



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-02-2026

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THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.3899 of 2026andW.M.P.Nos.4315, 4318 and 4320 of 2026

M/s.RAMANI TEX,
570, CRPF Road,
Vadamadurai,
Kathirnaickenpalayam -641 035
Rep. by its Partner.

Petitioner

Vs

1. The Deputy Director,
Employees State Insurance Corporation
(Sub Regional Office) 1897,
Trichy Road, Panchdeep Bhavan,
Ramanathapuram,
Coimbatore- 641 045.

2.The Recovery Officer,
Employees State Insurance Corporation
(Sub Regional office) 1897,
Trichy Road, Panchdeep Bhavan,
Ramanathapuram,
Coimbatore- 641 045.

Respondents

PRAYER

Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent in C19 notice dated 20.10.2023 in Proceedings No.56001015850000101/10192023314 and consequential order under Section 45A of Employees State Insurance Act, 1948, dated 12.09.2022 in Proceedings No.56-00-101585- 000-



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0101INS.I SRO and quash the same.

For Petitioner

Mr.G.Anandhagopalan for
M/s ADVIT Law Chambers

For Respondents

M/s.G.Narmadha, SC for R1, R2

ORDER

The writ petition is filed seeking a Writ of Certiorari to call for the records of the first respondent in C-19 notice, dated 20.10.2023 and consequential order, under Section 45A of the Employees State Insurance Act, 1948 (in short “ESI Act”) dated 12.09.2022 and to quash the same.

2. Upon hearing Mr.G.Anandhagopalan, learned counsel appearing on behalf of the petitioner and perusing the material records of the case, the contention of the petitioner is that the petitioner was originally having ESI Code and was paid the contributions in accordance with law, until March 2018. Thereafter, the petitioner’s establishment was closed. After the petitioner’s establishment was closed, in the year 2022, when notices were issued to the petitioner claiming payment of contribution, the partner of the firm appeared before the authorities on behalf of the petitioner and submitted the necessary details evidencing the closure of the unit. Thereafter, without dropping the proceedings, the authorities seems to have passed an order under Section 45A of the ESI Act, determining the dues. However, after the enquiry, that was conducted, an order under Section 45A of the ESI Act, was not served on the



petitioner firm. Only when the bank account belonging to the wife of the partner of the petitioner firm was attached, they enquired and came to know about the impugned proceedings and as such, the petitioner has approached this Court.

3. The first contention of the petitioner is that, the petitioner is entitled to approach this Court, since the order under Section 45A of ESI Act, was not even served on the petitioner firm, so as to enable the petitioner to file an appeal or to approach the ESI Court, at the relevant point of time. Without even serving the order, the authorities cannot now take further action.

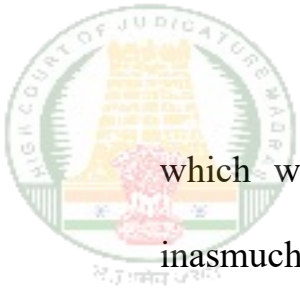
4. The second contention of the petitioner is that, in the recent judgement of the Honourable Supreme Court of India in *M/s Carborandum Universal Ltd., v. ESI Corporation* reported in [2025 INSC 1455], it is decided by the Honourable Supreme Court of India that the respondents, under the erstwhile Employees State Insurance Act, 1948, had powers to pass an order under Section 45A, which is in the nature of best judgment assessment only on the terms mentioned therein. When the employee had appeared and furnished all the documents, merely on the ground of inadequacy of evidence or on dispute of any facts, the power under Section 45A cannot be invoked and the only course open to the respondents authorities is to approach the ESI Court under Section 75(1) of the ESI Act to decide the said disputed question of fact or other disputes relating to the assessment and they cannot straight away pass an order



under Section 45A of the ESI Act, and make a demand or to make the attachment. Therefore, the impugned orders cannot be sustained and are liable to be quashed by this Court.

5. The writ petition is resisted by the respondents and the learned counsel appearing on behalf of the respondents, by placing reliance on the counter affidavit and other particulars, would submit that, it is true that when the order under Section 45A of the ESI Act was passed and it was sent by Registered Post, the same was returned with an endorsement as “addressee left”. It is for the petitioner firm to have informed the Corporation of their change of address. The petitioner ought to have exhausted the remedy of appeal as well as the remedy of approaching the ESI Court.

