IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
29.7.2026	31.7.2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

Civil Miscellaneous Appeal No.2148 of 2026

M/s.Pro-Interactive Services
(India) Private Limited,
31-32, Begampur,
Park Shivalik,, Malviya Nagar,
New Delhi-100 017

...Appellant

Vs

The Assistant Director,
Employees State Insurance
Corporation Ltd, at 143,
Sterling Road, Nungambakkam,
Chennai 600034

...Respondents

APPEAL UNDER Section 82 of the Employees' State Insurance Act, 1948 against the order dated 18.11.2025 in E.I.O.P.No.24 of 2016 passed by the Presiding Officer, Employees' Insurance Court (Principal Labour Court), Chennai.

For Appellant: Mr.M.Mubena Almas
For Respondent: Mr.Dwarakesh Prabhakaran, PC

JUDGMENT

This appeal has been filed under Section 82 of the Employees' State Insurance Act, 1948 (for brevity, the Act) against the order dated 18.11.2025 passed in E.I.O.P.No.24 of 2016 by the Employees' Insurance Court (Principal Labour Court), Chennai (for short, the Court below) dismissing the petition filed under Section 75 of the Act and confirming the order passed by the Adjudicating Authority dated 19.8.2015.

2. Heard the learned counsel for the appellant and the learned Panel Counsel appearing for the respondent.

3. The facts leading to filing of this appeal are as follows:

(i) The appellant is a private limited company engaged in the business of providing industrial security services. The appellant had employed a large number of employees and deployed them at various locations in and around Chennai. They were all covered under the Act and the appellant was paying contribution till November 2011.

(ii) The appellant received an adjudication order under Section 45A of the Act dated 19.8.2015 whereby the respondent determined the contribution at Rs.6,85,328/- for the period from November 2011 to May 2013.

(iii) The appellant challenged the said order dated 19.8.2015 passed by the Adjudicating Authority before the Court below by filing E.I.O.P.No.24 of 2016 and it came to be dismissed by the impugned order dated 18.11.2025. Aggrieved by that, the above appeal has been filed before this Court.

4. The appellant was paying the contributions till November 2011 and for the period from December 2011 to May 2013, the contributions were not paid. In such a situation, a show cause notice in Form C-18 dated 06.8.2014 came to be issued by proposing the contribution payable at Rs.6,85,328/-. This notice was returned with an endorsement 'delivered & door locked'. Another notice dated 17.2.2015 calling upon the appellant for personal hearing was issued and even for this notice, no acknowledgment was received. Finally, to afford further opportunity, a notice dated 20.4.2015 was sent to the appellant to both their addresses at Chennai and Delhi informing that the personal hearing was fixed on 20.5.2015. It was received at the Delhi address and acknowledged. But, no one appeared for the

personal hearing.

5. Once again, a notice dated 10.6.2015 was issued to the Director of the appellant company informing that the inquiry was fixed on 06.7.2015. Even though this notice was received, none appeared for the inquiry. Under such circumstances, the respondent proceeded to assess the contribution for 71 employees and it was determined at Rs.6,85,328/- by an order passed by the Adjudicating Authority under Section 45A of the Act dated 19.8.2015.

6. The main contention that was raised on the side of the appellant was that they did not receive any notice, that the order was passed without affording them an opportunity and that the respondent did not comply with the mandatory requirement under Section 45 of the Act nor endeavoured to conduct an inspection of the premises and verify the records and other statutory registers in order to ascertain the factual position regarding employment and wages. According to the appellant, this verification was required since the appellant did not engage any employee on its rolls in the State of Tamil Nadu during the period from December 2011 to May 2013 and consequently, no contribution was payable by the appellant.

7. In order to substantiate his submissions, the learned counsel for the appellant relied upon the judgment of the Hon'ble Apex Court in the case of ***Carborandum Universal Ltd. Vs. ESI Corporation [reported in 2025 SCC OnLine SC 2865].***

8. The following substantial question of law arises for consideration in this appeal:

> *"Whether an assessment under Section 45A of the Act can be validly invoked without exercising powers under Section 45 of the Act to satisfy the statutory preconditions for invoking Section 45A in the light of the law laid down by the Hon'ble Apex Court in Carborandum Universal Ltd. Vs. ESI Corporation [reported in 2025 SCC OnLine SC 2865?"*

9. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned order.

10. The first contention that has been raised on the side of the appellant was that they were not served with any notice before the

adjudication order came to be passed under Section 45A of the Act.

