IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present :

The Hon'ble Justice Shampa Dutt (Paul)

WPO/113/2020

PALLORBUND TEA LIMITED

-VERSUS-

UNION OF INDIA AND ORS.

For the Petitioner	:	*Ms. Debapriya Gupta, Adv.* *Mr. Sibashis Chowdhury, Adv.* *Mr. Moni Shankar Sengupta, Adv.*
For the Union of India	:	*Mr. Rajesh Kumar Shah, Adv.*
For the Respondent Nos.2 & 3	:	*Mr. Arindam Maitra, Adv.*
Judgment reserved on	:	09.07.2026
Judgment delivered on	:	06.08.2026

SHAMPA DUTT (PAUL), J. :-

1. This writ application has been preferred praying for direction to restrain the respondent nos.2 and 3 being the Employees State Insurance Corporation (ESIC) authorities from giving effect to the notice dated 5th December, 2019 (received by the petitioner on 6th December, 2019) bearing no.N/Ins.I/41000614330001002/6791 and 6792.

2. Vide the impugned notice dated 5th December, 2019, the Deputy Director of ESI Corporation passed a reasoned order in compliance with the Hon'ble Court's order dated 26.08.2019, in WP No.356(W) of 2019, wherein the authority held as follows:-

> *"The authorized representative, Shri Kamalesh Prakash Gupta appeared before the authorized officer for Personal Hearing on 31.10.2019 and submitted a letter dated 30.10.2019. But Shri Gupta did not produce any other records. The employer in their letter dated 30.10.2019 stated that the Company is only carrying the business of manufacturing of tea which is fully exempted as per Section 1(4) read with 2(19A) of the ESI Act. In their letter, the employer also stated that their Registered Office situated at 3B, Lal Bazar Street, 2nd Floor, Kolkata-700 001 is established solely for the purpose of administrative activities i.e. office purpose of the tea estate at Assam and as such no manufacturing process or commercial activities is being carried out. The office of the Estate situated at above mentioned address has been covered under Sec. 1(5) of the E.S.I. Act. 1948 with effect from 01.04.2013 on the basis of the strength of employment of 18 employees.*
>
> *I have applied my mind to the facts of the case and my findings are as under:*
>
> *The employer was afforded an opportunity to represent his case, personally, or through an authorized representative, and to produce records before the authorized officer, for the purpose of assessment of actual contribution due for the said*

period. But, the employer did not produce any record on the dates fixed for the purpose of hearing in the matter. The employer in their letter stated that the Registered Office situated at 3B, Lal Bazar Street, 2nd Floor, Kolkata-700 001 is established solely for the purpose of administrative activities l.e. office purpose of the tea estate at Assam and as such no manufacturing process or commercial activities is being carried out. Hence, the case is now decided on merit, based on the facts and records, as available with this Office, maintained in respect of the establishment.

In absence of any factual records, I, therefore, determine assumed wages Rs.8250/- per month per employee ***for 9 persons*** *for the period June, 2013 to December, 2016 and Rs.11,550/- per month per employee for* ***10 persons*** *for the period January, 2017 to May, 2018 totaling Rs.49.59.900/- and the contribution thereon comes to Rs.3,22,394/-, which is payable and which is fair, reasonable and according to law.*

For the above reasons, I. Nirmalendu Biswas, Deputy Director, in exercise of the powers delegated to me by the ESI Corporation, vide Resolution, dated 14.12.1980, think fit and accordingly order that contributions totaling Rs.3.22,394.00 (Rupees three lakhs twenty two thousand three hundred and ninety four) only for the period from June, 2013 to May, 2018 are finally determined and you as one of the principal employers are hereby ordered to pay the above amount within a period of 60 days from the date of this order; falling which this shall be caused

> *to be recovered under Section 45-C to 45-1 of the E.S.I. Act."*

3. The petitioner's case herein is that the petitioner is a limited company registered under the appropriate provisions of the Companies Act, 1956 and in all parlances is being represented before this Hon'ble Court by and/or through its authorized officer, and is having its registered office at 3B, Lalbazar Street, 2nd Floor, Kolkata- 700 001.

