantify the damages for the belated payment of contributions from July 2019 to September 2020 for Rs.1,50,946/- and that is only a show cause notice issued to the petitioner by the respondents and the first respondent has to appear before the concerned authorities and if he has any objection, he can raise the same and thereafter, after considering the objections, the first respondent has to pass orders. The notice also intimated that it is proposed to determine and recover from M/s.Sri Balaji Agency as per Regulation 31-C of the ESI (General) Regulation, 1950 read with Section 85(B)(I) of the ESI Act and it is proposed to afford an opportunity to show cause against the determination and recovery. In case M/s.Sri Balaji Agency decides to represent his case in person, he may appear before the officials on 02.02.2022 on 11.00a.m. with necessary documents to explain his case. Therefore, the petitioner ought to have appeared before the appropriate authorities to explain his case and without doing the same, he has straightaway approached this Court by challenging the said notices. This Court already in previous paragraph decided that as far as the statutory deductions are concerned, the contributions made by the second and third respondents to be paid directly to the Government authorities and if there is any dispute between the petitioner, second and the third respondent, it has to be adjudicated by the appropriate forum and if the petitioner has any objection in respect of wages, interest and damages, he can always approach the concerned authorities and in order to give an opportunity the authorities had issued notice and therefore, the petitioner is at liberty to approach the first respondent authority in respect of the show cause notice dated 06.01.2022.

11.Therefore the writ petitioner is not entitled to any relief and this writ petition is dismissed. If the petitioner appears before the first respondent to explain his case along with the necessary documents, then it has to be considered by the first respondent on merits and in accordance with law.

12.With the above observations and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition stands closed.

sli **17.10.2025**
Index:Yes/No

Speaking/Non-speaking order
Neutral Citation:Yes/No

P.DHANABAL,J.

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To

1.The Deputy Director,
Sub Regional Office, Salem,
Employees' State Insurance Corporation,
(Ministry of Labour and Employment,
Government of India),
39/57, Theerthamalai Vaniga Valagam,
Three Roads, Salem – 636009.

2.The Chief General Manager (Telecom),
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3.The Assistant General Manager, (HR & Admn)
O/o.General Manager, BSNL,
Cantonment, Trichy 620002.

Pre-Delivery Order in
W.P.No.17839 of 2022

17.10.2025
(2/2)