

OD-3

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/829/2025
M/s. BESCO LIMITED (FOUNDRY DIVISION)
-VERSUS-
EMPLOYEES STATE INSURANCE
CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA DUTT (PAUL)

Date : 9th April, 2026.

Appearance:

Mr. Soumya Majumdar, Sr. Adv.
Ms. Debjani Sengupta, Adv.
Mr. Rajib Mullick, Adv.
Ms. Priyanka Barik, Adv.
.... for the petitioner.

Ms. Soumi Guha Thakurta, Adv.
Ms. Raima Ganguly, Adv.
Ms. Madiha Haider, Adv.
...for the respondent nos.1 to 3.

1. The writ application has been preferred challenging the demand notice dated 27th May, 2025 and the garnishee order dated 14th October, 2025 and all other recovery action.
2. It is the case of the petitioner that the petitioner was not given a proper hearing during the proceeding under Section 45A of the ESI Act, 1948 and the respondent authority without hearing the petitioner/company has passed the impugned order dated 27th May, 2025.
3. It is further stated that in spite of passing the order without granting an opportunity of hearing to the petitioner, the respondent authorities have proceeded against the petitioner

vide an order dated 14th October, 2025 by issuing a garnishee order under Section 45G of the ESI Act.

4. Mr. Majumder, learned senior counsel for the petitioner has brought to the notice of the Court, the order under Section 45A of the ESI Act dated 26th December, 2018 which is marked as annexure B at page 22 of the supplementary affidavit to the affidavit in opposition filed by the respondent nos.1 to 3.
5. On perusal of the said order, on the basis of which the impugned orders and notices have been issued, this Court finds that the authority concerned in his order in the proceeding under Section 45A of the ESI Act noted as follows :

“Whereas on 26.04.2017, the employer did not turn up for personal hearing but submitted a letter dated 20.04.2017 declaring suspension of work from 19.04.2017. However, in the interest of natural justice, the employer was given another opportunity of personal hearing on 14.06.2017 which was communicated to the employer vide this office letter of even no. dated 30.05.2017.”

6. It appears from the said observation that the **date of hearing in the proceeding under Section 45A of the ESI Act was fixed during the period when there was admittedly suspension of work [lock-out] in the petitioner’s establishment.** The respondent authorities without giving the

petitioner further opportunity and/or waiting till the suspension of work was withdrawn, proceeded to hold that the employer did not attend the hearing and, as such, passed an order against the petitioner herein. The said conduct is clearly against the principles of natural justice.

- 7.** Mr. Majumder, has further brought to the notice of this Court several discrepancies in the order under Section 45A of the ESI Act and the statement attached to the impugned notice dated 27th May, 2025. It appears that there are several discrepancies regarding the amount claimed and the period for which the said amount has been claimed.
- 8.** Considering that the hearing under Section 45A was concluded without taking into consideration, the predicament of the petitioner that there was “suspension of work” in his establishment, the authorities concerned neither waited for the suspension of work to be withdrawn, nor did they fix any date after the suspension period and have proceeded to come to a finding without thus granting an opportunity of hearing to the petitioner. Such conduct on the part of the respondent authorities is, prima facie, against the principles of natural justice and is thus clearly an abuse of the process of law.
- 9.** Accordingly, on hearing the parties and considering the materials on record and the issues involved, this Court sets aside the order under Section 45A of the ESI Act dated 26th

December, 2018 and the impugned demand notice dated 27th May, 2025 and also the garnishee order dated 14th October, 2025 with a direction that the authority concerned shall **initiate a fresh proceeding under Section 45A of the ESI Act** and on granting opportunity to the petitioner, who shall be at liberty to place the discrepancies, as pointed out in the writ application, before the authority concerned and on giving due consideration to the said submission of the petitioner, shall complete the proceeding by passing a reasoned order in accordance with law.

10. Mr. Majumder, further submits that on the basis of such an erroneous order passed by violating the principles of natural justice, the respondent authorities have recovered a substantial amount for which the petitioner is liable to the Bank and submits that as the amount has been recovered by way of an erroneous order, the same be refunded to the petitioner herein, who has suffered severe prejudice. On the other hand, learned counsel for the ESI authorities submits that as the matter is being freshly heard, the amount may be retained and the same may be adjusted after the fresh adjudication is completed.
11. Considering the submissions of both the parties, the materials on record and in the interest of justice, this Court directs the respondent authority to refund/return the amount which has

been withdrawn on the basis of the garnishee order, considering the fact the amount has been recovered on the basis of an order which is, prima facie, erroneous.

- 12.** It is further directed that the authorities concerned while passing the order shall proceed in accordance with law.
- 13.** Writ application stands disposed of.

(SHAMPA DUTT (PAUL), J.)

pkd/nm.