4. The petitioner is engaged in the business of manufacturing tea, which is carried on in its factory situated at Banskandi, Cachar, Assam. Since, it is well known that, tea is a **seasonal crop,** therefore, the factory of the petitioner and its business activities are dependent on the seasonal variations absolutely and for all purposes. The registered office of the petitioner is established solely for the purpose of administrative activities i.e. office purpose of the tea estate at Assam and as such, no manufacturing process (by use of power) or commercial activity is being carried out from there.

5. It is submitted on behalf of the petitioner that from the text and tenor of the substantive provisions of the statute itself, it transpires that, the manufacturing of tea being defined as a 'seasonal factory' is exempted from the applicability of the Act making it non coverable for the purpose of contribution.

6. The petitioner submits that on or about 29th September, 2015, the petitioner received a notice from the respondents herein, whereby the said petitioner was asked to allegedly comply the provisions of the statute at the earliest.

7. The petitioner was constrained to send a reply dated 16th October, 2015 bringing it on record that, the factory of the petitioner is not coverable under the Act. Upon a lapse of almost three years, on or about 24th May, 2018, the respondents had served another notice asking the petitioner to attend the hearing in alleged compliance of the statute.

8. However, the Social Security Officer of the respondent no. 2 had visited the premises of the petitioner herein and in spite of the petitioner's objection came to a purported finding that, the petitioner company is coverable under the Act, which was communicated to the petitioner.

9. On the designated date of hearing, the petitioner had attended the purported hearing through its authorized representative and raised the issue of maintainability inter alia to the extent that, the petitioner is an establishment which is not coverable under the Act.

10. In spite of the aforesaid, the respondents had proceeded to issue notice in C-18 (Adhoc) bearing no. C/Ins-1/41000614330001002/5090 and 5091 both dated 5th September, 2018 thereby purportedly holding the petitioner to be coverable under the relevant provisions of the statute. It has inter alia also been alleged in the said notice that, the respondents have purportedly assessed a preliminary contribution without any document and/or basis whatsoever and they shall subsequently proceed further to assess the contribution in accordance with section 45A of the Act. The grievance of the petitioner whirls around the fact that, the respondents cannot resort to a finding that, the provisions of the Act will apply to the petitioner herein, which is a substantial question of law and could be determined by this Hon'ble Court only.

11. The petitioner states that, the aforesaid purported notice in C-18 (Adhoc) dated 05th September, 2018 is bad in law, illegal and absolutely non est. The petitioner cannot be made to be coverable under the appropriate provisions of the Act, as the said provisions of the Act itself acts as a clear embargo upon the respondents herein.

12. A writ application was preferred by the petitioner being WP/530/2018. On 21st February, 2019, when upon hearing, this Hon'ble Court was pleased to hold that, since the petitioner has not disclosed the relevant documents before the respondents, hence no order should be passed in the said writ petition. The Hon'ble Court did not pass a judgment on merits of the said matter which could have entailed the petitioner to prefer an appeal.

13. On or about 24th June, 2019, the petitioner has received one purported notice bearing no.N/Ins.I/41000614330001002/1092 from the respondent no.3 herein, wherefrom it transpires that, without any relevant papers and on erroneous assumptions and presumptions a hypothetical assessment was made, which they are not legally entitled to.

14. Petitioner then preferred another writ application being WP/356/2019 which was heard and disposed of by an order dated 26th August, 2019, whereby the purported order of assessment dated 4th June, 2019 was set aside, with further direction that, the respondent authority shall issue a notice to the writ petitioner and thereafter give an opportunity of hearing to the writ petitioner and at the hearing, the writ petitioner shall be at liberty to file relevant documents in support of its case that the organization is not covered under the Act.

15. A notice was issued at the behest of the respondent no.3 herein, whereby the petitioner was directed to submit the relevant documents in support of its claim that, the petitioner is not covered under the Act.

16. By a covering letter dated 30th October, 2019 the petitioner had submitted all the relevant documents and accordingly, participated in the hearing as was designated in terms of the order of the High Court on the issue of maintainability of the prosecution. From the text and tenor of the documents being enclosures to the aforesaid letter it shall clearly transpire that, the petitioner is engaged only with the business of manufacturing tea from its factory situated in Assam having its registered office at Kolkata and as such, no commercial activity other than manufacturing of tea is carried out or discharged by the said petitioner. Therefore, it is submitted that in no reasonable stretch of imagination, the petitioner can be said to be covered under any of the provision of the Act.