6. As far as the second argument made on behalf of the petitioner is concerned, it is the contention of the learned counsel for the respondents that the corporation is aggrieved by certain findings in the above judgment of *M/s Carborandum Universal Limited case (cited supra)*, as the same would run contrary to paragraph No.5 of the earlier judgment of the Honourable Supreme Court of India in *Employees’ State Insurance Corporation v. F.Fibre Bangalore (P) Ltd.*, reported in *[(1997) 1 SCC 625]* and the corporation is appropriately moving the Honourable Supreme Court of India in respect of its grievance. In any event, the learned counsel would point out that, this is a case,



which would warrant exercise of power under Section 45A of ESI Act, inasmuch as, it is the contention of the petitioner that, it has closed down the undertaking. It must be seen that the authorities have framed Regulations under the erstwhile *Employees' State Insurance Act, 1948* namely, the *Employees' State Insurance (General) Regulations, 1950*. As per Regulation 26, it is incumbent upon the petitioner firm to have filed the return. If it is the contention of the petitioner firm that they have closed the firm, even then, under Regulation 10C, they ought to have informed the authorities about the same. Admittedly, the same has not been done and therefore, since there is a violation with reference to the mandatory compliances under Section 44, this is a fit case for invocation of the power under Section 45A of the ESI Act.

7. I have considered the rival submissions made on either side and perused the material records of the case.

8. The following questions arise for consideration in the instant case:

(i) Whether the order passed under Section 45A of the ESI Act, is liable to be interfered with by this Court for violation of the scheme of the Act in terms of the judgement of the Honourable Supreme Court of India in *Carborandum case* (cited supra)?

(ii) Whether the petitioner can now be permitted to



agitate the order under Section 45A of the ESI Act, 1948 ?

Question No:1

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9. At the outset, certain submissions were made with reference to the decision, that was made, in ***Carborandum case (cited supra)*** and the remit of this Court, at best be, to record the arguments of the learned counsel and this Court has to go by the dictum that is laid down by the Honourable Supreme Court of India in ***Carborandum case (cited supra)***. On a reading of paragraph No.25 of the judgment of the Honourable Supreme Court of India, it can be seen that the Honourable Supreme Court of India had held that the authorities can go only by the scheme of the Act. Section 45A of the ESI Act gives them powers to carry out best judgment assessment only in the scenario mentioned therein and not under all circumstances and not as if they were making a regular assessment.

10. On perusal of the scheme of the Act, it can be seen that Section 38 mandates, all employees be insured; Section 39 mandates payment of contributions; Section 40 fastens the liability on the principal employer to pay the contributions at the first instance; Section 41 provides for the recovery of the contribution by the principal employer from the immediate employer; Section 42 contains general provisions as to payment of contributions; Section 43 provides for the method of payment of contribution, enabling the corporation to make regulations in respect to the matters mentioned therein; Section 44,



which is relevant for deciding the instant question, is extracted hereunder for ready reference:

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“44. Employers to furnish returns and maintain registers in certain cases.-(1) Every principal and immediate employer shall submit to the Corporation or to such officer of the Corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulations made in this behalf.

(2) Where in respect of any factory or establishment the Corporation has reason to believe that a return should have been submitted under sub-section (1) but has not been so submitted, the Corporation may require any person in charge of the factory or establishment to furnish such particulars as it may consider necessary for the purpose of enabling the Corporation to decide whether the factory or establishment is a factory or establishment to which this Act applies.

(3) Every principal and immediate employer shall maintain such registers or records in respect of his factory or establishment as may be required by regulations made in this behalf.”

11. Thus, it enjoins upon the employers, firstly, to file returns as may be directed under the Act and Regulations framed thereunder and Secondly, to maintain such forms and particulars relating to the persons employed by him or by the immediate employer. Section 44(2) imposes liability to recover on any person in charge of the factory or establishment to furnish particulars, if there is reason to believe that a return should have been submitted, but it has not been submitted. Section 44(3) creates an obligation on the principal and immediate employers to maintain such registers or records in respect of his factory or establishment as may be required under the Regulations made by the corporation in this behalf.



