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Date on which Order was pronounced : 10.04.2026
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APHC010579172016



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3327]
(Special Original Jurisdiction)**

FRIDAY, THE TENTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE K SREENIVASA REDDY

WRIT PETITION NO: 23255/2016

Between:

1. SMT. R. SRIVALLI, CHITTOOR DIST., , R/O DOOR NO.20-1-470/5-A, KORLAGUNTA, TIRUPATHI, CHITTOOR DISTRICT.

...PETITIONER

A N D

1. UNION OF INDIA LABOUR NEW DELHI 2 OTRS, MINISTRY OF LABOUR AND EMPLOYMENT, REP.BY ITS SECRETARY, SHRAMA SAKHI BHAVAN, RAIL MARG, NEW DELHI-110001.
2. THE DEPUTY DIRECTOR, EMPLOYEES INSURANCE CORPORATION, REGIONAL OFFICE, HYDERABAD.
3. ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION REP BY, ITS REGIONAL MANAGER, NELLORE.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of writ of mandamus, declaring the action of the 2nd respondent in issuing the proceedings vide No.AP/Ins.II/52000282330001001 dated 5.5.2016 of the 2nd respondent and also consequential order vide & No.AP/INS-II/52-00-028233-000-1001/493 dated 15.7.2015 proceedings of the 2nd respondent as illegal, unconstitutional, colourable exercise of power and contrary to the

provisions of the Employees State Insurance Act, 1948 and the rules and regulations framed thereunder, and also contrary to the proceedings of the No.E5/ 122(7)/2012-RM(NLR) dt.13.03.2012, and set-aside the same

IA NO: 1 OF 2016(WPMP 28637 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the proceedings of No. AP/Ins.II./52000282330001001 dated 5-5-2016 and No. AP/INS-II/52-00-028233-000-1001/ 493, dated 15-07-2015 issued by the 2nd respondent, pending disposal of the writ petition.

IA NO: 2 OF 2017(WPMP 141600 OF 2017)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

Counsel for the Petitioner:

1.J UGRANARASIMHA

Counsel for the Respondent(S):

1.K JAGAN MOHAN REDDY

2.P DURGA PRASAD SC FOR APSRTC

3.P RAJASEKHAR

4.B G RAVINDER REDDY

5.VENKATESHWARLU GUMMADEVALLY

The Court made the following:

THE HONOURABLE SRI JUSTICE K SREENIVASA REDDY**WRIT PETITION NO.23255 OF 2016****ORDER**

This Writ Petition was filed seeking the following relief:

“...to issue an appropriate Writ, Order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of 2nd respondent in issuing the Proceedings vide No.AP/Ins.II/52000282330001001, dated 05.05.2016 of 2nd respondent and also consequential Order vide No.AP/INS-II/52-00-028233-000-1001/493, dated 15.07.2015 proceedings of 2nd respondent, as illegal, unconstitutional, colourable exercise of power and contrary to the provisions of the Employees State Insurance Act, 1948 and the rules and regulations framed thereunder and also contrary to the Proceedings of No.E5/122(7)/2012-RM (NLR), dated 13.03.2012 and set-aside the same and pass such other order or orders ...”

2. Contents of the affidavit filed by the Writ Petitioner, in brief, are that 2nd respondent awarded a Tender vide Proceedings No.E5/122(7)/2012-RM (NLR), dated 13.03.2012 specifying her contract only for Two (02) years, and it was further mentioned that it can be extended for One (01) more year; that the said contract specified the number of workers as Four (04) Sweepers and One (01) Attender and also specified the amount at Rs.28,901/- per month. The said proceeding confirms the total employees limited to Five (05) only.

(b) The intention of Legislature is clear that 1st respondent can invoke its powers to cover any Unit as stipulated under Section 1 (5) of the Employees' State Insurance Act, 1948 (for brevity 'the ESI Act, 1948'). The individual, who covered the Writ Petitioner, is none other than an Inspector, under Section 45 of the ESI Act, 1948, without any verification of the documents. The Writ Petitioner was covered on adhoc basis by issuing C-18 Notice, but not by verifying the records, which is an admission on the part of 1st and 2nd respondents.

