



WP(MD)No.26689 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 23.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.26689 of 2022
and
WMP(MD)No.20888 of 2022**

M/s.Kanyakumari Medical Mission Hospital,
rep by its Medical Superintendent,
Dr.S.Rajesh Sathia,
Neyyoor Post,
Kanyakumari District.

... Petitioner

Vs

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Labour and Employment Department,
Fort St.George, Chennai.
- 2.The Regional Director,
ESI Corporation,
143, Sterling Road,
Nungambakkam,
Chennai – 34.
- 3.The Deputy Director,
ESI Corporation,
Sub Regional Office,
Tirunelveli.



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4.The Assistant Director,
ESI Corporation,
Sub Regional Office,
Tirunelveli.

5.The Recovery Officer,
The Assistant Director,
ESI Corporation,
Sub Regional Office,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records relating to the impugned order issued by the 3rd respondent vide his proceedings NO.66000408640001401/12620181157/95/18, dated 08.01.2019 and the consequential impugned order issued by the 4th respondent vide his proceedings No.66-00-040864-000-1401/Ins/SRO/TLI/802/22, dated 18.10.2022 and quash the same as illegal

For Petitioner : Mr.G.Sailendrababu
for Mr.Robert Bruce

For Respondent : Mr.C.Venkatesh Kumar,
No.1 Special Government Pleader
For Respondent : Mr.C.Karthick
Nos. 2 to 5



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ORDER

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The petitioner / a multi speciality hospital claims that they are having branches at various places in Kanyakumari district. They filed this writ petition as against the orders of the authorised officer of the ESI Corporation, Tirunelveli, authorising the recovery officer to initiate necessary recovery proceedings under Section 45 C to 45 I of the Employees State Insurance Act, as against the petitioner. The ESI corporation has already determined the liability of contribution in respect of the employees for the period from June 2013 to September 2014 and an order under Section 45A of the ESI Act was passed on 08.01.2019, calling upon this petitioner to pay a sum of Rs.13,12,740/-. The petitioner neither paid the amount as directed nor challenged the said order. Therefore, consequential proceedings for recovery of the said amount was initiated under Section 45 C to 45 I of the ESI Act and now both these orders are challenged in this writ petition.

2.The learned counsel for the petitioner submits that the petitioner establishment is a multi speciality hospital and they are providing better



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treatment than the ESI corporation and therefore, the petitioner establishment has been exempted from ESI coverage under Section 87 read with 91-A of the ESI Act vide GO(D)No.175, Labour and Employment (L1) Department dated 07.05.2015. However, they have recovered for the period from 08.05.2015 to 07.05.2016. Therefore, the petitioner has filed WP(MD)No.5202 of 2018 seeking a declaration to declare that exemption granted to the petitioner establishment vide GO(MD)No.175, dated 07.05.2015 also holds good from 03.04.2014 and for the consequential demand notice. This court by its order dated 29.03.2019 disposed of the writ petition with a direction to consider the application of the petitioner from the date of their application dated 22.09.2014 and the same according to the petitioner is still pending with the government. Therefore, according to the learned counsel for the petitioner, the recovery for this period is not proper, when the issue is pending before the government.

3.The learned counsel for the respondent submits that as against the order passed under Section 45A of the ESI Act, the remedy is available only before the ESI Court under Section 75G of the ESI Act.



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Therefore, this writ petition is not maintainable.

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4.This court considered the rival submissions made and perused the materials placed on record.

5.This writ petition is filed challenging the order passed under Section 45A of the ESI Act and also the consequential recovery order. Perusal of the order passed under Section 45A of ESI Act reveals that the statutory requirement of providing reasonable opportunity, has not been provided to the petitioner by the ESI Corporation. The relevant portion is extracted hereunder:

“Whereas M/s KANYAKUMARI HOSPITAL, Code No.66000408640001401 situated at Neyyoor P.O, Kanyakumari Kanyakumari District, is an establishment covered under the Employees State Insurance Act, 1948 and required to pay the Contributions with section 39 and 40 of the said Act read with regulations 29 & 31 of the Employees State Insurance (General) Regulations framed under the Act. As the employer in relation to this factory failed to pay the Contributions as required by



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law, a notice was issued to the Principal Employer vide this office letter of even no dated to show cause within 15 days why contributions as per statement enclosed/particulars furnished in Para-4 is not recovered from the employer.

In the said show cause notice, the employer was afforded an opportunity to represent his case in person at the time of personal hearing on and/or to submit a statement of contributions due actually as per their records.

I have applied my mind to all the facts of the case and my findings are as follows: ”

6.Proviso to Section 45 reads that an order under Section 45A of the ESI Act shall not be passed by the corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given reasonable opportunity of being heard.

7.A reading of the order passed under Section 45A of the ESI Act discloses that there was no reasonable opportunity as per proviso to



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Section 45 A of the ESI Act. On this ground alone this writ petition is allowed and the impugned order is set aside. The matter is remanded back to the ESI authority to provide reasonable opportunity to the petitioner and to take a decision. Considering that the amount of contribution is due from the management for the period from June 2013 to September 2014, the petitioner is directed to deposit a sum of Rs.Five Lakh to the ESI Corporation without prejudice to their case before the ESI Corporation. No costs. Consequently connected miscellaneous petition is closed.

23.10.2025

Internet : Yes / No

DSK

To

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Labour and Employment Department,
Fort St.George, Chennai.
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B.PUGALENDHI, J.

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