11. In the considered view of this Court, this contention raised on the side of the appellant is wholly unsustainable. The appellant, even while filing the petition under Section 75 of the Act before the Court below, categorically admitted that the notice dated 27.11.2015 was, in fact, received by the appellant. But, in spite of it, the appellant had not chosen to attend the personal hearing.

12. The Court below, while dealing with this issue, gave a categorical finding at paragraph 13 of the order dated 18.11.2025 to the effect that repeated attempts were made to serve the notice and that the appellant was afforded with reasonable opportunities before the adjudication order was passed. In view of the same, this Court rejects the contention raised by the learned counsel for the appellant to the effect that the adjudication order passed by the respondent would suffer from violation of the principles of natural justice.

13. The next contention that has been raised on the side of the appellant was that they ceased to operate in the State of Tamil Nadu

from December 2011 till the end of May 2013.

14. While dealing with this issue, the Court below, by considering Ex.P.2, found that the appellant had filed returns for 186 employees, that out of 186 employees, 99 were shown to be on leave, that no contribution was paid in respect of those employees and that the appellant had paid the contribution during November 2011 for the remaining 87 employees. The Court below thereafter proceeded to render a finding that with such a large number of employees employed by the appellant on their rolls, if really the appellant was not continuing with the operations in the State of Tamil Nadu, the burden of proof was only on the appellant to establish by filing necessary documents/registers and that in the absence of the same, such a presumption could not be made on the mere ipse dixit of the appellant.

15. What was filed by the appellant to substantiate the above defence was only Ex.P.1, which was a copy of the termination of contract between the appellant and one M/s.Indus Towers. In the considered view of this Court, that document, by itself will not

substantiate the claim made by the appellant as if there were no operations from December 2011 till the end of May 2013.

16. The Court below further rendered a finding that the appellant claimed to have provided the industrial security services to its customers in the city of Chennai and various other places in the State of Tamil Nadu and that the termination of contract with one of its customers would not be sufficient to raise such a presumption. This finding rendered by the Court below is supported by reasons and does not suffer from perversity warranting the interference of this Court.

17. The last defence was purely a question of law, which has to be answered by this Court.

18. The appellant had taken a stand that the Social Security Officer ought to have visited the establishment of the appellant and collected information to arrive at a conclusion and to determine the contribution payable in respect of those employees, who were allegedly engaged by the appellant and that in the absence of fulfilling this mandate provided under Section 45 of the Act, it was contended

that the order dated 19.8.2015 passed by the Adjudicating Authority under Section 45A was unsustainable.

19. At this juncture, the judgment of the Hon'ble Apex Court relied upon by the learned counsel for the appellant in the case of ***Carborandum Universal Ltd.,*** has to be taken note of. The relevant portions in the said judgment are extracted as hereunder:

> *"24. Thus, Section 45A is designed as a mechanism which the corporation may employ only when there is a default qua Section 44 or when statutory inspection under Section 45 becomes impossible on account of the conduct of the employer. The foundation for exercise of the power under Section 45A, as explained in Santhakumar, is either non-production of records or absence of cooperation or obstruction of inspection. The power is conceived as a best judgment determination akin to similar provisions in taxing statutes. What is equally significant is the clear statement of law that when records are produced and cooperation is forthcoming, assessment must be carried out under Section 75(2)(a) and not under Section 45A. The distinction drawn is therefore fundamental to the statutory architecture. Section 45A is not meant to be an alternative mode of computation at the*

option of the corporation. It is a residuary power available only when the employer makes a default under Section 44 or disables the corporation from carrying out inspection under Section 45.

25. In so far the impugned judgment and order of the High Court is concerned, we find that the High Court itself recorded that the appellant had appeared before the corporation through its authorized representative(s) and that relevant records were produced during the course of personal hearings. If the records were produced and the appellant had participated in the personal hearings which indicates that there was no non co-operation or obstruction, the conditions precedent for invoking jurisdiction under Section 45A were clearly absent. While it is true that there is no limitation under Section 45A of the Act, it is equally true that invocation of the said provision is dependent upon fulfillment of the aforesaid two conditions which are the functional requirement for invoking Section 45A viz non-production of records or obstruction of inspection. Mere inadequacy of the record would not confer jurisdiction upon the corporation to invoke Section 45A. The legislative intent is clear: summary determination under Section 45A would be permissible only in exceptional situations as alluded to hereinabove. The Act does not contemplate Section 45A as an alternative assessment mechanism available at the *option of the corporation whenever the employer's records are perceived as deficient or inadequate.*

