



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.25256 of 2025
CNR No.ODHC010646092025

An application under Articles 226 and 227 of the Constitution of India

M/s. Sai +2 Science Residential College, Baripada, Mayurbhanj **Petitioner**

Versus

Deputy Director (Revenue), ESI Corporation, Bhubaneswar and others **Opposite Parties**

Advocates appeared in the case :

For Petitioner : Mr. Somanath Mishra, Advocate

For Opp. Parties: Mr. Sk. Ruplal, Advocate,
(for Opp. Party Nos.1 and 2)
Mr. Manoj Kumar Routray, Advocate
(for Opp. Party No.3)

CORAM:
THE HON'BLE MR. JUSTICE MRUGANKA SEKHAR SAHOO

J U D G M E N T

Date of hearings: 21.09.2026 & 24.09.2026 and Judgment: 29.10.2026

MRUGANKA SEKHAR SAHOO, J.

1. The petitioner an educational institution imparting +2 Science course, is before this Court seeking intervention under Articles 226 and 227 of the Constitution of India,



challenging the Garnishee Order dated 18.08.2025 (Annexure-3 to the writ petition) issued under Section 45G of the Employees' State Insurance(ESI) Act, 1948 by the Recovery Officer.

2. Learned counsel for the petitioner refers to Annexure-1 series to the writ petition: letter dated 07.04.2017 issued by the ESI Authority, the period of demand being October, 2014 to January, 2016; the next notice is for the period from February, 2016 to January, 2017. Learned counsel refers to the page-23 of the counter affidavit which is an 'ad-hoc C-18' notice for the period from May, 2013 to September, 2014.

It is submitted: that from the notices issued by the authority it is apparent that the period starts from May, 2013 and ends January, 2017.

3. Learned counsel for petitioner referring to page-40 of the counter affidavit i.e. letter dated 28.05.2025 submits that the said letter indicates that the demand is for the period from February, 2017 to March, 2018 and May, 2018 to August, 2022. Accordingly, it is submitted that the records of the opposite parties-ESI authorities itself go to show that though the notices can at best be for the period from May, 2013 to January, 2017 but the period of contribution demanded is from February, 2017 to March, 2018 and May, 2018 to August, 2022.

4. Learned counsel further refers to the counter affidavit filed by the opposite parties-Corporation and refers to the aspect that the counter affidavit does not specifically deal with



the averments and submissions made in the writ petition, para wise.

Referring to the Annexure-1 to the writ petition, it is submitted that the date of hearing was fixed to 04.05.2017. The written response was submitted on 01.05.2017. Thereafter, there has been no hearing, nor there is anything indicated in the counter to show that on any date any hearing was made.

5. Learned counsel for the petitioner submits that after 2018, in response to the letter issued by the petitioner, response of the ESI authorities has come in the year 2025. Thereafter, the garnishee order under Section 45-G has been issued. Learned counsel reiterates his submissions that only from the Bank where the petitioner maintains it's account it has come to know about the order passed U/s.45-G. It is submitted: direction issued by this Court by order dated 09.09.2026 to show before the Court that order has been passed U/s.45-A, has not been complied with by the opposite parties.

6. It is submitted by the learned counsel for the petitioner that after the garnishee order came to the notice of the petitioner, it applied to the authorities for providing the documents on 03.09.2025. In response certain documents have been supplied, copies of which have been annexed to the writ petition marked as Annexure-5 series.

7. Mr. Ruplal, learned counsel appearing for the opposite parties-Corporation is apprised of the order dated 09.09.2026



passed by the coordinate Bench. The learned counsel has gone through the said order.

The order dated 09.09.2026 is reproduced herein:

“1. Heard Mr. S. Mishra, learned counsel for the Petitioner. The main submission of Mr. Mishra is that without passing any order under Section 45-A of the ESI Act and affording reasonable opportunity of hearing to the Petitioner, demand has been made pursuant to which a Garnishee order has also been passed.

