BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.09.2025**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

W.A.(MD)Nos.2677 & 2738 of 2025
and
C.M.P.(MD)No.15543 of 2025

M/s.Dhan Foundation,
1-A, Vaithiyanathapuram,
East Kennet Cross Road,
Madurai-625 016. ... Appellant in W.A.(MD)No. 2677/2025

1.The Regional Director,
Employees State Insurance Corporation Regional Office,
143, Sterling Road, Nungambakkam,
Chennai – 600034.

2.The Deputy Director / Authorised Officer
Employees State Insurance Corporation Regional Office,
2nd West Street, K.K.Nagar,
Madurai - 625020.

3.The Recovery Officer
Office of the Recovery Officer,
ESI Corporation, 2nd West Street,
K.K.Nagar, Madurai – 625020. ... Appellants in W.A.(MD)No. 2638/2025

/Vs./

1.The Regional Director,
Employees State Insurance Corporation Regional Office,
143, Sterling Road, Nungambakkam,
Chennai – 600034.

2.The Deputy Director / Authorised Officer
Employees State Insurance Corporation Regional Office,
2nd West Street, K.K.Nagar,
Madurai – 625020.

3.The Recovery Officer
Office of the Recovery Officer,
ESI Corporation, 2nd West Street,
K.K.Nagar, Madurai – 625020.

4.The Bank Manager
Canara Bank-Madurai Grand Central,
P.B.No.197, 118-B,
West Perumal Maistry Street,
Madurai – 625001. ... Respondents in
W.A.(MD)No.2677 of 2025

1.M/s.Dhan Foundation,
1-A, Vaithiyanathapuram,
East Kennet Cross Road,
Madurai-625 016.

2.The Bank Manager
Canara Bank-Madurai Grand Central,

P.B.No.197, 118-B,
West Perumal Maistry Street,
Madurai – 625001. ... Respondents in
W.A.(MD)No.2738 of 2025

COMMON PRAYER:- Writ Appeals – filed under Clause 15 of Letters Patent, against the order passed by this Court in WP(MD). No.23326 of 2025 dated 28.08.2025.

In W.A.(MD)No.2677 of 2025:

For Appellant : Mr.Sarath Madhav
For R1 to R3 : Mr.N.Dilip Kumar
Standing Counsel

In W.A.(MD)No.2738 of 2025:

For Appellants : Mr.N.Dilip Kumar
Standing Counsel
For R1 : Mr.Sarath Madhav

COMMON JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.)**

The order disposes cross appeals filed by the writ petitioner and the Employees Transport Corporation challenging an order passed by the writ Court on 28.08.2025.

2.The writ petition had been filed by the DHAN Foundation ('Foundation') challenging the recovery proceedings by way of a garnishee notice under Section 45-G of the Employees' State Insurance Act (in short 'Act').

3.The Foundation had suffered an order passed under Section 45-A of the Act that was challenged before the Labour Court, Madurai in E.S.I.O.P.No.22 of 2018. An interim order of stay was granted on condition that stood complied. As the Foundation had not been represented at various hearings, the Original Petition had come to be dismissed for default on 21.08.2025.

4.Mr.Sarath Mahadev, appears for the Foundation, and states that a restoration petition had been filed before the E.S.I. Court on 22.08.2025. While so pending, the impugned garnishee notice under Section 45-G of the Act had been issued on the same day. Pursuant to the garnishee notice, a sum of Rs.4,08,53,105/- (Rs.1,88,28,810/- being the demand raised in 2017 and applicable interest thereupon), was demanded to be paid by the Foundation.

5. As no portion of the impugned demand has been paid, the writ petition had come to be disposed on 28.08.2025 directing the Labour Court to restore E.S.I.O.P.No.22 of 2018 to its file and to dispose the Original Petition prior to 31.10.2025. Additionally, the Corporation had been directed to refund a sum of Rs.1,50,00,000/- within a period of ten days from the date of receipt of a copy of that order, to the Foundation. Aggrieved with the said direction, both the Foundation and ESI Corporation are in appeal before us.

6.The Foundation would submit that garnishee notice, dated 22.08.2025 ought to have been quashed. In this regard, reference is made to the provisions of both the ESI Act and the Income Tax Act 1961, particularly, the second Schedule thereof, to say that a period of 15 days ought to have been provided to the Foundation prior to the appropriation of amount from the account, and this had not been done.