12. Section 45 of the ESI Act enables the officer concerned to make inspection of the records and to perform such duties, as may be the authorised by the Corporation. Section 45A reads as follows and is extracted hereunder for ready reference:-

45A. Determination of contributions in certain cases. (1)

Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any (Social Security Officer) or other official of the Corporation referred to in sub-section (2) of section 45 is [prevented in any manner] by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under Section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment;

[Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.]

[Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable]

(2) An order made by the Corporation under sub-section (1) shall be sufficient proof of the claim of the Corporation under section 75 or for recovery of the amount determined by such order as an arrear of land revenue under Section 45B 3or the recovery under section 45C to section 45-I.”

13. Thus, it can be seen that what is envisaged under Section 45A of the ESI Act is a best judgment assessment. It can be done, firstly, where in respect of a factory or establishment, no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Section 44 or where the official of the Corporation referred to under Section 45 of the ESI Act is prevented from exercising his functions and discharging his duties. In this regard, the matter has been decided by the Honourable Supreme Court of



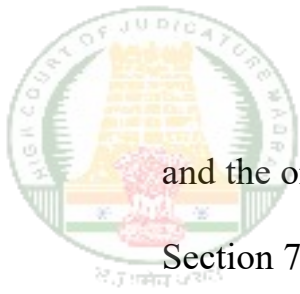
India in *Carborandum case (cited supra)* and it is essential to extract Paragraph Nos.27 and 30 of the said judgment.

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“27.In the present case, the materials placed before us shows that the appellant had produced ledgers, cash, books, journal vouchers, contractor records and returns of contribution for the period in question. Personal hearings were granted on numerous dates and the appellant had appeared through its authorised representative in such hearings. The corporation has itself recorded in its order that records were produced but certain supporting bills were not furnished in respect of some heads of expenditure. This finding, even if accepted at face value, does not bring the case within the ambit of Section 45A. The statutory threshold is not inadequate production but non-production. The statute does not permit a best judgment determination merely because the records produced is inadequate.

30.In so far the instant case is concerned, it is clear that the respondent was not obstructed from inspection; nor was there non-production of records. The appellant furnished ledgers, cash, books, vouchers and returns, and had attended personal hearings repeatedly. The respondent’s allegation was not non-production of the record but inadequacy of the record. In such a case, the proper statutory course for the respondent, once records had been produced, was to examine the correctness thereof under Section 75 and if any dispute persisted, to initiate proceedings within the period of limitation prescribed by the proviso to Section 77(1A)(b). Invocation of Section 45A in such circumstances was misconceived. The Employees’ Insurance Court and the High Court, in our considered opinion, while affirming the order passed under Section 45A without examining this jurisdictional deficiency, fell into a grave and palpable error.”

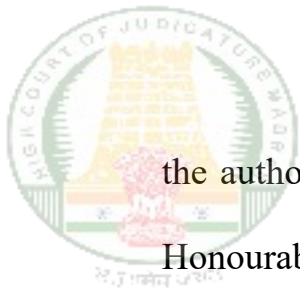
14. Thus, on a reading of the same, it is very clear that the Honourable Supreme Court of India, has mandated that only where the grounds that are expressly mentioned under Section 45A of the ESI Act are made out, best judgment assessment can be resorted to. With reference to deciding the disputed questions of fact or disagreement between the employer and the Corporation, the power of best judgment under Section 45A of the ESI Act cannot be invoked



and the only course open for the Corporation is to approach the ESI Court under Section 75(1) of the ESI Act. It is now brought to the notice of the Court that the new Social Security Code, 2020, resolves this impasse by introducing Section 125, whereby express provisions for assessment is made even in cases where the returns are filed or where the disputes are raised.

15. Thus, advertng to the facts in question in the above legal background, it can be seen that firstly, when the petitioner firm was having ESI Code allotted to it, as per Regulation 26 of the Employees State Insurance (General) Regulations, 1950, it was expected of the petitioner firm to have filed a return for the period subsequent to March 2018, which it did not file. Secondly, if it is the contention of the petitioner that there was closure of the undertaking even then appropriate intimation under **Regulation 10C** should to have been filed to the respondents authorities. Once, they omitted to do so, then, automatically, as per the judgment in *Corborandum case (cited supra)*, the grounds envisaged under Section 45A of the ESI Act are present in this case and no exception whatsoever can be taken for the authorities to have invoked the power under Section 45A of the ESI Act.