2. Mr. Sk. Ruplal, learned counsel appearing on behalf of Opposite Party No.1 and 2 after arguing for some time and taking the Court to different averments in his counter affidavit and different pages of the Annexures is unable to point out the order passed under Section 45-A or any averment to that effect that any order under Section 45-A has been passed. Thereafter, he seeks for some time to obtain instructions.

3. Considering his prayer, list this matter on 11.09.2026 as prayed for by Mr. Sk. Ruplal, learned counsel for Opposite Party No.1 and 2.”

8. In response to the observations made in the order dated 09.09.2026, it is submitted by the learned counsel that no order under Section 45-A has been passed.

Learned counsel for the opposite parties-Corporation has further responded that order is not necessary to be passed under Section 45-A.

It is submitted that order under Section 45-A is issued when contribution ‘is not disputed’.

Accordingly, the learned counsel was also requested to apprise by saying ‘contribution’, what is referred to; the answer is ‘contribution by the employer to ESI’.



9. Referring to the Annexure-A series at page-12 of the writ petition, it is submitted by the learned counsel for opposite party that notice in form C-11 dated 19.11.2014 has been issued for implementation of the contribution from 01.05.2013.

Now it is submitted that for non-compliance of the notice dated 06.06.2016, copy of which has been annexed to the counter affidavit filed by opposite party nos.1 and 2 marked as part of Annexure-A series, notice under Form-C-18 on ad hoc basis was issued on 07.04.2017.

10. The learned counsel for the authorities was asked under which provision notice dated 06.06.2016 was issued, in response, it is submitted the show cause notice does not refer to any particular provision under which it is issued, however, it is captioned “subject: Show Cause Notice for Non-Compliance with the provisions of the ESI Act, 1948 and Regulations framed there under as amended up to date”.

11. It is submitted that in response to the notice issued under Form-C-18, the petitioner’s reply dated 01.05.2017 has been received by the authority with month wise statement; the notice and order under Section 45-A is not necessary. Referring to pages 29 to 35 of counter, it is submitted by the learned counsel for the opposite parties-Corporation that the petitioner has ‘admitted’ the ‘contribution’ after which the petitioner has not paid.

12. It is submitted that the petitioner by letter dated 07.12.2018 has intimated the ESI Authority for correction of



e-mail ID and password to pay the contribution. The learned counsel refers to certain documents which are not supported by any affidavit. He filed the documents along with a memo. Copy of those documents with the memo is served on the learned counsel for the petitioner. Thereafter affidavit dated 23.09.2026 has been filed enclosing the documents and served on learned counsel for petitioner which are letter dated 18.09.2026 issued by Deputy Director (Rev-II) addressed to the Legal Branch, Regional Office, ESI Corporation, Bhubaneswar.

13. It is submitted by the learned counsel for the opposite parties-Corporation that notice dated 28.05.2025 was issued which forms part of Annexures-C and D series addressed to the petitioner under the subject ‘Compliance under the ESI Act, 1948 (As amended)-reg.’”

Then the learned counsel refers to page-36 of the counter i.e. letter dated 09.01.2018 marked as Annexure-B series which he states to be Form-C-18(ACTUAL basis). Referring to the said letter dated 09.01.2018, it is submitted that the petitioner has ‘admitted the actual contribution’.

It is contended that the petitioner has admitted the amount in letter dated 09.01.2018.

14. Since the learned counsel for the opposite parties-Corporation repeatedly argues: “the petitioner has admitted” learned counsel was requested to find out a page from the documents available on record, where and by which communication the petitioner has admitted. The learned



counsel in response refers to page-29 of counter filed by opposite party nos.1 and 2 i.e. letter dated 01.05.2017 which reads thus:

“To
The Deputy Director (Revenue)
E.S.I. Corporation, Regional Office,
Bhubaneswar.

Ref.; Your letter No: OR/44000128470001303/REV-
ll/285 dtd.7.4.17

Sub.; Assessment of Contribution for the period
05/2013 to 09/2014

Dear Sir,

In reference to your above letter we are attaching a month-wise statement showing the details of wages paid during the period as mentioned above, along with the Xerox copy of Aquittance Roll, for your perusal.

