Date of reserved for judgments: 21.07.2026
Date of pronouncement : 11.08.2026
Date of uploading : 11.08.2026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI

Bench Sr.No:- [3584]

APHC010347162017

WRIT APPEAL Nos:80, 81, 120, 291, 292, 293, 299, 305, 368, 415, 416, 443, 478, 481, 504, 526, 530, 531, 555, 556, 566, 588, 605, 606, 614, 640, 647, 648, 650, 651, 652, 654, 660 AND 662 OF 2024

W.A.No.80 of 2024: ...Appellant(s)

Guntur Municipal Corporation

Vs.

Employees State Insurance Corporation and others. ...Respondent(s)

****

Advocate for Appellants:	MR. KOKA SATYANARAYANA RAO
Advocate(s) for Respondent(s):	MR.K.SANGAN NAIDU (R1&R3) G.P. FOR LABOUR – R2

CORAM : THE CHIEF JUSTICE LISA GILL
SRI JUSTICE CHALLA GUNARANJAN

DATE : 11th August 2026.

COMMON JUDGMENT: (per Hon'ble Sri Justice Challa Gunaranjan)

All these writ appeals since involve the very same question of law as to applicability of provisions of the Employees' State Insurance Act, 1948 (for short, the "ESI Act") to various municipal corporations, the same are heard together and disposed of by this common judgment.

2. For the sake of convenience, the facts emanating in Writ Appeal No. 80 of 2024 are stated as under.

3. (a) The appellant-writ petitioner is a statutory corporation established under the provisions of the Andhra Pradesh Municipal Corporations Act, 1994 and governed by the Greater Hyderabad Municipal Corporation Act, 1955. The corporation provides civic amenities such as services in health, sanitation, maintenance and development of roads, urban forestry, street lighting and maintenance of works, playgrounds, etc., which are essential functions envisaged under the provisions of the Corporation Act.

(b) In order to perform aforesaid functions, the corporation engages the services of outsourcing workers provided by self-help groups/contractors. Though the said workers engaged by such independent self-help groups/contractors are not employees of the corporation, nevertheless, as a welfare measure, the corporation has been extending benefits under various enactments, such as payment of minimum wages, ESI and provident fund contributions, etc.

(c) It is stated that though the appellant was not notified by the appropriate Government as required under Section 1(5) of the ESI Act, bringing it within the purview of provisions of said Act as an establishment, the corporation on its own was providing the benefits of ESI contribution. Despite the appellant not being governed by provisions of the ESI Act and regulations made thereunder, 1st respondent ESI corporation, by order, dated 20.05.2016, levied damages of Rs.31,52,988/- for delayed payment of contribution for the period from October 2010 to December 2014, in terms of Section 85-B of the ESI Act, treating the corporation as an establishment.

(d) The appellant Corporation had challenged the said orders in W.P. No. 19581 of 2016, which eventually came to be disposed of by setting aside impugned order on the ground that said order was passed without deciding as to whether damages were at all leviable or not, and whether there was any *mens rea,* accordingly, the matter was remanded to decide the issue afresh after conducting a detailed enquiry. In pursuance to the same, during the inquiry, appellant had raised a jurisdictional issue of applicability of the ESI Act in the absence of a statutory notification under Section 1(5) of the ESI Act and also sought to place reliance on order, dated 05.12.2018, passed in ESI Case No.13 of 2018 and batch relating to GHMC, which decided the issue in its favour, therefore, pleaded that question of imposing damages does not arise. However, the 1st respondent has passed order, dated 29.11.2019, confirming the damages. Assailing the same, appellant corporation preferred W.P. No. 374 of 2019.

