IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-02-2026

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THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.6541 of 2026
and W.M.P.Nos.7121 and 7123 of 2026

M/s SMS College of Arts and Science,
Represented by its Correspondent,
Mr.Kanagayam Chennpalanisamy,
Sms Garden Perur,
Perur, Coimbatore 641 010.

.. Petitioner

/versus/

1.The Employees State Insurance Corporation
Represented by its Deputy Director,
Trichy Road, Ramanathapuram,
Coimbatore 641 045.

2.Recovery Officer,
Employees State Insurance Corporation,
Panchdeep Complex, 1897,
Trichy Road,Ramanathapuram,
Coimbatore 641 045.

3.The Branch Manager,
Indian Bank,
Raja Street Branch,
P B No.139, D.No.560, Raja Street,
Coimbatore 641 001.

.. Respondents

Writ Petition has been filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 16.02.2026 passed by the 2nd respondent in CBE/RECY/CP-4/56001109190001303, quash the same as illegal and consequently, direct the 2nd respondent to not take any coercive action or act upon the notice dated 13.02.2026 without affording adequate opportunity to the petitioner.

For Petitioner	:Mr.S.Ravi, Asst.by Senior Counsel Mr.S.G.Vadiraj Anirudh
For Respondents	:Mr.F.Terry Chellah Raja for R1 to R2

ORDER

The writ petition is filed challenging the impugned order dated 16.02.2026 passed by the respondents.

2.Upon hearing the learned Senior Counsel appearing for the petitioner and perusing the material records of the case, it can be seen that already a liability of Rs.11,19,443/- with interest of Rs.11,80,319/- was levied as against the petitioner. Aggrieved by the original assessment amount, the petitioner has approached the ESI Court and E.S.I.O.P.No.132 of 2025 is pending. Even though before the waiver application was ordered on condition that the petitioner deposits 25%, the petitioner did not pray for any interim stay. Under the said circumstances, now the impugned order of passing garnishee order attaching the amounts lying in the bank accounts is passed. According to the learned Senior Counsel appearing on behalf of the petitioner when action is being taken under the second schedule of the Income Tax Act, 1961, 15 days notice is mandatory and therefore, the impugned notice as well as the order that was passed directing the petitioner to forthwith deposit the amount, without even waiting for the said mandatory period of 15 days, is illegal.

3. Per contra, the learned counsel appearing on behalf of the ESI Corporation would submit that the petitioner had already failed in two rounds challenging the liability. They have passed the 45-A order and there is no stay of the order as on date. Therefore they are entitled to proceed with recovery. As far as the 15 days requirement is concerned the proviso enables the authorities to attach the property in the event they are satisfied that the defaulter is likely to conceal, remove or dispose of the whole or part or any of such movable or immovable property. The subject matter involved is a bank account and if petitioner withdraws the amount nothing will be left and therefore the authorities decided to act immediately.

4. In reply thereof, the learned senior counsel would submit that no reasons have been mentioned in the impugned order.

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

6. It is essential to quote the relevant Rule including the proviso, which reads as under:

> ***"Definitions***
>
> *1. In this Schedule, unless the context otherwise requires,—*
>
> *(a) "certificate" means a certificate received by the Tax Recovery Officer from the Income-tax Officer for the recovery of arrears under this Schedule ;*
>
> *(b) "defaulter" means the assessee mentioned in the certificate ;*
>
> *(c) `'execution," in relation to a certificate, means recovery of arrears in pursuance of the certificate ;*
> *(d) "movable property" includes growing crops ;*
> *(e) "officer" means a person authorised to make an attachment or sale under this Schedule ;*
> *(f) "rule" means a rule contained in this Schedule; and*
> *(g) "share in a Corporation" includes stock, debenture stock, debentures or bonds.*

Issue of notice

2. *When a certificate has been received by the Tax Recovery Officer from the Income-tax Officer for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule.*

When certificate may be executed

3. *No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice required by the preceding rule :*

Provided *that, if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a civil court and the realisation of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing,* *an attachment of the whole or any part of such property :*

Provided further *that if the defaulter whose property has been so attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment shall be cancelled from the date on which such security is accepted by the Tax Recovery Officer."*

7. Thus, it can be seen that as per the proviso to the Rule, it will be open for the authorities to dispense with the period of 15 days, provided they are satisfied that there is an immediate possibility of the property being removed or disposed of by the defaulter. Not only that, the proviso also imposes the second condition of recording the said reasons in writing. Therefore, the authority should be satisfied that the defaulter is likely to remove or dispose of the property and the said reason should also be reduced into writing.

8. On a perusal of the impugned order, it can be seen that no reason has been mentioned in the impugned order for the purpose of dispensing with the 15 days period. Even in the notice that is issued no reason finds place. Therefore, the impugned order is unsustainable.

9. The learned Senior Counsel submits that already 25% has already been deposited. Even if 25% has been deposited, the petitioner has to approach the appropriate Court before which the original petition is pending, for any interim order pending disposal of the original petition. This Court under Article 226 of Constitution of India cannot pass any interim order pending the statutory proceedings and it is for the Court concerned to grant such interim order on appropriate terms.

10. In view thereof, this writ petition is disposed of on the following terms.

(1)The impugned order dated 16.02.2026 stands set aside.

(2)Time is granted for the petitioner till 27.02.2026 to move the concerned ESI Court before which E.S.I.O.P.No.132 of 2025 is pending for appropriate interim relief. Until 27.02.2026, no fresh order of attachment or garnishee order shall be passed.

(3)After 27.02.2026, if the petitioner is not able to obtain any interim order of stay, it will be open for the authorities to pass fresh orders of attachment or garnishee order by duly recording the reasons, if any, for dispensing with the 15-days period.

(4)It is needless to mention that if any interim order is passed, the parties should thereafter be guided by the interim order that is passed by the ESI Court.

(5)It is further needless to mention that the findings of this Court relate only to the attachment/garnishee order alone and the parties shall be entitled to contest the matter on its own merits.

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

17-02-2026

Neutral Citation:No

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To

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D.BHARATHA CHAKRAVARTHY, J.

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