We request your good self to kindly go through the information provided by us and ascertain the actual contribution payable.”

15. On being again asked to go through the above quoted letter, the learned counsel refers to part of the sentence ‘*We request your good self to kindly go through the information provided by us and ascertain the actual contribution payable*’ and submits that this sentence amounts to admission by the petitioner.

16. Thereafter, the learned counsel refers to page 38 of counter which is part of Annexure-B series, letter dated 07.02.2018, sub-paragraph: ‘*We, therefore, request you to kindly arrange for changing our Password so as to enable us to open our Portal and deposit the contribution regularly. Please also arrange to change our mail ID as provided below. ...*’ and submits that this is the admission by the petitioner.



It is further contended that after the letter dated 07.02.2018 was received by the authority (page-38), the request of the petitioner has been acceded to, the authorities have corrected e-mail id and password of the petitioner-institution after which the petitioner has not paid.

17. Copy of notice dated 28.05.2025 as at page-40 of the counter affidavit filed on behalf of the opposite party nos.1 and 2 (part of Annexure-C and D series) is referred to, 'for compliance of the contribution giving 15 days time'. The learned counsel then refers to the letter dated 28.05.2025 (copy of which has been annexed to the counter as part of Annexure-C and D series at page-41) which is purportedly notice in form C-19, sent to the Recovery Officer and page-42 of the counter affidavit which indicates that the letter has been served on the petitioner.

18. The learned counsel for opposite party nos.1 and 2 refers to the Form No.ESI CP-2 'demand notice' dated 11.06.2025 issued to the petitioner for the period from May, 2013 to January, 2017; interest has been calculated up to 27.05.2025, the total amount being Rs.5,26,696/-. It is submitted as the amount has not been paid, the garnishee order dated 18.08.2025 as per the Appendix-18 of the ESI Act has been issued.

Lastly, it is submitted that the recovery process was started on 08.09.2025 and copy has been served to the petitioner and the bank has been served on 09.09.2025.



19. Referring to the submissions as noted above which has been termed as ‘admission of the petitioner’, it is submitted by the learned counsel for the petitioner that by any stretch of imagination the statements made by the petitioner intimating the facts to the authorities cannot be treated as admissions much less it can be contended that the said statements form the basis of order passed by the ESI authority.

It is submitted by the learned counsel for the petitioner as a matter of fact it is abundantly clear that no order under Section 45-A has been passed.

20. It is submitted by the learned counsel for the opposite parties-Corporation that the petitioner has stated certain aspects in rejoinder which was not part of the writ petition paragraphs. In response the learned counsel for the petitioner submits that rejoinder is in response to the counter affidavit filed by opposite party nos.1 and 2. He again reiterates that the opposite party nos.1 and 2 have not given any specific answer to the para-wise contentions and averments in the writ petition.

21. Learned counsel for the opposite parties-Corporation submits that as per the provisions contained in Section 75 of ESI Act, the writ petition is not maintainable. In response, it is submitted by the learned counsel for the petitioner that the petitioner alleges procedural irregularity in passing the impugned order and non-compliance of the principles of natural justice and the authorities have already stated that no order has been passed under Section 45-A of the ESI Act.



22. The learned counsel for the opposite parties-Corporation relies upon decision of this Court in W.P.(C) No.15182 of 2026: ***M/s. A.B.S. Engineering, Jagatsinghpur v. Employees' State Insurance Corporation, (E.S.I.C.), Bhubaneswar and others*** disposed of on 15.05.2026 and decision of the Gauhati High Court by a co-equal bench in WP(C)/6469/2019: ***M/s. Hotel Brideway and another v. The Union of India and 3 others***, (Verdictum.in print) to contend that the writ petition is not maintainable.