16. The further argument is that, even though the power could have been invoked and notice was issued when the representative appears and furnished documents, thereafter, the disputed questions should not have been decided by



the authorities. I am unable to accept the said contention, as the dictum of the Honourable Supreme Court in *Carborundum case (cited supra)* is to be understood, that unless the Act gives the power, the authorities should not invoke Section 45A of the ESI Act. Once there is a ground to invoke Section 45A and the exercise of determination of contribution is undertaken, thereafter, it cannot be said that on a mere dispute of any fact or non-availability of any evidence, the power under Section 45A would again be nullified and thereafter, the authorities should once again approach the ESI Court. That is not the dictum laid down by the Honourable Supreme Court of India. Once an authority is given the power to decide the contribution of the best judgment basis, the power to decide the incidental questions thereto should also be deemed to be vested in the authorities.

17. Therefore, I am not able to accept the contention of the learned counsel for the petitioner in this regard. I answer the first question, that on the facts of the instant case, as per the dictum laid down by the Honourable Supreme Court of India in *Carborundum case (cited supra)*, the authorities had jurisdiction to invoke Section 45 A to determine the dues.

Question No.2:

18. As far as this question is concerned, admittedly, the Section 45 A of the ESI Act order had returned as unserved. The argument of the learned



counsel for the respondents is that the petitioner ought to have informed the corporation of any change of address if any. It can be seen in this regard that even in the enquiry before the authorities, the pleadings of the petitioner was that the unit was closed and they were not at all present in the said address. Admittedly, the order under Section 45A of the ESI Act has been returned with the endorsement as “addressee left”. Since it is also pleaded that the petitioner had closed down the undertaking, even before the authorities during the enquiry, I am of the view that since the petitioner is now furnished a copy of the order, the petitioner will be entitled to the alternative remedies either by filing an appeal under Section 45 AA of the ESI Act or by approaching the ESI Court and the starting point of the limitation shall be from today. An argument is made by the learned counsel for the petitioner that the partner’s wife’s bank account is being attached. It will be open for the petitioner to raise all grounds either before the appellate authority or the ESI Court and seek interim relief by canvassing the merits of the case. Accordingly, this question is answered.

19. At this juncture, the learned counsel prays that they will approach the ESI Court and till then, interim protection be given as the petitioner is ready to deposit 20% of the amount. In view thereof, the Writ Petition is disposed of on the following terms:

(i) The petitioner shall approach the ESI Court within a period of four weeks from today and as and when the said original petition is filed, the same



shall be treated as being within the period of limitation and the petitioner will be at liberty to pray for such an interim orders;

(ii) Once the ESI Court passes an order either granting or refusing the interim order, the parties will be bound by the order of the ESI Court;

(iii) In the meanwhile, if the petitioner deposits 25% of the total claim, that is made, the attachment of the bank account shall stand revoked and thereafter, for further interim reliefs, the parties will be bound by the orders of the ESI Court to continue the same arrangement and also for such other relief as the case may be;

(iv) It is needless to mention that all the contentions of both sides are left open to be decided by the ESI Court on merits in accordance with law.

(v) Consequently, connected Miscellaneous Petitions are closed. No costs.

12-02-2026

Neutral Citation: Yes

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To

1. The Deputy Director

Employees State Insurance corporation (Sub Regional Office)

1897,

Trichy Road, Panchdeep Bhavan, Ramanathapuram,

Coimbatore- 641 045.

2. The Recovery Officer

Employees State Insurance Corporation (Sub Regional office)

1897,

Trichy Road, Panchdeep Bhavan, Ramanathapuram,

Coimbatore- 641 045.



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W.P.No.3899 of 2



D.BHARATHA CHAKRAVARTHY, J.,

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W.P.No.3899 of 2026

and

W.M.P.Nos.4315, 4318 and 4320 of 2026

12-02-2026