(e) After filing of the writ petition, Government of Andhra Pradesh, vide G.O.Ms.No.2, Labour, Factories, Boilers & Insurance Medical

Services (IMS&VIG) Department, dated 19.04.2023, issued final notification in terms of Section 1(5) of the ESI Act, extending the provisions of ESI Act to all classes of establishments viz., municipal bodies including municipal corporations, municipal councils, nagar palikas and other urban local bodies run by the State Government, wherein ten or more persons on casual or contractual or both basis are employed, or were employed for wages on any day of the preceding 12 months. Even the respondent ESI Corporation issued circular, dated 22.05.2023, to the effect that Government of Andhra Pradesh had issued draft notification, dated 28.11.2022, and thereafter, final notification, dated 19.04.2023, under Section 1(5) of the ESI Act for coverage of casual or contractual workers engaged under municipal corporations and municipal councils, which had post-facto approval of the Central Government. Therefore, all appellant corporations came to be covered by the provisions of the ESI Act with effect from 19.04.2023. The learned Single Judge dismissed the writ petitions on the ground of availability of alternative remedy under Section 75 of the ESI Act and accordingly, relegated the appellant Corporations to avail the same. Assailing the same, the present appeals are filed.

(f) In all the other writ appeals, the facts are more or less similar except for the quantum of damages imposed. Therefore, the facts in each case are not set out separately.

4. Heard Mr.Koka Satyanarayana Rao, learned counsel appearing for the appellant Corporations and Mr.K.Sangan Naidu, learned counsel appearing for the 1st & 3rd respondents - ESI Corporation.

5. (a) Learned counsel for the appellant corporations contended that the impugned orders, passed by the 1st respondent ESI Corporation, in levying and demanding damages purported to be under Section 85-B of the ESI Act, are without jurisdiction, particularly, in the absence of a proper notification under Section 1(5) of the ESI Act notifying the appellant Corporation to be establishments falling within the purview of the said Act. Once the appellants are not properly brought under the purview of the ESI Act, in the manner as envisaged thereunder, question of insisting the appellants to make ESI contributions or levying damages thereon does not arise. It is further contended that mere issuance of proceedings in Rc.No.1994/2007, dated 24.04.2007, by the Commissioner and Director, Municipal Administration Department, Government of Andhra Pradesh, instructing all urban local bodies to ensure contributions are made towards ESI on account of engaging the municipal workers by itself cannot be treated as a proper notification as envisaged under Section 1(5) of the ESI Act.

(b) It is contended that circular, dated 24.04.2007, cannot be construed as a proper notification under Section 1(5) of the ESI Act, but the proper notification was the one issued in G.O.Ms.No.2, dated

19.04.2023, which meets the requirements of the provisions of the Act. Therefore, the appellants cannot be compelled to comply with the provisions of the Act or be made liable for contributions, interest or damages for the period prior to issuance of the notification.

(c) It is further contended that it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, then the act must be done in that manner, thus, the appellant corporations would have been brought within the purview of the Act only through proper notification issued in the manner as envisaged under the Act, in the facts and circumstances of the case, such notification came to be issued only vide G.O.Ms.No.2, dated 19.04.2023. Even the respondent ESI Corporation also issued a circular, dated 22.05.2023, to the effect that the Government of Andhra Pradesh had issued draft notification, dated 28.11.2022, and thereafter, final notification, dated 19.04.2023, under Section 1(5) of the ESI Act, for coverage of casual and contractual workers engaged under the municipal corporations and municipal councils, which had post facto approval of the Central Government. Therefore, all the appellant corporations came to be governed by the provisions of the ESI Act with effect from 19.04.2023. In support of the aforesaid submissions, learned counsel made this Court go through orders passed by the ESI Court in E.I.C.No.13 of 2018 and batch, wherein the very same issue has been decided in favour of the corporation therein by holding that unless proper notification under Section 1(5) of the ESI Act is issued in the manner as envisaged under the Act, question of extending the provisions of the ESI Act and thereby levying and demanding any damages does not arise. Further, reliance has also been placed on the judgment of the Hon'ble Apex Court in **Brajendra Singh Yambem v. Union of India**[1] and also Single Judge of the Bombay High Court in **Edelstahi Agencies (P) Ltd. v. Regional Provident Fund Commissioner**[2] to the same effect.

(d) Lastly, it is contended that the learned Single Judge was not right in dismissing the writ petitions on the ground of alternative remedy, inasmuch as when the impugned orders are assailed wholly to be without jurisdiction, following the ratio laid down by the Hon'ble Apex Court in **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai**[3], the writ petitions are very much entertainable.