(c) If the respondent Nos.1 and 2 intend to extend the purview and scope under Section 1 (5) of the ESI Act, 1948, the scheme has been extended to Shops, Hotels, Restaurants, Cinemas including Preview Theatres, Road Motor Transport Undertakings and Newspaper Establishments, and it should be 20 employees without the aid of power, and 10 or more employees with the aid of power. That distinction was made by the ESI Act, 1948 under Section 2 (12) of the ESI Act, 1948. But, 3rd respondent, being a State or the instrumentality of the State, confirmed in the agreement *vide* Proceedings No.E5/122(7)/2012-RM (NLR), dated 13.03.2012 that only five (05) persons were deployed to the sanitation work of seeping, cleaning of garage

yard and DMs Office at Nellore-II Depot, thus, 2nd respondent high-handedly invoked the provisions of law without consulting the Writ Petitioner nor getting any explanation from her.

(d) After receiving Adhoc Notice under C-18, the Writ Petitioner issued a legal notice. Respondent No.2 further went on and issuing C-19 Notice without verification of records from 3rd respondent, and further issued Section 45A of the ESI Act, 1948 Order dated 15.07.2015 directing to pay half of the amount and finally, issued a proceeding threatening the Writ Petitioner to invoke the provisions of law as contemplated under Section 45-C to 45-Ia of the ESI Act, 1948, which is nothing but, sort of excessive exercise of power by 2nd respondent, and such action is contrary to 1st respondent and its coverage procedure under the ESI Act, 1948.

(e) Respondent No.1 widely published in its webpage making applicable to non-seasonal factories employing 10 or more persons, under Section 2 (12) of the ESI Act, 1948. If that is so, even according to 1st respondent, contrary to their stand, they applied the scheme against the Writ Petitioner. The contract of the Writ Petitioner is only for Two (02) years and expired along with the time prescribed in the said proceedings of 3rd respondent. The

mandatory obligation on the part of Writ Petitioner is that, she shall not engage more than Five (05) persons as stipulated under the Agreement. In the light of above said provisions of law, and also under the instructions of 1st respondent, 1st respondent contract, with 3rd respondent was only for Two (02) years and expired after Two (02) years and at any given point of time, exceeded Five (05) employees, the question of coverage under the ESI Act, 1948 does not arise at all.

(f) The Writ Petitioner was continuing 3rd respondent contract and the said contract was already expired and the Writ Petitioner worked with the said contract only with Five (05) people as directed under the clauses of the contract, so, it is not the case of 1st and 2nd respondents to do the coverage according to their choice. Hence, the Writ Petition.

3. Respondent Nos.1 and 2 filed counter-affidavit, denying the contents of the Writ affidavit, contending *inter alia* that the ESI Act, 1948 has been enacted for the benefit of workers to render medical benefits to them and their family, as enumerated in Section 46 of the ESI Act, 1948. The Writ Petitioner is the Proprietor of M/s. R.Srivalli Labour Contractor and an Establishment under Section 1 (5) of the ESI Act, 1948 with Code

No.79000282330001001 (previously 52000282330001001) and the same was communicated *vide* Form C-11 dated 26.11.2007 with effect from 01.07.2007. The Writ Petitioner is required to pay the contributions under Sections 40 and 44 of the ESI Act, 1948 read with Regulations 26, 29 and 31 of the ESI (General) Regulations, 1950.

(b) The Writ Petitioner filed the Writ Petition with false, untrue, frivolous and unsustainable allegations and approached the Court with unclean hands. The Writ Petitioner herself submitted in Form-I dated 26.10.2007 that a total of 27 employees were directly employed by the Writ Petitioner for the purpose of contract with the Municipal Corporation, Tirupati *vide* Contract No.Roc.No.2412/F1, dated 29.06.2007. The Insurance Inspector, Tirupati visited and filled in, and submitted Form-I of the Writ Petitioner, Form C-11 dated 26.11.2007 was issued with an intimation that the said establishment comes under the purview of the ESI Act, 1948 under Section 1 (5) with effect from 01.07.2007.

