



WEB COPY

WP No. 19671 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-07-2025

CORAM

THE HONOURABLE MR.JUSTICE P. DHANABAL

WP No. 19671 of 2022

and

WMP Nos.18986 & 18987 of 2022

Williams Photography

Petitioner

Vs

1. Assistant Director / Deputy Director
Employees State Insurance Corporation
Panchdeep Bhawan, 143 Sterling Road,
Chennai-600 034.

2. Office of the Recovery Officer,
Regional Office (RO-Chennai), Employees State
Insurance Corporation Panchdeep Bhawan, 143,
Sterling Road, Chennai-600 034.

3. The Bank Manager,
State Bank of India, Alwarpet Branch, 241, TTK
Alwarpet Road, Chennai-600 018.

Respondents



PRAYER Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Ceriorarified Mandamus, Calling for the records relating to the order passed by 1st Respondent dated 25.02.2022 in reference No. 51001123530001099 / 21420221227 / INS2 and quash the same and consequently forbear the respondent from levying any amount as contribution under the ESI Act, 1948.

For Petitioner: M/s.S.Vaitheeswari

For Respondents: Mrs.S. Jayakumari, for R1 and R2
R-3 – No Appearance

ORDER

This writ petition has been preferred relating to the order passed by 1st Respondent dated 25.02.2022 in reference No. 51001123530001099 / 21420221227 / INS2, quash the same and consequently forbear the respondent from levying any amount as contribution under the ESI Act, 1948.

2.The learned counsel for the petitioner would submit that the petitioner concern is a freelancing agency, doing photography business and is in existence from 2014 onwards. On 01.03.2015, a notice was received by the petitioner from the Regional Office of ESI, for implementing the ESI Act, 1948 and



Registration of Employees of the Factories and Establishments under Section

1(3)/1(5) of the ESI Act. Therefore, the petitioner approached the officials of the

1st respondent and informed that the petitioner will not be covered under ESI

Act and there was no response from them. She would submit that the petitioner

had submitted a letter to the Manager of ESI Corporation on 05.10.2018 had

paid a sum of Rs.1,02,329/- to the ESI Account in ESI Number 112 353 and

requested the respondent to cancel the ESI account of the petitioner as the Act is

not applicable to the petitioner. On 24.02.2020, the 1st respondent had issued

order under Section 45-A of the Employees' State Insurance Act, 1948 (As

Amended), which was sent to the old address of the petitioner and thereby the

petitioner was not aware of the said notice and now only after receiving freezing

the bank account, the petitioner came to know about the said notice through the

3rd respondent bank.

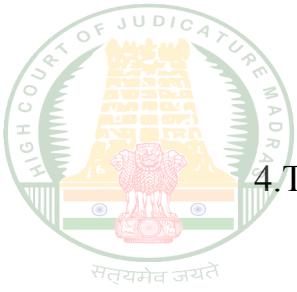
2.1. The learned counsel would also submit that the petitioner proprietary concern is not covered under the ESI Act 1948 since there were less than ten employees at the relevant point of time. However, the 1st respondent issued



attachment notice under Section 45-G of the Act on 21.04.2022 to the 3rd

respondent/SBI Bank ordering to freeze the bank account of the petitioner which was received by the bank on 29.04.2022. Thereafter the 1st respondent issued impugned notice dated 25.02.2022 for recovery of the contributions under Section 45-C to 45-I of the ESI Act along with interest. The impugned order passed by the 1st respondent is not sustainable, since the provisions of the ESI Act would not apply to the petitioner concern, the 1st respondent without inspecting the petitioner concern and also without providing opportunity to the petitioner passed the order and hence the impugned order is liable to be quashed.

3.The learned counsel appearing for the respondent nos.1 and 2 would submit that already the 1st respondent passed an order under Section 45-A of the ESI Act. But, without challenging the said order, now only challenged the consequential recovery order passed by the 1st respondent dated 25.2.2022 under Section 45-C of the Act and therefore, he prays to dismiss the petition.



4. This Court heard both sides and perused the materials placed on record.

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5. In this case, the petitioner challenged the impugned proceedings on the ground that the ESI Act would not apply to the petitioner's establishment as the minimum number of employees of 7 persons alone employed. However, already the authority had passed an order under Section 45-A in proceedings No. TN/ins-II/C18 Adh/51-00-112353-000-1099 dated 24.02.2020 and the same is also admitted by the petitioner, but according to the petitioner, they changed the address and thereby they are unable to receive the notice for the proceedings under Section 45-A of the ESI Act. However, without challenging the said order under Section 45-A of the ESI Act, they cannot challenge the consequential order passed by the authorities. Therefore, the petitioner is at liberty to challenge the order before the appropriate forum in accordance with law and the petitioner is entitled to the benefit of Section 14 of the Limitation Act during the pendency of the writ petition.



6. With the above observation, this writ petition stands dismissed. There is

no order as to costs. Consequently, connected Miscellaneous Petitions are

closed.

gbi

18-07-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



To
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