

11.05.2026.
Item No. 13.
Court No. 13
ap

M.A.T. No. 962 of 2025
With
I.A. No. CAN/1/2025

M/s. M.M. Enterprises & Ors.
Versus
The Union of India & Ors.

Mr. Pratik Majumder,
Mr. Ayan Chakraborty,
Ms. Sohini Mukherjee,
Mr. Saikat Mallick.

...For the appellants.

Mr. Bodhisatta Biswas,
Mr. Ishan Bhattacharya.

...For the respondent nos.2 & 3.

Mr. Sahasrangshu Bhattacharjee,
Mr. Loknath Chatterjee.

...For the UOI.

1. The instant intra court appeal is directed against the judgment and order dated 24th June, 2025 passed by a learned Single Judge of this Court in W.P.A. 13987 of 2025.

2. The issue in the writ petition was as to whether a contractor under C.E.S.C. Limited was liable or came within the purview of the Employees State Insurance Corporation Act, 1948. The first authority under the ESIC decided against the appellants.

3. It appears that the issue came for consideration before the Hon'ble Supreme Court of India in an appeal carried by the C.E.S.C. Limited and a contractor, one of the appellants herein, namely, M/s. M.M. Enterprises against an order of a Division Bench of this Court.

4. The decision of the Hon'ble Supreme Court of India in the case of **C.E.S.C. Limited & Ors. – Vs. – Subhash Chandra Bose & Ors.** reported in **(1992) 1 Supreme Court Cases 441** held in paragraph 20 as follows:

*“20. Thus on both counts, the principal question as well as the subsidiary question must be answered against the ESIC holding that the employees of the electrical contractors, on facts and circumstances, established before the Division Bench of the High Court, do not come in the grip of the Act and **thus all demands made towards ESI contribution made against the C.E.S.C. and the electrical contractors were invalid.** We affirm the view of the High Court in that regard.”*

(emphasis added)

5. It follows from the lines emphasized hereinabove that both the C.E.S.C. Limited and the Electrical Contractors were held to be outside the purview of the ESIC Act, 1948.

6. Learned Counsel appearing on behalf of the appellants would argue that the first authority under Section 45A of the ESIC Act committed error of jurisdiction in holding that the appellants/contractors were covered under the ESIC Act and liable to make payment. This, according to the Counsel for the appellants, is diametrically against the observations of the Hon'ble Supreme Court of India highlighted hereinabove.

7. Learned Counsel appearing on behalf of the respondents would argue that the order of the Single Judge does not call for interference and the appellants

could agitate all these issues before the Appellate Authority under Section 45AA of the ESIC Act. He further submits that the issue of liability of the contractors was not even discussed in the aforesaid judgment of **Subhash Chandra Bose (supra)** by the Hon'ble Supreme Court of India. The observation emphasized hereinabove in paragraph 20 thereof is that electrical contractors must be treated as *obiter* or an error.

8. It is now well-settled that the alternative remedy of a statutory appeal is not a bar for a Writ Court to entertain a writ petition when a question of jurisdiction is involved or violation of natural justice is alleged or when the acts in violation of any statutory provisions are complained of.

9. The writ petition ought not to have been dismissed by a learned Single Judge of this Court and the appellants ought not to have been relegated to appeal under Section 45AA of ESIC Act. Exception to alternative remedy for maintainability and entertainability of the writ petition discussed hereinabove are squarely applicable in this case.

10. In view of the observations of the Hon'ble Supreme Court of India in the case of **Subhash Chandra Bose (supra)**, the appellants are clearly not liable under the ESIC Act nor do they come within the purview of the said Act.

11. The question of the appellants being remanded to the Appellate Authority does not arise as the first authority has committed jurisdictional error.

12. The impugned orders dated 10th December, 2024, 13th February, 2025 and 10th June, 2025 are set aside. The garnishee proceedings arising therefrom shall also stand set aside.

13. The order of the first authority under Section 45A, impugned in the writ petition, freezing the account of the appellants shall stand quashed.

14. Having regard to the above, M.A.T. 962 of 2025 is allowed and disposed of.

15. In view of the disposal of the appeal itself, the connected application being CAN 1 of 2025 is also disposed of.

16. There will be no order as to costs.

17. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Rai Chattopadhyay, J.)