(c) The Writ Petitioner was provided with an opportunity of hearing on 28.05.2015 for C-18 Adhoc Notice dated 07.05.2015 for an amount of Rs.2,84,750/- for the period from 04/2009 to 03/2011, but, the Writ Petitioner failed to attend the personal

hearing. The Writ Petitioner was also provided with another opportunity on 07.07.2015 *vide* Letter dated 05.06.2015, but, the same was also not utilized by the Writ Petitioner. The Writ Petitioner was issued Section 45-A dated 15.07.2015 for an amount of Rs.1,44,788/- for the period from 06/1020 to 03/2011 excluding the period 04/2009 to 05/2010 (as the said period was time barred) deducting Rs.1,39,962/-. In response to that, the Writ Petitioner *vide* Letter dated 06.08.2015 informed that she executed housekeeping work for the period 04/2012 to 03/2014 and that, she executed no work from 03/2014 and hence, she had not paid ESI contributions. In reply to the above representation, 2nd respondent issued a letter dated 24.08.2015 to Writ Petitioner, to prefer an appeal under Section 45-AA of the ESI Act, 1948 before the Appellate Authority, Regional office, ESI Corporation, Hyderabad on or before 12.09.2015 depositing 25% of the contributions as per the Order *i.e.* Rs.36,197/-, failing which, further action will be initiated under Section 45-C to 45-I without any further notice. The Writ Petitioner did not make any compliance against the above notices/letter. With no other alternative, the respondents issued C-19 dated 25.02.2015 to the Recovery Officer against the Writ Petitioner for an amount of

Rs.2,35,442/-. The Writ Petitioner made another representation dated 28.03.2016 stating that she executed housekeeping for the period from 07/2007 to 03/2010 in the Municipal Corporation, Tirupati and that, from 13.03.2012 to 03/2014 supplied employees five (05) in number for housekeeping services at APSRTC and that, no work was executed by her for the period between the two contracts. The Writ Petitioner is well aware about the notices served from the respondents and the respondent issued letter dated 05.05.2016, wherein it was clearly specified that due to lack of response from the Writ Petitioner, 2nd respondent issued C-19.

(d) The respondent issued C-18 Adhoc notice dated 07.05.2015 due to non-compliance of Writ Petitioner for the said period, and because of her failure to submit the document in support of her contention, 2nd respondent was left with no other alternative. The Health, Medical and Family Welfare Department, Government of Andhra Pradesh in G.O.Rt.No.1613, dated 12.10.1999 stated that only the regular employees of APSRTC are exempted from the provisions of the ESI Act, 1948, but, as the Writ Petitioner herself submitted in Form-I that 27 employees were working directly, the Writ Petitioner is liable to pay the ESI

contributions for them. Hence, it is prayed to dismiss the Writ Petition.

4. Respondent No.3 filed counter-affidavit, denying the allegations made in the Writ affidavit, contending *inter alia* that according to the allotment order, the Writ Petitioner has to employ Four (04) Sweepers and One (01) Attender to perform the seeping and cleaning work and the Writ Petitioner entered into the Agreement on 22.03.2012 and attended the above work.

(b) According to Clause No.31 of the Agreement, the Writ Petitioner has to comply with all the provisions of the Act of the Government relating to Labour, Rules and Regulations made thereunder from time to time like payment of Minimum Wages, Provident Fund, EDLIF, ESI, Weekly Off etc., and the contract was completed by 21.03.2014. Therefore, the Writ Petitioner has to pay the necessary contribution towards ESI for the period for the workmen she engaged at that time. The Writ Petitioner had not approached the Court with clean hands and violated the provisions of the ESI Act, 1948. Hence, it is prayed to dismiss the Writ Petition.