17. It is the case of the petitioner that the respondent authority has proceeded to pass an order on 5th December, 2019, whereby the respondent no. 3 has assessed an amount of contribution totaling to Rs.3,22,394/- be paid by the petitioner herein. The petitioner states that, the respondent no. 3 did not comply with the earlier solemn direction of this Hon'ble Court dated 26th August, 2019 and as such, did not decide the question of maintainability as to whether the petitioner can be attributed to be coverable under the act by any statutory enactment. The impugned order is bad in law not only for the reason that, it is violative of the earlier dictum of this Hon'ble Court, but, also for the reason that, the said respondent has failed to pass reasoned order based on the documents supplied by the petitioner.

18. **Hence the writ application,** on the ground that the registered office of the petitioner has been purportedly covered from June, 2013, as the number of employees were only six (6) in number, working in the said registered office of the petitioner. Such purported acts and/or actions on the part of the respondent authorities are violative of the statutory provisions in utter prejudice to the said petitioner. The concerned respondent authority in colorable exercise of the power vitiated by malice submitted his preliminary inspection report to the Corporation that, nine (9) employees were coverable from June, 2013 without having proper records and/or documents of the matter of the petitioner company.

19. The specific case of the petitioner is that the petitioner is engaged in the business of manufacturing tea at its factory situated at Cachar, Assam. The said factory is absolutely a seasonal factory as per section 2(19A) of the Act which is exempted from applicability as per section 1(4) of the said Act. Therefore, the respondents cannot forcefully make the provisions of the said Act to be applicable vis a vis the petitioner is concerned. The petitioner has thereby being victimized and severely prejudiced by issuance of the purported notice dated 04th June, 2019 (actually received on 24th June, 2019).

20. In course of hearing, both the parties have filed their respective written notes.

21. Learned counsel for the petitioner has relied upon the following judgments:-

i) ***Chief Commissioner, Delhi & Ors. vs. Federation of Indian Chambers of Commerce and Industry (FICCI) reported in AIR 1974 SC 1527;***

ii) ***Dalco Engineering Pvt. Ltd. vs. Shree Satish Prabhakar Padhye & Ors.;***

iii) ***The Management of Tata Iron and Steel Co. Ltd. vs. The Chief Inspecting Officer, Government of Bihar & Ors. reported in (1997) 1 LLJ 508 (Pat.);***

iv) ***Mathura Bai Fatehchand Damani Maternity Home vs. Regional Provident Fund Commissioner;***

v) ***Shubham Knit Wear Pvt. Ltd. vs. Regional Provident Fund Commissioner & Anr. reported in 2007 (2) LLJ 905 (Bom.);***

vi) ***Sasidharan vs. Peter & Karunakar & Ors. reported in AIR 1984 SC 1700;***

22. Hence the prayer for setting aside of the impugned order with a prayer for declaration that the petitioner's establishment is not covered under the ESI Act.

23. **The respondent nos.2 and 3** being the ESI Corporation authorities, on filing their written notes, have argued that the petitioner is a limited company registered under the provisions of The Companies Act, 1956, having its registered office at 3B, Lal bazar Street, 2nd Floor, Kolkata

700001. The petitioner is engaged in the business of manufacturing tea which is carried on at its factory situated at Banskandi, Cachar, Assam. The petitioner has been covered by ESIC under Section 1(5) of The ESIC Act 1948 pursuant to preliminary inspection report in Form C-23 conducted by insurance inspector of the Respondent No. 2 (hereinafter referred to as the Social Security Officer) on or about 20.08.2015 with effect from 01.04.2013 as during the said period, 18 (eighteen) employees were found engaged out of which 9 (nine) were coverable in the said registered office of the petitioner.

24. The respondents' principal contention herein is that the writ petition is not maintainable mainly on the following grounds:-

> *"The petitioner has challenged the order under Section 45A passed under The ESI Act without availing the opportunity of appeal under Section 45AA of the said Act. Since this is a special statute the provision of appeal clearly states that such appeal shall be filed within 60 days of such order from the date of such order. Since there is an alternative remedy given in the statute and as per various judgments passed by the Hon'ble Supreme Court of India, the petitioner should have availed the provision of appeal under Section 45AAbefore the Appellate Authority, if the petitioner is not satisfied with the order passed under Section 45A."*

25. The petitioner's contention for not preferring an appeal is that he has challenged the coverage under the act and not only the impugned order.

