
(2025) 12 CAL CK 1734
In the Calcutta High Court, Appellate Side
Case No : WPA 10121 Of 2025

Birendra Kumar Mantry

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 10-12-2025

Acts Referred:

Employees State Insurance Act, 1948 — Section 45(A), 75(1)

Citation : (2025) 12 CAL CK 1734

Hon'ble Judges : Smita Das De, J

Bench : Single Bench

Advocate : Rabindra Kumar Mantry, Sidharta Sharma, Patrali Ganguly, Rabindranath Bag, Piyas Chowdhuri, Nazni Khatun, Aranb Das, Rehan Ansari, Satyendra Agrawal, Bijoy Bag, Goutam Malik

Final Decision : Disposed Of

Judgement

Smita Das De, J

1. Both the parties are represented through their respective learned counsels.
2. In the instant case, petitioner alleges to be the sole proprietor of a chartered accountancy firm, for providing professional services.
3. Main grievance of the petitioner is that by an order dated 25th February, 2020 passed by the respondents under Employees' State Insurance Act, 1948 (hereinafter referred to as 'ESI Act') has erroneously held that the petitioner's establishment falls under the ESI Act and consequently raised demands by initiating coercive recovery measures, including warrants of arrest.
4. The petitioner submits that the petitioner received an inter departmental communication dated 3rd January, issued by the respondent No.3 to respondent no. 4 with regard to the initiation of the proceeding against the petitioner.
5. Thereafter the petitioner came to know that an order dated 25th February, 2020 was already passed under Section 45 A of the said Act by the respondent

No.3 assessing an amount of Rs. 1,78,806 on account of ESI contribution from the Period of April, 2017 to May 2018.

6. A representation was made on 9th January, 2023 against the order dated 25th February 2020 requesting inter alia, the respondent No. 2 not to take any coercive measures against the petitioner.

7. It is submitted by the petitioner that order dated 25February, 2020 was passed without affording any opportunity of hearing to the petitioner.

8. Thereafter being aggrieved by the impugned order dated 25th February,2020 passed by the respondent No.3 challenged the same along with an application filed under section 75(1)(g) of the said Act, being TC Case no. 120 of 2023 seeking inter alia, rescission revocation, and withdrawal of the impugned order.

9. Thereafter the matter was taken up for hearing on 22 November 2023, by the ESI Court directing inter alia, to deposit 35% of the total claimed amount as on 25.4.23 to the ESI court by way of a demand draft on any Nationalized Bank by 31st January, 2024 and not to take any coercive action against the applicant. The said order which was reproduced below:

"That the petition U/S 75(2B) of the ESI Act, 1948, dt. 25.07.2023 filed by the applicant is hereby allowed in part by directing the applicant to deposit 35% of the total claimed amount as on 25.04.2023 to this court by way of a demand draft on any Nationalized Bank by 30.01.2024. On the other hand the OP Corporation is directed not to take any coercive action whatsoever against the applicant till date. The injunction order shall be subject to the deposition of the above stated amount, The instant petition U/S 75(2B) of the ESI Act and the petition praying for injunction both of dt. 25.07.2023 are accordingly disposed of on contest without any order as to cost.

To date."

10. The learned Counsel for the petitioner further submits that on several occasions the respondents have sought for seeking adjournment, unnecessarily dragging the matter by keeping the same alive.

11. Next date of hearing has been fixed before the ESI Court on 19th December, 2025.

12. The learned Counsel for the respondent No.2 to 4 submits that already an application under Section 75 is pending before the ESI Court being an identical issue involved herein.

13. After hearing the rival contentions of the the parties, I am of the considered view that the ESI Court is directed to consider the locus of the petitioner before entering into the merits of the case in the light of the judgment delivered by co-ordinate Bench of this Court in WPA 6417 of 2024.

14. The petitioner is directed to make deposit of 35% of the total claim amount

as directed by the ESI Court by 19th December, 2025 upon payment of the same the respondent shall be restrained from taking any coercive action against the petitioner by the respondents.

15. It is made clear, that if the petitioner establishment is found to fall within the ambit of the said Act in the light of the Judgment delivered in WPA 6417 of 2024, the ESI court shall pass an appropriate order in accordance with law upon affording opportunity of hearing to the petitioner along with other interested parties, if any.

16. The matter has already been fixed for hearing on 19th December, the ESI Court shall hear out the matter on merit and dispose of the same as expeditiously as possible.

17. With the above observation and directions, this writ petition WPA 10121 of 2025 is disposed of without taking any exception of the merits of the case.

18. Photostat certified copy of this order, if applied for, be furnished expeditiously.