5. Learned counsel for the Writ Petitioner would contend that the Writ Petitioner covered under Adhoc basis but not on

actual basis and the same was admitted by the respondents. The Writ Petitioner did not take any contract of Housekeeping for the period from June, 2010 to December, 2010 and January, 2011 to March, 2011 and to that effect, the Writ Petitioner obtained a Certificate from the Health Officer, Municipal Corporation, Tirupati and therefore, demanding the Writ Petitioner by issuing Notice dated 02.05.2016 to pay Rs.2,35,442/- towards contribution in respect of employees for the aforesaid period is illegal. The Proceedings No.E5/122(7)/2012-RM(NLR), dated 13.03.2012 is unilateral one and subsequent to the tender made by the Writ Petitioner. Learned counsel would further contend that 2nd respondent has to explain for covering the Writ Petitioner under the scheme of the ESI Act, 1948 as an individual *suo motu* or unilaterally and the burden lies on 2nd respondent and its Inspectors as contemplated under Section 45 of the ESI Act, 1948, who covered the Writ Petitioner under the ambit of the ESI Act, 1948. According to the learned counsel, 2nd respondent high-handedly invoked the provisions of the ESI Act, 1948 neither consulting the Writ Petitioner nor getting an explanation from her and the *impugned* Order dated 05.05.2016 issued by 2nd

respondent and its consequential order dated 15.07.2015 are illegal and unconstitutional.

6. Learned Central Government Counsel for respondent No.1 would contend that the Writ Petitioner in her Form-I dated 26.10.2007 stated that a total of 27 employees were directly employed by her for the purpose of contract with the Municipal Corporation, Tirupati *vide* Contract No.Roc.No.2412/F1, dated 29.06.2007 and accordingly, the Insurance Inspector, Tirupati issued Form C-11 dated 26.11.2007 with an intimation that the said establishment comes under the purview of the ESI Act, 1948 under Section 1 (5) with effect from 01.07.2007. Learned counsel would further contend that sufficient opportunity for hearing was provided to the Writ Petitioner, but, she failed to attend to utilize the same. Even, the Writ Petitioner was issued Section 45-A dated 15.07.2015 for an amount of Rs.1,44,788/- for the period from 06/1020 to 03/2011 excluding the period 04/2009 to 05/2010 by deducting a sum of Rs.1,39,962/-, but the Writ Petitioner had not paid the ESI contributions. According to the learned counsel, the Writ Petitioner is well aware of the notices served from the respondents.

7. Learned Standing Counsel for respondent No.2 would contend that the ESI Act, 1948 has been enacted for the benefit of workers to render medical benefits to them and their family, as enumerated in Section 46 of the ESI Act, 1948, and the Writ Petitioner, being the Proprietor of M/s. R.Srivalli Labour Contractor, an Establishment under Section 1 (5) of the ESI Act, 1948, required to pay the contributions under Sections 40 and 44 of the ESI Act, 1948 read with Regulations 26, 29 and 31 of the ESI (General) Regulations, 1950. Learned counsel would further contend that only the regular employees of APSRTC are exempted from the provisions of the ESI Act, 1948, but, as the Writ Petitioner herself submitted in Form-I that 27 employees were working directly, the Writ Petitioner is liable to pay the ESI contributions for them.

8. Sri P.Durga Prasad, learned Standing Counsel for ASPRTC representing respondent No.3 would contend that the Writ Petitioner as per the Agreement dated 22.03.2012 performed the seeping and cleaning work by engaging Four (04) Sweepers and One (01) Attender and as such, according to Clause No.31 of the Agreement, the Writ Petitioner has to comply with all the provisions of the ESI Act, 1948.

9. Perused the entire material available on record.

10. A perusal of the Allotment Order *vide* No.E5/122(7)/2012-RM(NLR), dated 13.03.2012 issued by 3rd respondent goes to show that the Writ Petitioner was awarded the contract of Seeping, Cleaning of Garage Yard and DMs Office including sanitation and providing of Attender to DMs Office at Nellore-II Depot. The total number of workers to be deployed were Four (04) Sweepers and One (1) Attender and the remuneration payable was at Rs.28,901/- per month. It was further mentioned in the said Allotment Order that the contract period was valid for Two (02) years initially and extendable for One (01) more year subject to satisfactory performance of the contractor.