26. The following judgments are relied upon in support of the said contention:-

i) ***Commissioner of Income Tax & Ors. vs. Chhabil Dass Agarwal*** *reported in* ***(2014) 1 SCC 603;***

ii) ***Titagarh Paper Mills Co. Ltd. vs. State of*** *Orissa reported in* ***(1983) 2 SCC 433;***

27. It is further stated that the petitioner's registered office falls under the ambit of **Section 1(5) & 1(6) of The ESI Act** under the word **'establishment',** as the registered office is not engaged in agricultural operations and the registered office by itself was employing eighteen employees and carrying on organised and systematic commercial and administrative activities through employees engaged for wages. It is further submitted that the order under Section 45A is a well reasoned and exhaustive order and the same was passed after reasonable and ample opportunity of hearing to the petitioner. The competent authority has jurisdiction to pass such order under Section 45A of the said Act and there has been no violation of infringement and the principles of natural justice and fair play and there is no violation under the statute. In support thereof, the respondent has relied on a Division Bench judgment of this Court in the case of ***Mahesh Kumar Gelani & Anr. vs. The Calcutta Metropolitan Corporation & Ors.*** reported in **1992 (2) CLJ 21.**

28. The respondents further contends that Section 2(9) of the ESI Act inter alia provides 'employee' means every person employed for wages in or in connection with work or factory or establishment to which this Act applies and includes any person employed for wages and any work connected with the administration of factory or establishment or part, branch or department thereof and as such the registered office so mentioned in the preliminary inspection report dated 20.08.2015 falls under the ambit of the ESI Act as the registered office is engaged in administrative, managerial, accounting, financial, commercial and business activities connected with the affairs of the company and consequently the establishment squarely falls under Section 1(5) /1(6) of the ESI Act. The activities carried on in the said registered office of the petitioner is engaged in maintaining, maintenance of accounts, finance, payroll, correspondence, statutory compliances, purchase and procurement, marketing, coordination of tea sells, banking and transaction and overall management of the business of the company. In this connection the respondents are relying on judgement passed in ***Cochin Shipping Co. v. ESI Corporation, (1992) 4 SCC 245 (Paragraphs 18 & 19).***

29. It is stated that the registered office exercises supervision and control over the affairs of the company, maintains account, manages, finances, handles statutory obligations and coordinates business operations. The fundamental, managerial and financial integration between the office and the tea estate clearly establishes that the registered office forms an essential and inseparable part of the overall commercial undertaking.

30. **In the present case,** the petitioner is a limited company registered under the Companies Act 1956 having his registered office at 3B, Lalbazar Street, Kolkata.

31. The petitioner is admittedly engaged in the business of manufacturing tea in its factory at Cachar, Assam.

32. Thus, the registered office of the petitioner at **Kolkata** is not a 'factory' and is thus an 'establishment'.

33. A factory is registered under the Factories Act where as an establishment is registered under the Shops and Establishments Act.

34. The petitioner is also a company registered under the Companies Act and admittedly not a 'factory' (seasonal in this case) nor does it enjoy exemption under the West Bengal Shops and Establishments Act.

35. As such, the petitioner cannot take the advantage of its tea factory at **Assam**, being a 'seasonal factory' which enjoys exemption under the ESI Act. In view of the fact that the ESI Act is applicable to all non-seasonal factories employing 10 or more persons [Section 1(2) read with Section 2(12) and Section 2(19A)], **the State Governments have extended the coverage under Section 1(5) of the Act** to Shops, Hotel, Restaurants, Cinema including preview theatres, Road-motor transport undertakings, Newspaper establishments, Private Medical Institutions, Educational Institutions and to contract and casual employees of Municipal Corporation/Municipal Bodies employing 10 or more persons in the certain States/where State Govt. is the appropriate Govt., vide notification dated February 10, 2011 of the West Bengal Shops and Establishment, 1963.

36. Under Section 1(5) of the ESI Act ESIC Coverage, the West Bengal government has issued phased notifications extending the ESI scheme to various classes of non-factory establishments West Bengal, India.

In regions where the Act has been implemented, the provisions generally apply to the following types of establishments employing 10 or more persons ESIC Coverage:

- Shops and commercial establishments
- Hotels, restaurants, and clubs
- Cinemas and preview theaters
- Road motor transport undertakings
- Newspaper establishments
- Private medical institutions
- Educational institutions
- Contract and casual employees of Municipal Corporations

37. While actual plantation workers generally fall under different welfare schemes (historically the Plantation Labour Act and now the Social Security Code), any person employed for clerical or administrative work at the head office, local office, or workshop is considered an "employee".

