

25.09.2025
Ct. No. 30
SL No. **6**
MKP

WPA 22892 of 2025

Tapan Roy Security Agency And Anr.
Vs.
Employees State Insurance Corporation And Ors.

Mr. Ranjay De, Sr.Adv.
Mr. Basabjit Banerjee
Mr. Adityajit Abel Bose
.....for the Petitioner

Ms. Sonia Sharma
.....for the Respondent/ESIC

1. Affidavit of service be kept with the record.
2. The writ application has been preferred challenging a notice in Form-C-19 dated 04.06.2019 (Annexure P/13), notice in Form No. ESI CP 2 dated 20.06.2019 (Annexure - P/16), notice for recovery of damages under Section 85B of the ESI Act, 1948 in Form-D-19 dated 04.06.2019 (Annexure P/14), Form No. ESI CP 2 dated 13.06.2019 (Annexure P/15) as well as the Garnishee Order dated 20.08.2025 (Annexure P/19) issued by the Respondent Authorities respectively and to refund the amount so recovered from the account of the petitioner lying with the Respondent Bank in furtherance to Garnishee Order dated 20.08.2025.

3. The Learned Counsel for the petitioner submits that he being an ex-army personnel, who had opened a Security Agency after his retirement is now faced with the issue of the pension account being attached/freezed.
4. On hearing the Learned Counsel for the petitioner and on perusal of the materials on record, it appears that the E.S.I. Authorities vide their notice dated 04.06.2019 have imposed a sum of rupees as contribution due from the petitioner as follows:

“The above named factory/establishment and its principal employer were and are required to pay a sum of Rs.863363 as contributions in respect of employees for the period Apr-2016, May-2016, Jun-2016, Jul-2016, Aug-2016, Sep-2016, Oct-2016, Nov-2016, Dec-2016, Jan-2017, Feb-2017, Mar-2017, Apr-2017, May-2017, Jun-2017, Jul-2017, Aug-2017, Sep-2017, Oct-2017 plus Rs. 235157 as interest at the rate of 12% per annum for each day of delay/default upto the date of this application to the Employees' State Insurance Corporation. The total amount thus works out to Rs.1098520.”

5. It appears that the said notice of the Recovery Officer has been issued without conducting any

prior enquiry, hearing or passing an order under Section 45A of the E.S.I.Act. The petitioner submits that no hearing has been granted to him and the notice has been issued.

6. The Learned Counsel for the petitioner further placed a document at page 72, Annexure- P/11, of the writ application which shows that the contract period in favour of the petitioner was extended for 2 years, on and from 09.11.2017 that is till 09.11.2019. The petitioner has further placed another document which appears to be a certificate issued by the principal employer/Indian Oil Corporation wherein, in the said certificate dated 27.06.2019, it has been mentioned that the work conducted by the petitioner agency was for the period from 01.10.2013 and completed 31.03.2016. It appears from the notice dated 04.06.2019 that the period for which the **penalty has been imposed is for the period from April, 2017 to October, 2017.**

7. The petitioner submits that during the total period as claimed by the E.S.I.Authority, in the Recovery Officer's notice dated 04.06.2019, he was not operating a security agency and his Agency was not providing any workforce for any organization and as such was not functionable during the said period. It appears that on the

basis of the said notice, the petitioners pension account has been attached vide garnishee order dated 20.08.2025.

8. The Learned Counsel for the petitioner has relied upon the judgment of the Calcutta High Court passed in ***Rajrani Exports Ltd Versus E.S.I. Corporation***, wherein the Court has categorically held as follows:

“THUS, it appears that absence of giving hearing is a glaring infraction of statutory provisions or violation of the established principles of law as enshrined in the statute. In any event, the right of hearing or the principle of 'audi alteram partem' is a principle implicit in many of the provisions where a civil right of the person is determined. In such a case, one can not be punished unheard of or penalised unheard or visited with civil consequences unheard. Even without the proviso it could have been said that such right is implicit in the provision itself. Section 45a, as it stood prior to the adding of the proviso, was interpreted in Asian Paints (India) Ltd. v. ESIC 1981 Lab IC 514 (Bombay), wherein it was held that opportunity is required to be given before determination under section 45a is made. This view was

affirmed by the apex Court in *Royal Talkies Hyderabad v. ESIC* AIR 1978 1476: 1978 Lab IC 1245: 1978 (II) LLJ 390, in order to enable the employer to point out errors or inconformity in the determination. Similar view was followed in *Hedge and Golay Ltd. v. ESIC* 1982 (1) LLJ 48 by Karnataka High Court. However, the statute makes it clear in this case to that extent. When the statute ensures the principle of 'audi alteram partem', then the same can not be overlooked. Thus the provision of 'audi alteram partem' as enshrined in the statute itself having been overlooked, the writ petition cannot be thrown out on the ground of alternative remedy. The decision in *Whirlpool Corporation. (supra)* as held in paragraph 15 supports the above proposition, which is now a settled principles of law. The decision in *Fenner Garments v. Deputy Regional Director ESIC Madras (supra)* also holds good having taken the same view to the extent that in case of non-filing of Return if the authority determines the amount or calculates the amount on the basis of the Report of the Inspector without issuing

notice of show cause and without affording any opportunity of hearing, in that event, section 45a (1) is infringed.”

- 9.** Pending hearing of the writ application, order dated 04.06.2019 and the garnishee order dated 20.08.2025 be stayed till the 15th of December, 2025.
- 10.** The respondent/bank being the respondent no.4 herein, is directed to defreeze the pension account of the petitioner herein, maintained with immediate effect.
- 11.** Considering the case as made out by the petitioner, the Learned Counsel for the E.S.I.Authority shall file a report in the form of affidavit on the next date of hearing.
- 12.** Matter be listed in the monthly list of **December, 2025.**

[Shampa Dutt (Paul). J]