7. Learned counsel would point out that the notice impugned in the writ petition was dated 22.08.2025. However, a copy of the same had been received by the Foundation only later, although the amount had

been appropriated by the Corporation on the same day.

8. Per contra, Mr.Dilip Kumar, learned counsel for the Corporation points out that the demand had been raised and was pending since 2017. No portion of the same had been paid except Rs.15,07,000/-, imposed as a condition by the Labour Court. Hence, there was no legal infirmity in the issuance of garnishee notice under Section 45-G of the Act or the fact that it had not been quashed.

9.On the other hand, the Corporation is seriously aggrieved by the direction to refund a sum of Rs.1,50,00,000/-. No circumstances whatsoever have been made by the Foundation as to why the said amount should be refunded. Garnishee notices had been issued to other Banks as well and information collated from those Banks to the effect that the Foundation had substantial balances therein. Hence, the question of paucity of funds for daily operations did not arise.

10.We have heard the submissions advanced by both parties and have also studied the materials and applicable statutory provisions.

11.Admittedly, the garnishee notice has been issued on

22.08.2025 after the dismissal of Original Petition. With the dismissal of Original Petition, demand of Rs.1,88,28,810/- with interest as on 21.08.2025 becomes immediately recoverable. Hence, there could be no fault attributed to the issuance of notice itself. This is on one hand.

12.The second issue raised is as regards the mode of recovery. Section 45-G of the Act stipulates *‘other modes of recovery’* and one of the modes of recovery is by way of issuance of garnishee notice under Section 45-G(3)(ii) of the Act. Thus, the notice issued by the Corporation is proper. All that remains to be seen is as to whether a notice of 15 days is liable to be granted to the Corporation, prior to the appropriation of the amount.

13.We have carefully perused Section 45-G of the Act as well as the second Schedule of the Income Tax Act, that has been made applicable to the Act in terms of Section 45-H thereof. We find that notice of 15 days is required in terms of Rule 2 of the second Schedule of the Income Tax Act, which refers to drawing of certificate for recovery of arrears.

14. In the present case, recovery certificate has been drawn on 06.06.2017, pursuant to the order dated 31.03.2017, under Section 45-A of the Act. Copy of the certificate is produced before us. It is only for the drawing of certificate, that the defaulter, in this case, the Foundation, is required to be issued with a notice calling upon them to pay the amount stipulated in the certificate within 15 days from the date of service of that certificate.

15.We find that certificate dated 06.06.2017 quantifies the amount payable and calls upon the Foundation to remit the amount in the account of the ESI Insurance fund. Hence, there is no further requirement for the writ petitioner to be put on notice, and no justification in the Foundation expecting so, as far as recovery is concerned. This is all the more so when issuance of garnishee notice is a legitimate mode of recovery and there is nothing untoward in the Corporation having taken resort to the same. The impugned notice also reveals that a copy of the notice has been simultaneously marked to the Foundation.

16. In light of the discussion as above, we are of the categoric view that the procedure as set out under the Act as well as second Schedule of the Income Tax Act has been properly followed in the present case. The arguments in relation to quashing of the notice dated 22.08.2025 issued under Section 45-G of the Act are thus rejected.

17.We are also persuaded to arrive at this conclusion seeing as the Original Petition has been restored to the file of the ESI Court and there is a direction to the Court to dispose of the Original Petition prior to 31.10.2025. Assuming for a minute that the Foundation succeeds, it would then be entitled to refund of the amount. Hence balance of convenience would justify the present approach as no prejudice would be caused to the Foundation on this account.

18. The direction to remit a sum of Rs.1,50,00,000/- is set aside as we find no justification for the same. Our attention is drawn to the writ affidavit, particularly para 15, wherein they have referred to earmarking of funds for various social development interventions. This cannot justify violation in payment of a statutory liability, that would take

priority over any other operational or other requirements of the writ petitioner.

19.In light of the discussion as aforesaid, W.A.(MD)No.2738 of 2025 filed by the Corporation is allowed and W.A.(MD)No.2677 of 2025 filed by the Foundation is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[A.S.M.J.,] & [C.K.J.,]
17.09.2025

NCC :Yes/No
Index :Yes/No
Internet :Yes
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To

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DR.ANITA SUMANTH, J.
AND
C.KUMARAPPAN, J.

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