6. (a) *Per contra*, learned counsel for the respondent ESI Corporation, while vehemently opposing the submissions made above, tried to support the impugned order passed by the learned Single Judge. It is contended that the appellants since have by themselves been deducting and paying the ESI contribution, even if it were to be voluntarily, they have accepted the applicability of the provisions of the

[1] (2016) 9 SCC 20
[2] 2004 SCC OnLine Bom 1305 = 2004 LawSuit(Bom) 762 = 2005 (1) CLR 341 = 2005 (2) LLJ 108
[3] (1998) 8 SCC 1

ESI Act and, at any rate, even the question of applicability as well can be agitated before the ESI Court under Section 75 of the ESI Act, therefore, learned Single Judge was justified in relegating the appellants to avail alternative remedy. In support thereof, reliance has been placed on the judgment of a coordinate bench of the composite High Court of Andhra Pradesh in **Ashok Leyland Ltd., Ductron, Castings Ltd., RR District v. Deputy Tahsildar/Special Revenue Inspector (ESI)**[4].

(b) Learned counsel for the respondent ESI Corporation further contended that admittedly the appellant corporations had deducted ESI contribution both of employer and employees, and the same were paid belatedly, therefore, the corporation was justified in levying damages under Section 85-B of the ESI Act. To buttress the same, our attention has been drawn to various paragraphs of the pleadings in the writ affidavit. Learned counsel further had laid significant emphasis on the proceedings in Rc.No.1994/2007, dated 24.04.2007, to contend that the State Government had clearly notified that all the urban local bodies should necessarily make contributions towards the ESI at the rate of 4.75% in the process of ensuring payments to all contractual workers, therefore, the appellants now cannot turn around and plead that their establishments are not notified under the provisions of the ESI Act.

---

[4] 2001 (4) ALD 96 (DB)

(c) Lastly, it is submitted that though the ESI Court in E.I.C. No.13 of 2018 and batch, has set aside the demand of damages, eventually, the GHMC has settled all the payments, and therefore, the said order would have no consequence to the present adjudication, thus, pleaded for dismissal of the appeals.

7. We have considered the submissions made on either side and perused the record.

8. The core issue which falls for our consideration is as to whether the municipal corporations in the State of Andhra Pradesh were otherwise covered and governed by the provisions of the ESI Act prior to the issuance of notification by the Government of Andhra Pradesh vide G.O.Ms.No.2, dated 19.04.2023, and whether any damages imposed on account of delay in making the contributions for the period prior thereto is without jurisdiction?

9. The appellant corporations are statutory local bodies established under the provisions of either the Municipal Corporations Act or the A.P. Municipal Corporations Act, which came to be enacted in terms of Article 243Q of the Constitution of India. The appellants, in order to discharge their statutory functions, have been engaging casual workers through either self-help groups or contractors. By way of proceedings in Rc.No.1994/2007, dated 24.04.2007, a circular came to be issued by the Municipal Administration Department instructing all urban local bodies to pay minimum wages as well as contributions towards Provident Fund and ESI to all the municipal workers. Based on the same, the appellants corporations have been making remittance of ESI contributions. On account of delay in payment of the same, the first respondent had levied damages in terms of Section 85-B of the ESI Act. The demand of damages has been resisted by the appellant corporations, contending that in the absence of a proper notification under Section 1(5) of the ESI Act, bringing them within the purview of the provisions of the Act, question of imposing damages does not arise and the same would be without jurisdiction. After filing of the writ petitions, the State Government has issued preliminary notification, dated 28.11.2022, and thereafter, final notification, dated 19.04.2023, as contemplated under Section 1(5) of the ESI Act, extending the provisions of the ESI Act to all the urban local bodies. Later, even the respondent ESI Corporation also issued a circular, dated 22.05.2023, whereby it has been informed that in view of the final notification, dated 19.04.2023, issued by the Government of Andhra Pradesh, the ESI scheme came to be extended to all casual/contractual workers under the municipal corporations and municipal councils and other local bodies within the State. Therefore, appellant Corporations contend that their claim stands fortified in view of aforesaid notification.