11. A perusal of the Memo *vide* USR No.16622 of 2026 filed by respondents goes to show that on 26.10.2007, the Writ Petitioner furnished the information under Form-01 as per Regulation 10-B of the Employees' State Insurance Corporation Regulations, in the Employers' Registration Form that, the total number of employees employed for wages directly and through immediate employers' on the date of application, were 27 and the total wages payable to them is Rs.75,816/-. Respondent No.2 *vide* AP/INS.II/52000282330001001/493, dated 07.05.2015 issued C-

18 Adhoc Notice to the Writ Petitioner questioning that, so far she had not paid the contributions as per the provisions of law and also not submitted return of contributions for the period from 4/2009 to 3/2011 and thereby, called for explanation to show cause as to why an amount of Rs.2,84,750/-, which was determined, could be recovered towards contribution payable in respect of the employees in the Establishment run by the Writ Petitioner under Section 45-A of the ESI Act, 1948 by 28.05.2015.

12. *Vide* No.AP/Ins.II/52-00-0282330001001/493, dated 05.06.2015, 2nd respondent addressed a letter to the Writ Petitioner stating that as neither the Writ Petitioner attended the hearing on 28.05.2015 nor any response was received, in order to provide another opportunity of being heard, to render natural justice, as a special case, the Writ Petitioner was afforded with another opportunity on 07.07.2015 to represent her case either in person or through an authorized representative along with all records and failing which, further action against Section 45-A order will be initiated without any further notice.

13. Admittedly, as the Writ Petitioner did not appear before the said authority, the *impugned* Order under Section 45-A of the ESI Act, 1948 *vide* No.AP/INS-II/52-00-028233-000-

1001/493, dated 15.07.2015 was passed by 2nd respondent, in exercise of the powers delegated and it was ordered that an amount of Rs.1,44,788/- for the period from 01.06.2010 to 31.03.2011 is finally determined towards payment of contributions and the Writ Petitioner, as one of the principal employers, was ordered to pay the said amount within a period of 15 days from the date of the said order, failing which, the amount shall be caused to be recovered under Sections 45-C to 45-I of the ESI Act, 1948. In the said *impugned* Order, it was further mentioned that in case, the Writ Petitioner has any objection so far as the Order is concerned, an appeal under Section 45-AA can be filed for reconsideration by the Appellate Authority, ESI Corporation, Hyderabad and such an appeal has to be submitted within 60 days of the said Order, by depositing 25% of the amount determined or actual amount of contributions payable as per their records, whichever is higher.

14. A perusal of the material on record goes to show that subsequent to the *impugned* Order dated 15.07.2015, the Writ Petitioner addressed a letter to 2nd respondent on 12.08.2015 informing that subsequent to the housekeeping work for the period from April, 2012 to 21st March, 2014, she had not taken any

housekeeping contract works. The said letter further discloses that she had not paid the contributions towards ESI from March, 2014, and she did not take up the housekeeping works.

15. It is the contention of learned Standing Counsel for 2nd respondent that the Writ Petitioner having covered under the provisions of the ESI Act, 1948, is required to pay the contribution under Section 40 through and at the rates specified in Rule 51 of the ESI (General) Rules, 1950 as amended in respect of the employees within 21 days from the last day of calendar month in which the contributions fall due, as laid down in Regulation 31 of the Employees' State Insurance (General) Regulations, 1950.

16. A perusal of the letter dated 29.03.2016 addressed to 2nd respondent would reveal that the Writ Petitioner concedes that she engaged Five (05) workers for the period from 13.03.2012 to March, 2014 to attend the contract work in 3rd respondent and for the period from March, 2010 to March, 2012, she did not take up any contract works either in the Municipal Corporation or in 3rd respondent/APSRTC, but, she received notices from 2nd respondent from July, 2010 to March, 2011 directing the Writ Petitioner to pay the contributions of the employees for the aforesaid period. According to learned counsel for Writ Petitioner,

the Writ Petitioner paid the ESI contributions in respect of Five (05) workers engaged for the contract work done with 3rd respondent *i.e.* from 13.03.2012 to March, 2014. Indeed, Certificate dated 17.10.2015 issued by the Health Officer, Municipal Corporation, Tirupati *vide* RO.No.5354/2015/H1, dated 17.10.2015 is to the effect that the Writ Petitioner had not supplied any labour on contract basis from 01.04.2010. Admittedly, the period mentioned in the *impugned* Order dated 15.07.2015 is from 01.06.2010 to 31.03.2011.

