

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 6511 of 2025

State Bank of India & Anr.
Vs
Employees State Insurance Corporation & Ors.

For the Petitioners : Mr. Soumya Majumder, Ld. Sr. Advocate,
Mr. Debashis Saha,
Mr. Avirup Roy Sanyal,
Ms. Sucheta Pal,
Mr. Jyotishman Sarkar.

For the E. S. I. C. : Mr. Shiv Shankar Banerjee,
Mr. Siddharth Chaurasia,
Mr. A. Narayan Banerjee.

For the RBI : Ms. Suchishmita Ghosh,
Ms. Aradhita Banerjee.

Judgment reserved on : 03.09.2026

Judgment delivered on : 05.10.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging the Garnishee orders dated 21.02.2025 and 26.02.2025 issued by the Recovery Officer under the ESI Act to the petitioners herein and the Reserve Bank of India respectively.

2. It is the contention of the petitioners that the prohibitory order was issued by the Recovery Officer on 12.08.2024, as it appears from the notice dated 21.02.2025.
3. Mr. Majumder, learned senior counsel for the petitioners has placed a reply to the said order dated 19.12.2024 sent by the petitioners to the Recovery Officer, ESI Corporation in respect of the account of the Private Respondent wherein it has been stated that a “hold” has been marked in the current account.
4. The said letter was accompanied with a demand draft for an amount of Rs. 1,26,000/- from the current account and the statement of the last two years for the said account along with the cash credit account for necessary records.
5. It is further stated that the Division Bench in MAT 222 of 2025 has passed an interim order in the present case on 17.02.2025, wherein certain direction had been given by the Bench.
6. Mr. Majumder further submits that the Division Bench permitted the appellant/private respondent to operate the account in usual course of business, by keeping a sum of Rs.5 lac as part frozen. **It is submitted by the petitioners herein that there was no such amount in the said account.** It is brought to the notice of this court that the said appeal being MAT 222 of 2025 has been disposed of by the Division Bench on 17th March, 2025.
7. **The Division Bench on disposing of the appeal directed as follows:-**
“(i)The impugned order passed by the appellate authority shall, therefore, remain in abeyance. The

respondents shall not take any coercive measures against the appellant until 15th April, 2025.

(ii) The appellant shall file a fresh appeal before the appellate authority, disclosing all documents, in connection with the subject lis, within a period of 7 days from date with a copy to the respondents.

(iii) The appellate authority constituted under Section 45 of the ESI Act shall fix a date within 10 days thereafter for hearing out the appellant. The appellate authority shall be entitled to look into and call for the records from the other respondents and thereafter pass a reasoned order, within 2 weeks of the personal hearing.

(iv) It is made absolutely clear that no adjournment whatsoever shall be granted to the appellant. In the event the appellant does not present himself and make submissions on the date of hearing, to be fixed by the appellate authority, the latter shall proceed to pass appropriate orders, thereafter within the time stipulated hereinabove. The order that may be passed shall be communicated to the writ petitioner/appellant forthwith thereafter.”

8. As such, it appears that the dispute and the issue raised in the present case is also connected to the said directions issued by the Division Bench while disposing of MAT 222 of 2025, which was preferred by the establishment being WPA 3021 of 2025.
9. This Court had stayed the Recovery Officer's notice dated 21.02.2025 and 26.02.2025 in view of the order of the Division Bench dated 17.03.2025 passed in MAT 222 of 2025, as it was connected to the same proceedings relating to the same establishment.
10. Affidavit-in-opposition has been filed by the respondent no.1 wherein it is stated that the petitioner is a defaulter in payment of dues under the

Act and that the prohibitory order and Garnishee order have been issued to the petitioner/bank as the petitioner/bank is the custodian of the defaulter's account which is sought to be attached by the respondent authorities.