23. The reliance upon the decisions rendered in ***M/s. A.B.S. Engineering, Jagatsinghpur*** (*supra*) and ***M/s. Hotel Birdeway*** (*supra*) would not come to the aid of the opposite parties as the fact matrix of those cases are miles away from the facts of the present case. The opposite parties have been fair to the extent in stating/submitting that there is no order passed by the authority under Section 45-A as mandated by the statute. Effort has been made to justify the action of authorities in not passing order under Section 45-A and passing the order under 45-G.

24. It hardly needs to be stated that a decision is an authority for the proposition laid down in a given fact matrix, and not for all that, that would be logically following from what has been so laid down. So said Lord Halsbury more than a century ago in ***Quinn v. Leathem***.¹, and quoted herein:

“Now before discussing the case of Allen v. Flood, [1898] AC 1 and what was decided therein, there

¹ [1901] UKHL 2 : 3 [1901] AC 495



are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.”

25. In *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others; AIR 1999 SC 22:1998 (8) SCC 1* at paragraphs 14, 15, 16, 17,18, 19, 20 and 21 the Hon’ble Supreme Court have observed thus:

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in



at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. *Rashid Ahmed v. Municipal Board, Kairana* [1950 SCC 221 : AIR 1950 SC 163 : 1950 SCR 566] laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another *Rashid* case, namely, *K.S. Rashid & Son v. Income Tax Investigation Commission* [AIR 1954 SC 207 : (1954) 25 ITR 167] which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, “unless there are good grounds therefor”, which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances.

17. A specific and clear rule was laid down in *State of U.P. v. Mohd. Nooh* [AIR 1958 SC 86 : 1958 SCR 595] as under:

“But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.”

18. This proposition was considered by a Constitution Bench of this Court in *A.V. Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhwani* [AIR 1961 SC



1506 : (1962) 1 SCR 753] and was affirmed and followed in the following words:

“The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court.”

19. Another Constitution Bench decision in Calcutta Discount Co. Ltd. v. ITO, Companies Distt. I [AIR 1961 SC 372 : (1961) 41 ITR 191] laid down:

“Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act.”



20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal"."

[Underlined to supply emphasis]

26. This Court comes to a conclusion after analysis of the facts and circumstances of the present case that there are procedural irregularity in passing the impugned order as the authorities have not passed any order under Section 45-A and effective opportunity of hearing was not granted to the petitioner to put forth his case before the adjudicating authority. On scrutiny of the orders passed by the opposite party authorities it is found that the orders passed are arbitrary and do not satisfy the test of reasonableness. The principles applied by the authority in their series of decisions are not based on statutory principles nor they satisfy reasonableness.

27. Applying the principles laid down in **Whirlpool Corporation** (*supra*) relying on the earlier decision rendered by Constitution Benches in **A.V. Venkanteswaran, Collector**



of Customs v. Ramchand Sobhraj Wadhwani and another: AIR 1961 SC 1506 and Calcutta Discount Company Ltd. v. Income-Tax Officer, Companies District I: AIR 1961 SC 372, and by applying the principles laid down in **Subodh Kumar Singh Rathour v. Kolkata Metropolitan Development Authority: (2024) 15 SCC 461**, the orders enclosed to as part of Annexure-5 series of the writ petition and impugned i.e. Order No.44000128470001303/REV-II-15956/59 dated 28.05.2025, Order No.OR/44000128470001303/Revenue-II/668 to 670 dated 09.01.2018 and the garnishee order dated 18.08.2025 (Annexure-3) passed under Section 45G of the Employees' State Insurance (ESI) Act, 1948 are set aside and quashed. Any amount appropriated from bank account of the petitioner pursuant to the orders those have been quashed shall be reverted to the bank account forthwith.

28. The writ petition is allowed and disposed of.
No costs.

(Mruganka Sekhar Sahoo)
Judge

Orissa High Court, Cuttack
The 29th October, 2026/Jyostna

Signature Not Verified

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Signed by: JYOSTNARANI MAJHEE
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W.P. (C) No.25256 of 2025