17. Learned counsel for the Writ Petitioner would contend that reasonable opportunity has not been afforded to the Writ Petitioner subsequent to issuance of C-18 Adhoc notice and the entire inquiry was conducted in a biased manner. Learned counsel placed reliance on the proposition of law laid down in **Foundever CRM India Pvt. Ltd. and another v. Employees State Insurance Corporation and others**¹, wherein it was held as under: (paragraph No.74)

“74. The ESIC Revenue Manual, in particular Section L.12.5, explicitly mandate that any order under Section 45A must be a well-reasoned speaking order and must be preceded by affording the employer a reasonable opportunity of being heard. In L.12.9 of the said Manual, requires that prior

¹ Writ Petition (L) No.36012 of 2024, dated 19.09.2025 on the file of the High Court of Judicature at Bombay.

to issuing a Section 45A order against C18 (Adhoc) and C18 (Actual) notices, the Authority must ascertain whether any representation from the employer is pending, and in all cases, allow a minimum period of 30 days for the employer to appear for a personal hearing or submit a written representation. These procedural safeguards, which are integral to ensuring fairness in quasi-judicial proceedings under ESI Act, were not addressed or considered in the SRTC Tech Solutions Private Limited (supra), thereby limiting its applicability and diminishing its precedential value.”

From a perusal of the entire material on record, it is apparent that in C-18 (Adhoc) notice, dated 07.05.2015, the Writ Petitioner was given time for 15 days to file statement giving full particulars of the contributions actually due as per the records and she was directed to appear before the authority on 28.05.2015. When the Writ Petitioner did not appear before the authority, 2nd respondent again issued Notice dated 05.06.2015 providing another opportunity of being heard and directed to represent before the authority on 07.07.2015 and as there was no representation from the Writ Petitioner, the *impugned* Order dated 15.07.2015 was issued under Section 45A of the ESI Act, 1948. But, when the Certificate dated 17.10.2015 issued by the Health Officer, Municipal Corporation, Tirupati that the Writ Petitioner had not supplied any labour on contract basis from 01.04.2010, the

impugned Order dated 15.07.2015 ordering the Writ Petitioner to pay the contributions for the period from 01.06.2010 to 31.03.2011 appears to be unjustifiable. Therefore, in order to avoid further proliferation of the matter, this Court is of the considered opinion that one more opportunity can be afforded to the Writ Petitioner to put-forth her case before the respondents-authority, along with relevant documents, which would clear the ambiguity.

18. Accordingly, the *impugned* Proceedings No.AP/Ins.II/52000282330001001, dated 05.05.2016 and also the consequential *impugned* Order vide No.AP/INS-II/52-00-028233-000-1001/493, dated 15.07.2015 issued by 2nd respondent are hereby set-aside. The respondent No.2 is directed to issue fresh C-18 (Adhoc) Notice to the Writ Petitioner within Four (04) weeks from the date of receipt of copy of this Order and on receipt of the same, the Writ Petitioner shall appear before 2nd respondent for personal hearing along with relevant record available with her, and upon such personal hearing, the respondent No.2 shall pass appropriate orders by affording reasonable opportunity to the Writ Petitioner as contemplated under Section 45A of the ESI Act, 1948.

19. With the above observation, the Writ Petition is disposed of. There shall be no order as to costs of the Writ Petition.

As a sequel thereto, the miscellaneous applications, if any, pending in this Writ Petition shall stand closed.

JUSTICE K. SREENIVASA REDDY

10th April, 2026.

DNB