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13.5.2026
Ct. No. 30
AB

In The High Court At Calcutta
Appellate Side
Constitutional Writ Jurisdiction

WPA 11151 of 2026

Birendra Kumar Mantry
Vs.
Union of India & Ors.

Mr. Sidhartha Sharma
Mr. Rishav Dutt
Mr. Rabindra Kumar Mitra
Ms. Akanksha Chowdhury
... for the petitioner

1. Affidavit of service filed in Court today is taken on record.
2. The writ application has been preferred praying for setting aside of the Order No. 18 dated December 19, 2025 and the Order of Dismissal dated December 22, 2025 passed by the Learned Judge, Employees' State Insurance Court, West Bengal, Kolkata in Tender Case No. 120 of 2023 as the same are in gross violation of the directions passed by this Hon'ble Court on December 10, 2025.
3. The petitioner has also prayed for cancellation of the prohibitory order dated April 22, 2026 and the Garnishee Order dated March 4, 2025 and praying for de-freezing the three bank accounts.
4. It is the case of the petitioner that the order dated 10.12.2025 passed in W.P.A. 10121 of 2025 has not been complied with by the respondent authorities. Regarding non-compliance of

orders there is a specific provision under the law for enforcing compliance of the same. Filing a separate writ application is not to be encouraged.

5. Admittedly the petitioner has not complied with the direction in para 14 of the said order dated 10.12.2025. Paragraph 14 of the said order is very specific:-

“14. The petitioner is directed to make deposit of 35% of the total claim amount as directed by the ESI Court by 19th December, 2025 upon payment of the same the respondent shall be restrained from taking any coercive action against the petitioner by the respondents.”

6. Admittedly the said amount as directed has not been deposited. As such as no interim order was passed, and there was no order of injunction, the respondent authority proceeded in accordance with law and passed the impugned prohibitory order dated 22nd April, 2026 and the Garnishee Order dated March 4, 2025.
7. It appears that the petitioner had preferred an appeal challenging the order under Section 45A of the ESI Act.
8. It is the case of the petitioner that the High Court had granted an opportunity to the petitioner that the appellate forum would consider the issue of applicability of the provisions of ESI Act to the petitioner's establishment and then decide the case on merit.
9. It appears from the said order dated 10.12.2025 the Court observed that an application under Section 75 of the ESI Act is also pending before the ESI Court on identical issue.

10. In paragraph 13 of the said order dated 10.12.2025, the Court had directed as follows:

*“13. After hearing the rival contentions of the parties, I am of the considered view that **the ESI Court is directed to consider the locus of the petitioner before entering into the merits of the case in the light of the judgment delivered by co-ordinate Bench of this Court in WPA 6417 of 2024.**”*

11. It is the contention of the petitioner that without hearing the case on merit, the appellate tribunal has proceeded to dismiss the tender case for non-compliance of Court's order, to the extent that the applicant had not deposited 35% of the amount as directed.

12. Considering the said facts and circumstances it appears that the impugned order dated 22.12.2025 is not in accordance with law **as paragraphs 13 and 14 of the order dated 10.12.2025 are independent of each other.**

13. For non-deposit of the said amount the respondents have proceeded against the petitioner in accordance with law (Para 14).

14. The appellate forum was directed to act as per paragraph 13 of the said order and **compliance of the directions in paragraph 14 was not a precondition.** The paragraph 14 was only in respect of getting an order of injunction.

15. Accordingly, this Court finds that the impugned order dated 22.12.2025 is not in accordance with law and thus set aside. The tender case No. 120 of 2023 is restored to its file and number and the ESI Court Calcutta is directed to hear the case on merit strictly as per direction in paragraph 13 of the

order dated 10.12.2025 passed by the High Court in WPA
10121 of 2025.

16.The writ application being **W.P.A. 11151 of 2026** stands
disposed of.

17.Urgent Photostat certified copy of this order, if applied for, be
given to the parties upon completion of usual formalities.

(Shampa Dutt (Paul), J.)