10. In order to test aforesaid submissions, Section 1(5) of the ESI Act is extracted as under:

> "**1. Short title, extent, commencement and application**.—(1) This Act may be called the Employees' State Insurance Act, 1948.
>
> (2)….
>
> (3) ….
>
> (4) ….
>
> (5) The appropriate Government may, in consultation with the Corporation and where the **appropriate Government** is a State Government, with the approval of the Central Government, after giving one month's notice of its intention of so doing **by notification** in the Official Gazette, **extend the provisions of this Act or** any of them, **to any other establishment** or class of establishments, industrial, commercial, agricultural or otherwise:
>
> Provided that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State." (emphasis supplied by us)

11. The above provision clearly prescribes that the appropriate State Government, with the approval of the Central Government, has to issue a notification in the Official Gazette extending the provisions of the ESI Act to any of the establishments. Unless such course of action is undertaken, definitely, the provisions of the ESI Act would not get extended to such of those establishments.

12. Now, it has to be seen whether the circular in Rc. No.1994/2007-D, dated 24.04.2007, issued by the Commissioner and Director, Municipal Administration Department, would qualify to be a notification as envisaged under the said provision. The text of the said circular reads as under:

> "1. The attention of all the Commissioners of ULBs and Regional Director-cum-Appellate Commissioner of Municipal Administrations in the State is invited to the references 1st to 3rd cited, and in the reference 3rd cited instructed all the Commissioners of ULBs and Regional Director-cum-Appellate Commissioner of Municipal Administrations, in their capacity as Principal Employers to develop / establish a mechanism to ensure that the bid amount accepted takes care of the minimum wages fixed by the Commissioner of Labour as well as contribution towards Provident Fund and ESI @ 13.61%, @ 4.75% respectively to the labour and also Minimum Wages Act. A compliance report of existing Municipal workers may be sent to Commissioner and Director of Municipal Administration, A.P. Hyderabad.
> 2. In view of the representation of the A.P. Municipal Employees & Workers Joint Council of Associations & Union & the A.P. Municipal & Panchayath Workers Federation (AITUC), all the Municipal Commissioners of the ULBs and the Regional Director-cum-Appellate Commissioner of Municipal Administrations are instructed to adopt latest rates notified under Minimum Wages Act, in Municipalities and Municipal Corporations for payment of daily wages.
> 3. Therefore, all the Commissioners of ULBs and Regional Director-cum-Appellate Commissioner of Municipal Administrations in the State are instructed to follow above instructions scrupulously. If any failure in this regard, the Municipal Commissioner will be solely responsible."

13. A glance at the contents of the aforesaid circular goes to show that the same was largely focusing on payment of minimum wages to contract workers engaged by various Government departments and urban local bodies and on implementation of the provisions of the Minimum Wages Act. Incidentally, it also refers to factoring contributions towards Provident Fund and ESI besides minimum wages. They appear to be mere internal instructions and not any statutory notification. Having said that, we now proceed to refer to the final notification issued by the State Government vide G.O.Ms.No.2, dated 19.04.2023. The text of the said G.O. reads as under:

> "The Insurance Commissioner, ESI Corporation, New Delhi in the letter first read above has given a notice with intention to extend the provisions of the Employees' State Insurance Act, 1948 (Act No. 34 of 1948), to the Municipal Corporation and Municipal Councils/Bodies.
>
> 2. After careful examination of the notice of the Insurance Commissioner, ESI Corporation, New Delhi, the Government of Andhra Pradesh have decided to extend the Employees' State Insurance Act, 1948 for coverage to Casual / Contractual Agencies working under Municipal Corporation and Municipal Councils in the State of Andhra Pradesh.
>
> 3. Accordingly, a preliminary notification has been published in the Andhra Pradesh Gazette No.1905, dated 28.11.2022, as per the G.O. 4th read above calling objections under sub-section (5) of section 1 of the Employees' State Insurance Corporation Act, 1948.
>
> 4. The Director, IMS in his letter 5th read above has informed that there are no objections received to Director, Insurance Medical Services, AP, regarding the said notification.
>
> Final Notification
>
> In exercise of the powers conferred by sub-section (5) of Section 1 of the Employees' State Insurance Act, 1948, the Government of Andhra Pradesh, Department of Labour, Factories, Boilers and Insurance Medical Services (IMS& VIG) in consultation with the Employees' State Insurance Corporation and with the approval of the Central Government vide Letter No.S-38025/07/2020-SS-1, dated 09.06.2021, hereby extend the provisions of the Act, to the classes of establishments specified in the schedule, as the same having been previously published in Part-I Extra Ordinary issue of the Andhra Pradesh Gazette No.1905, dated 28th November, 2022 vide G.O.Ms.No.33, LFB & IMS (Vig-IMS) Dept., dated 21.11.2022.
>
> SCHEDULE