If the corporate or head office meets the statutory criteria (e.g.. employing 10 or more people in most states), it is mandatorily required to register under the Employees' State Insurance Corporation and pay the prescribed contributions for its office staff.

38. Section 1(4) of the West Bengal Shops and Establishments Act, 1963 lays down:-

> ***"Section 1(4)*** *It shall apply to the areas and to the classes of shops and establishments to which the Bengal Shops and & Establishments Act, 1940 (Ben. Act XVI of 1940) applied immediately before the commencement of this Act; and shall also apply to such other areas or to such other classes of shops or establishments as the Slate Government may, by notification, specify in this behalf."*

39. Section 2(2) defines 'commercial establishment':-

> ***"Section 2(2)*** *"commercial establishment" means an advertising, commission, forwarding or commercial agency, or a clerical department of a factory or any industrial or commercial undertaking, an insurance company, joint stock company, bank, broker's office or exchange, and establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession, and includes an establishment of any legal practitioner, medical practitioner, architect, engineer, accountant, tax consultant or any other technical or professional consultant, a society registered under any enactment in force for the time being, charitable or other trust, whether registered or not, which carries on, whether for purposes of gain or not, any business, trade or profession or any work in connection with, or incidental or ancillary to any business, trade or profession and such other class or classes of concerns or undertakings as the State Government may, after taking into consideration the nature of their work, by notification, declare to be commercial establishments for the purposes of this Act, but does not include a shop or an establishment for public entertainment or amusement;"*

40. Section 2(5) defines 'Establishment':-

> ***"Section 2(5)*** *"establishment" means a commercial establishment or an establishment for public entertainment or amusement;"*

41. Section 2(13) defines 'shop':-

> ***"Section 2(13)*** *"shop" means any premises used wholly or in part for the sale of services to customers or for the wholesale or retail sale of commodities or articles, either for cash or on credit, and includes any offices, store-rooms, godowns or warehouses, whether in the same premises or elsewhere, used in connection with such sale or with the storage of commodities or articles for the purpose of such sale and also includes such other class or classes of premises as the State Government may, after taking into consideration the nature of the work carried on there, by notification, declare to be shops for the purposes of this Act, but does not include an establishment;*
> *Explanation: If any doubt arises as to whether any premises are a shop or a commercial establishment or an establishment for public entertainment or amusement, the question shall be referred to the State Government by the registering authority, suo motu or on an application, and the decision of the State Government thereon shall be final;"*

42. Thus covered under the West Bengal Shops and Establishments Act, 1963 and also covered under the ESI Act.

43. Thus, the registered head office of a tea garden or estate is covered under the ESI Act, even if the plantation workers themselves are not.

Administrative, clerical, and managerial staff working at the head or branch offices are governed under the ESI Act, if the office meets the standard coverage criteria.

While actual plantation workers generally fall under different welfare schemes (historically the Plantation Labour Act and now the

Social Security Code), any person employed for clerical or administrative work at the head office, local office, or workshop is considered an "employee".

If the corporate or head office meets the statutory criteria (e.g.. employing 10 or more people in most states), it is mandatorily required to register under the Employees' State Insurance Corporation and pay the prescribed contributions for its office staff.

44. The number of employees in the petitioner company being 19 in this case, the company is covered under the ESI Act, as Administrative Acts are carried out here even if such acts relates to its business connected to a tea (seasonal) factory.

45. The company by itself, in its registered office, does not carry out any manufacturing process nor any act connected to the manufacturing process like blending, packing etc. but runs an office which functions as an administrative part of the trade and business and is thus not in a position to take the plea of being connected to tea (seasonal) factory to avail/take the advantage of the exemption enjoyed by such seasonal factories.

46. Thus, the petitioner is covered under the ESI Act, 1948 and the **impugned order dated 5th December, 2019 passed by the Deputy Director of ESI Corporation, the respondent no.3 herein, being in accordance with law requires no interference.**

47. The writ petition stands dismissed.

48. Interim order, if any, stands vacated.

49. Connected applications, if any, also stands disposed of.

50. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(SHAMPA DUTT (PAUL), J.)

A.Sadhukhan