26. Once Santhakumar is read and understood in its factual setting, its ratio becomes clear. In that case, the employer had failed to produce records and had not cooperated with the inspection. Invocation of Section 45A, therefore, rested squarely on the statutory preconditions. It would not be appropriate to extend the rationale of Santhakumar to cases where records have in fact been produced and where repeated personal hearings have been attended by the employer. Dissatisfaction with the completeness or quality of documents does not convert production into non-production, nor does it permit the corporation to invoke a power meant for exceptional situations. If the corporation, after examining the materials produced, believes that the computation made by the employer is incorrect or that further evidence is needed to decide the true nature of particular entries, the proper course is to raise a dispute under Section 75. To enlarge Section 45A so as to cover situations of partial dissatisfaction or perceived inadequacy would tantamount to rewriting the statute in a manner plainly contrary to its text and structure.

27. In the present case, the materials placed before us shows that the appellant had produced ledgers, cash books, journal vouchers, contractor *records and returns of contribution for the period in question. Personal hearings were granted on numerous dates and the appellant had appeared through its authorized representative in such hearings. The corporation has itself recorded in its order that records were produced but certain supporting bills were not furnished in respect of some heads of expenditure. This finding, even if accepted at face value, does not bring the case within the ambit of Section 45A. The statutory threshold is not inadequate production but non-production. The statute does not permit a best judgment determination merely because the record produced is inadequate."*

20. In the said judgment, the Hon'ble Apex Court considered the scope of Section 45A of the Act. It was held that to invoke Section 45A of the Act, two conditions must be fulfilled and they are:

(a) non production of records; and

(b) obstruction of inspection.

21. In the case in hand, the appellant received the notices before the adjudication order was passed by the respondent and in spite of it, the appellant did not care to appear for the personal

hearing/inquiry nor submit the relevant documents. Hence, the first requirement has been satisfied.

22. If the appellant did not appear for the personal hearing nor submit all the relevant documents/registers, the Authority would not be in a position to proceed further with the personal hearing/inquiry. In such a scenario, conducting an inspection would become a wild goose chase. More particularly, in the present case, the appellant had provided industrial security services to its customers in the city of Chennai and in various other places in the State of Tamil Nadu. In that case, it would not be possible for the Social Security Officer to go around all the places without any cooperation from the appellant to find out as to how many employees were engaged by them at various places. This attitude on the part of the appellant tantamounts to obstruction of inspection.

23. In a given case, the obstruction of inspection need not always be physical. It can arise in a case where a person or an entity refuses to provide any document or register and also refuses to participate in the inquiry. This will effectively obstruct the inspection.

An inspection can take place if some ledgers/documents/registers are provided to the Authorities by participating in the personal hearing/ inquiry. In such a scenario, the Authority has to consider the same and must necessarily conduct the inspection to ascertain the number of employees engaged and the contribution payable to them. That is the reason as to why the Hon'ble Apex Court, in the said judgment, made it clear that inadequacy of the records would not confer jurisdiction upon the respondent to invoke Section 45A of the Act. Section 45A of the Act is meant to be invoked in exceptional situations where there was non production of records or obstruction on the part of the employer. The said judgment of the Hon'ble Apex Court relied upon by the learned counsel for the appellant will not come to the aid of the appellant.

24. Even before this Court, the appellant was not able to produce any material to substantiate that the appellant did not engage the services of any employees between the period from December 2011 till the end of May 2013. If, during the month of November 2011, the appellant had paid the contribution for nearly 71 employees, all those employees would not vanish in thin air from December 2011 and

there must be some plausible explanation on the side of the appellant with supporting materials to substantiate as to how such a large number of employees were dealt with thereafter.

25. In the light of the above discussions, the substantial question of law is answered to the effect that the respondent fulfilled the precondition to invoke Section 45A of the Act and they satisfied the requirements prescribed by the Hon'ble Apex Court in the said judgment. Hence, the substantial question of law is answered in favour of the respondent and against the appellant.

26. In the result, the above civil miscellaneous appeal is dismissed. The order dated 18.11.2025 in E.I.O.P.No.24 of 2016 on the file of the Court below is confirmed. No costs.

31-07-2026

Index: Yes
Speaking order
Neutral Citation: Yes
To
1.The Presiding Officer, Employees'
Insurance Court (Principal Labour
Court), Chennai.

2.The Assistant Director, Employees'
State Insurance Corporation Ltd.,
at 143, Sterling Road, Nungambakkam,
Chennai-600034

RS

N.ANAND VENKATESH,J

RS

CMA.No.2148 of 2026

31-07-2026