Description of establishments	Areas in which the establishments are

	situated
(1)	(2)
Municipal bodies including Municipal Corporation (Nagar Nigam), Municipal Councils, Nagar Palika and Other Urban Local Bodies run by State Government wherein ten or more persons on casual or contractual or both, basis are employed, or were employed for wages on any day, of the preceding twelve (12) months.	All areas where provisions of the Employees State Insurance Act, 1948 have already been brought into force under sub-section (3) of Section 1 of the Act.

14. The aforesaid notification in Ref.No.1 refers to the communication of the Insurance Commissioner, ESI Corporation, New Delhi, expressing the intention to extend the provisions of the ESI Act to all the municipal corporations. The same was followed by the Government of Andhra Pradesh issuing preliminary notification, dated 28.11.2022, as mentioned in 4th reference therein. Finally, the same has culminated into the final notification under Section 1(5) of the ESI Act, by which, the provisions of the ESI Act came to be extended and taking cognizance of the same, subsequently, even the respondent Corporation also issued office circular, dated 22.05.2023. We, therefore, are clearly convinced that the circular in Rc.No.1994/2007, dated 24.04.2007, on which much emphasis has been laid by the learned counsel appearing for the respondent ESI

Corporation, cannot be construed to be a proper notification under Section 1(5) of the ESI Act. Rather, the proper notification is the one issued in G.O. Ms. No.2, dated 19.04.2023, since the same meets and satisfies the requirements envisaged under the provisions of the ESI Act. Thus, we hold that the appellant corporations have come under the purview of the ESI Act only with effect from 19.04.2023, and therefore, they cannot be compelled to comply with the provisions of the Act, either by making contributions or by demanding interest or damages, if any, for the period prior to issuance of the notification.

15. Learned counsel for the respondent ESI Corporation sought to contend that since the appellant corporations by themselves volunteered to pay contributions, any delay in payment by default would attract the levy of penalty and therefore, the respondents had rightly imposed the same.

16. The power to levy damages emanates from Section 85-B of the ESI Act. Until and unless an establishment is brought within the purview of the ESI Act, in the manner prescribed under the Act, none of the provisions of the Act would extend or operate qua such establishment.

17. We may also notice here that the appellant corporations did volunteer to pay contribution despite they having no legal obligation, and merely because there was some delay in honouring their commitments, the same *ipso facto* would not entitle the respondents to impose damages by invoking Section 85-B of the ESI Act.

18. The question of applicability of the ESI Act to the appellant corporations and the demand of damages in terms of Section 85-B are purely jurisdictional issues. Powers exercised under Article 226 of the Constitution of India are very wide, and there cannot be any fetter on such power as had been argued. Merely having an alternative remedy clearly would not operate as a bar to exercise the powers so conferred at least in three contingencies where a writ petition has been filed for enforcement of any fundamental rights, or where there has been violation of principles of natural justice, or where the order or proceedings are wholly without jurisdiction. This principle of law is well settled by the Hon'ble Apex Court in various judgments. In view of our observations and findings above, learned Single Judge was not right in dismissing the writ petitions on the ground of alternative remedy. Even otherwise, the very same issue has already been adjudicated and decided by the ESI Court in E.I.C. No.13 of 2018 and batch against the respondent ESI Corporation, therefore, relegating the appellants to avail alternative remedy would be a futile exercise.

19. Therefore, we allow all the writ appeals by setting aside the impugned orders passed by the learned Single Judge. Further, the respective impugned orders passed by the respondent ESI Corporation for recovery of damages under challenge in all the subject writ petitions stand set aside. It is needless to say that the respondent ESI Corporation shall refund the amounts, if any, already recovered in pursuance of the demands for damages now being set aside, and such refund shall be made within eight weeks from the date of receipt of a copy of this judgment. No order as to costs.

As a sequel, miscellaneous petitions pending consideration, if any, in these appeals, shall stand closed.

LISA GILL, CJ **CHALLA GUNARANJAN, J.**

cs