



W.P. No.40439 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2025

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P. No.40439 of 2025

and

W.M.P. No.45410 of 2025

M/s.Sri Kandagiri Sago Factory,
Vimalaraj Starch Industries,
Rep By its Proprietor
Mr M. Shanmugam,
132-A Therkku Kadu,
Attur, Salem-636 141.

Petitioner(s)

Vs

1.The Deputy Director,
Sub Regional Office (Salem)
Employees State Insurance Corporation,
Theerthamalai Vaniga Valagam,
Three Roads, Salem 636 009.

2.The Recovery Officer,
Sub Regional Office (Salem)
Employees State Insurance Corporation,
Theerthamall Vaniga Valagam,
Three Roads, Salem 636 009.

Respondent(s)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent and to quash its order dated 16.02.2023 in proceeding No.6300022440000004 /INS.II/SRO /SLM /C19 /245/19 and

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further direct the 1st respondent to conduct a fresh enquiry under Section 45 of the Employees State Act, 1948 by providing an opportunity to the petitioner.

For Petitioner(s) : Mr.G.K.Thamizh Arasan
for Mr.S.Ravichandran

For Respondent(s) : Mr.M.Palanimuthu

ORDER

This writ petition is filed challenging the order dated 16.02.2023 made by the 1st respondent. The 1st respondent Recovery Officer has passed the impugned order in exercise of his power under Section 45-C to 45-I of the ESI Act, 1948, by considering the original order that is passed under Section 45A of the ESI Act, 1948, and calculating the interest thereon and ordering recovery of the amount.

2. Upon perusing the affidavit filed in support of the writ petition and hearing the learned counsel for the petitioner, the grievance of the petitioner is that the factory of the petitioner was closed in the year 2015 itself and there cannot be any liability to pay the dues after the year 2015. The order that was passed under Section 45-A of the ESI Act, 1948, was passed without granting an opportunity and the order was also not served on the petitioner. The recovery proceedings were initiated recently and the petitioner came to know of the same and the petitioner could not approach

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the appropriate Court. Therefore, the petitioner has filed the present writ petition before this Court praying to set aside the impugned order and seeking an opportunity to be given to the petitioner to establish that the factory was closed in the year 2015 itself and there is no liability thereafter.

3. Per contra, the learned counsel appearing on behalf of the respondents would submit that the order determining the liability was passed after giving due opportunity and the order was also duly communicated to the petitioner. He would further submit that without challenging the order, consequential order of recovery cannot be challenged by way of the present writ petition under Article 226 of the Constitution of India.

4. I have considered the rival submissions made on either side and perused the material records of the case.

5. When the entire issues of assessment of the dues that are payable, the grievance redressal mechanism in the form of Original Petition before the concerned ESI Court and further appeal to this Court are regulated by the statutory mechanism and due limitation is also provided in respect of each and every aspect, it is now settled law that the power under Article 226



of the Constitution of India can neither be exercised to negate the mandatory limitation period nor to revive the cause of action.

6. Useful reference in this regard can be made to the judgment of the Hon'ble Supreme Court in the case of *CCT vs. Glaxo Smith Kline Consumer Health Care Limited* reported in (2020) 19 SCC 681 and also the judgment of the Hon'ble Supreme Court in *Thirumalai Chemicals Limited vs. Union of India* reported in (2011) 6 SCC 739.

7. Even the contention of the petitioner that they were not served with the order and they had no knowledge of the order can also be raised before the concerned forum to claim knowledge only from the particular date. Accordingly, keeping open the liberty of the petitioner to approach the appropriate forum, if permissible under law as per the period of limitation, the writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

03.12.2025

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Index: Yes/No
Speaking/ Non-Speaking order
Neutral Citation: Yes/No
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To:

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D.BHARATHA CHAKRAVARTHY, J.

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