- 11.** It is the case of the petitioner that in spite of the fact that an order was passed by the Division Bench, the respondent/Recovery Officer issued the said notices related to the proceedings, which were pending before the Hon'ble Division Bench. The said conduct of the respondent no.1 is thus clearly an abuse of the process of law.
- 12.** The petitioners on filing their written notes have argued that in India, every Bank, including SBI has to give its accounts at regular intervals or on daily basis to RBI. Like all other Banks, SBI has also deposited an amount with RBI for the purpose of carrying on its commercial activities of banking in the country.
- 13.** Eastern Division (Projects) Engineers Cooperative Society Limited (Respondent No. 3) is a constituent/customer of the Murgasol, Branch of SBI.
- 14.** The said customer had dispute with regard to coverage and allotment of code numbers to it by the ESI Corporation. The customer filed a writ petition in this regard before this Hon'ble Court in WPA No. 3021 of 2025, wherein interim order was refused on 12th February, 2025.
- 15.** In appeal before the Hon'ble Division Bench in MAT 222 of 2025, the SBI was restrained from taking coercive measure and the customer was allowed to operate the Bank account by keeping an amount of Rs. 5 lacs as "frozen" in the account.

16. In such background, by a letter dated 21 February, 2025 issued under Section 45G of the ESI Act, ESI declared SBI to be "deemed defaulter" by an order dated 26th February, 2025, being a garnishee order, ESI sought to recover the dues amount from RBI in relation to SBI's deposit lying with the RBI.
17. Mr. Majumder argues that the provisions of Section 45G and 45H of the ESI Act have been wrongly invoked against SBI by ESIC and in the event of the said orders not being set aside, RBI shall recover this amount from the amount of SBI lying in deposit with RBI.
18. It is further argued that, Section 45G of the ESI Act is a mode of recovery.

Section 45G(3) contemplates a notice to be served on a person who holds any money of the principal employer under ESI Act, and when such employer is in default. Therefore, the first and primary duty of ESIC towards recovery of money from the Banker of a defaulter, **is to find as to whether the Banker is actually in a position to pay the demanded amount or to see whether the Banker is prevented by any authority of law from remitting the demanded amount.**

19. Section 45H of the ESI Act applies the provisions of the Income Tax Act and Income Tax (Certificate) Rules to recovery proceedings under the ESI Act. This being a penal provision, an opportunity of hearing or at least a notice is necessary to find out as to whether the person from whom money on behalf of the defaulter employer is demanded, is actually in a position to pay the demanded money or not. Otherwise, the action of ESI shall become arbitrary, like in the instant case.

- 20. In any event, SBI could not have remitted any amount to ESIC from an "inoperative" account of the customer.**

Therefore, to brand SBI as a "deemed defaulter" in relation to the dues of the respondent no. 3 was without any application of mind and in violation of the principles of natural justice.

- 21.** The petitioners thus pray for quashing of the orders dated 21st February, 2025 and 26th February, 2025.
- 22.** In course of hearing the learned counsel for the respondent no. 4/RBI has informed by placing documents before this Court that the amount debited by it in view of the impugned garnishee orders from the petitioner's account maintained with it, has now been credited to the account of the petitioner/SBI.
- 23.** Considering the materials on record, it appears that the impugned garnishee orders have been passed by the respondent authorities to **implement it's order dated 12.02.2024 under Section 45A of ESI Act.**
- 24.** The said order has been kept in abeyance by the Hon'ble Division Bench vide its order dated 17.03.2025, when the bench has been pleased to allow the ESIC to conduct a fresh hearing on the prayer of their learned counsel, Mr. Banerjee, as huge number of documents were filed by the establishment before the Hon'ble Division Bench.
- 25.** The Hon'ble Division Bench was also pleased to restrain the petitioner Bank (SBI) herein from taking any coercive measures against the establishment during the fresh hearing and also permitted the establishment/appellant to file a fresh appeal.

26. Vide an order dated 17.02.2025 the Division Bench had permitted the appellant to operate the account in usual course of business on keeping Rs. 5,00,000/- as frozen.
27. Thus on the appeal MAT 222 of 2025 being disposed on 17.03.2025, directing fresh hearing in the proceedings under Section 45A of ESI Act, the impugned garnishee orders dated 21.02.2025 and 26.02.2025 have now become infructuous and are thus **quashed and set aside.**
28. **WPA 6511 of 2025 is allowed.**
29. Applications, if any, connected thereto stand disposed of consequently.
30. Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

(Shampa Dutt (Paul), J.)