BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2026

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THE HONOURABLE MR.JUSTICE HEMANT CHANDANGOUDAR

Writ Petition(MD)No.29438 of 2025

and

W.M.P(MD)Nos.22754 & 22758 of 2025

Saratha Matriculation School
rep. by its Correspondent,
424-C, Madurai Main Road,
Sankar Nagar,
Tirunelveli District - 627 357.

.. Petitioner

Vs

1.The Deputy Director,
Employees State Insurance Corporation,
Sub Regional Office,
Salaistreet,
Vannarpettai,
Tirunelveli District - 627 003.

2.The Recovery Officer,
Employees State Insurance Corporation,
Office of the Recovery Office,
Sub Regional Office,
Salai Street,
Vannarpettai,
Tirunelveli District - 627 003.

3.The Branch Manager,
Indian Overseas Bank,
Naranammalpuram,
Tirunelveli - 627 357.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records relating to the impugned order passed by the first respondent No.66-00-040016-000-1302/45-A/SRO/TLI/459-18/ dated 03.12.2024 and the consequential impugned Garnishee order passed by the second respondent in No.66000400160001302/RRC/SRO/TLI dated 22.08.2025 and quash the same as illegal.

For Petitioner : Mr.M.Jerin Mathew
For Respondents : Mr.R.Ravikumar for R1 & R2
Mr.N.Dilipkumar for R3

ORDER

The petitioner challenges the order dated 03.12.2024, bearing No.66-00-040016-000-1302/45-A/SRO/TLI/459-18, passed by the first respondent and the consequential Garnishee Order passed by the second respondent in No.66000400160001302/RRC/SRO/TLI dated 22.08.2025. By the said impugned order, the petitioner has been called upon to pay a sum of Rs.17,53,389/-, being the arrears of employees' contribution for the period from February 2013 to April 2018 under the Employees' State Insurance Act, 1948.

2. The petitioner is a school covered under the provisions of the Employees' State Insurance Act, 1948, and has been assigned the necessary code under the Act. Therefore, the petitioner is under a statutory obligation to pay contributions in accordance with Section 40 of the Act, read with Regulations 29 and 31 of the ESI (General) Regulations framed thereunder.

3. The first respondent issued a communication dated 26.02.2014 stating that payment of contribution to ESI was being withheld due to litigation initiated by the Association of Schools before the High Court. Since the petitioner failed to pay the contributions as required under law, a show cause notice dated 29.10.2018 was issued to the petitioner for the said period, calling upon the petitioner to explain why the contribution specified therein should not be assessed under Section 45-A of the Act. The petitioner did not submit any reply to the show cause notice and also did not participate in the enquiry conducted under Section 45-A of the Act. Thereafter, the first respondent, after considering the materials available on record, passed the impugned order.

4. The learned counsel appearing for the petitioner submitted that the impugned order passed by the first respondent is barred by

limitation, as it was issued more than five years after the contribution became payable. In support of this submission, reliance was placed on the second proviso to Section 45-A of the Act and the decision of a Coordinate Bench of this Court.

5. Per contra, the learned standing counsel appearing for respondents 1 and 2 submitted that the second proviso to Section 45-A has been interpreted by the Bombay High Court, wherein it has been held that while the assessment fixing the liability for employees' contribution can relate only to a period of five years, the assessment order itself may be passed beyond the said period of five years. Therefore, according to the learned counsel, the proviso does not mandate that the assessment order must necessarily be passed within five years from the date on which the contribution became payable. In support of this submission, reliance was placed on the judgment of the Bombay High Court reported in ***2019 (5) ALL MR 728 (M/s. Anil Chat Bhandar vs. Deputy Regional Director and another)***.

6. The submissions of the learned counsel appearing on either side have been considered.

7. Admittedly, the assessment relates to the period from February 2013 to April 2018. The show cause notice was issued on 29.10.2018. The petitioner did not participate in the enquiry proceedings. The impugned order records that a show cause notice was issued and that an opportunity of personal hearing was afforded to the petitioner. However, the impugned order does not indicate that any reply was submitted by the petitioner or that the petitioner participated in the enquiry. Though the proceedings were initiated on 29.10.2018, the impugned order came to be passed only on 03.12.2024.

8. The second proviso to Section 45-A of the Act states that no order shall be passed by the Corporation in respect of a period beyond five years from the date on which the contribution became payable. In other words, the order of assessment under Section 45-A must be passed within five years from the date on which the contribution became payable. In similar circumstances, a Coordinate Bench of this Court, in ***C.M.A.(MD) No.1326 of 2015 dated 20.03.2023 (Employees' State Insurance Corporation vs. M/s. Sree Visalam Chit Fund Ltd.)***, has held under Regulation 32(2) of the Employees' State Insurance (General) Regulations, 1950, an employer is required to maintain ESI records only for a period of five years from the date of

the last entry. Earlier, Section 45-A of the ESI Act did not prescribe any limitation for passing assessment orders. However, by the amendment introduced in 2010, the second proviso to Section 45-A provides that no order determining contribution shall be passed after five years from the date on which the contribution became payable. Therefore, if an order under Section 45-A is passed beyond the said five-year period, it would be barred by limitation and unsustainable in law.

9. Following the aforesaid pronouncement, another Coordinate Bench of this Court, in ***C.M.A.(MD) No.1120 of 2017, by order dated 14.08.2024***, allowed the appeal and held that the impugned order therein was barred by limitation.

10. The Bombay High Court, while interpreting the second proviso to Section 45-A, has held that the said proviso restricts the power of the Corporation to pass an order determining the contribution only within a period of five years from the date on which the contribution became payable, and not beyond the said period.

11. In other words, the Bombay High Court held that the competent authority under Section 45-A can pass an assessment

order only in respect of the contribution payable for a period of five years, and not beyond that period. In the said decision, the assessment related to a period of less than five years. In the present case, the assessment covers a period exceeding five years, and therefore the principle laid down in the said judgment is also applicable to the facts of the present case.

12. A strict interpretation of the second proviso to Section 45-A makes it clear that no assessment order can be passed after the expiry of five years from the date on which the contribution became payable, which interpretation has been rightly adopted by the Coordinate Bench of this Court.

13. The contention of the learned counsel appearing for respondents 1 and 2 that the present Writ Petition is not maintainable without exhausting the alternative remedy of appeal provided under Section 75 of the Act cannot be accepted. It is well settled that a writ petition is maintainable where an order is passed without jurisdiction. In the present case, the impugned order passed by the first respondent lacks statutory authority, as it has been passed beyond the limitation period of five years.

14. In such circumstances, this Court is of the view that the impugned order passed by the first respondent is barred by limitation and is therefore liable to be set aside, along with the consequential Garnishee Order.

15. Accordingly, this Writ Petition is allowed and the impugned order dated 03.12.2024 bearing No.66-00-040016-000-1302/45-A/SRO/TLI/459-18 passed by the first respondent, as well as the consequential Garnishee Order passed by the second respondent in No.66000400160001302/RRC/SRO/TLI dated 22.08.2025, are hereby quashed. No costs. Consequently, the connected miscellaneous petitions are closed.

12.03.2026

NCC : Yes/No
Index : Yes/No
Internet:Yes
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To

1.The Deputy Director,
Employees State Insurance Corporation,
Sub Regional Office,
Salaistreet,
Vannarpettai,
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2.The Recovery Officer,
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HEMANT CHANDANGOUDAR, J.

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