

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 21943 of 2025

M/S. Diamond Silk Khadi Society & Anr.

Vs

Employees' State Insurance Corporation & Ors.

For the Petitioners : Mr. Victor Chatterjee,
Mr. P. Nath,
Ms. S. Bhattacharya.

For the Respondent/ESI : Mr. Mihir Kundu.

Judgment reserved on : 20.03.2026

Judgment delivered on : 27.04.2026

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred against an orders dated 02.05.2022 and 07.01.2025 passed under Section 45-A and 45-AA of the Employees State Insurance Act, 1948.

2. The respondent no.1 is a body corporate constituted under the provisions of the Employees' State Insurance Corporation Act, 1948. The respondent no.2 to 4 are officers discharging duties under the respondent no. 1.
3. The petitioner states that it abides by the "Bye-laws" as provided by the Khadi and Poly Vastra Artisan Welfare and Pension Trust (in short AWFT) KVIC, MSME Government of India. KVIC in its meeting No. 493 dated 29/30.6.1999 resolved in consideration of the resolution to set up Khadi and Poly Vastra Artisan Welfare and Pension Trust, that is, AWFT (Artisan Welfare Fund Trust). It implies that all certified Khadi institutions are to be a member of the said Trust. A Circular was issued on 06.02.2003 for the formation of Khadi and Polyvastra Artisans Welfare and Pension trust state wise in India.
4. The petitioner states that the draft deed of the proposed Trust has been finalized in consultation with the Directorate of Legal Affairs for adherence. The "ARTISAN WELFARE FUND TRUST" was formed as per the deed, with "Bye-laws" that were implemented state wise in India. Thus, the "Bye-laws" of Khadi and Polyvastra Artisans Welfare and Pension Trust came into existence, and the objective is to create a welfare fund for the benefit of the artisans who are "self-employed".

5. It is further stated that the KVIC, MSME, Government of India, issued Guidelines on 19.5.2003, for the operation of the state level 'Artisan Welfare Trust fund', to facilitate the artisans to make their livelihood in accordance with the 'cost chart' prescribed by the Central Certification Committee of KVIC. As per the guidelines, Khadi institutions are required to make contribution for the welfare benefit of the artisans.

6. The petitioner no.1 is a certified 'KHADI MARK' institution and is authorized to use Khadi Mark 'tags and labels' as governed by the Khadi Mark Regulations, 2013. KVIC provides certain exemptions to certified Khadi institution using Khadi Mark registrations. 'Khadi Mark' registration process involves an application that is scrutinized by a committee and verified by accredited agencies to confirm adherence to hand spinning and hand weaving.. 'Khadi' is a hand-spun and hand-woven natural fiber cloth primarily made from cotton, silk and wool. Handspun Yarn is made manually on a spinning wheel (charkha) and the handspun yarn is woven on a handloom by artisans. The word "handloom" has been defined in section 2(d) of the Khadi and Village Industries Commission Act, 1956 which defines "khadi" as any cloth woven on handlooms in India from cotton, silk, or woollen yarn handspun in India or from a mixture of any two or all such yarns. Therefore, the petitioner no.1 does not fall within the meaning of factory

and the ESI Act, 1948 does not ipso facto apply to the petitioner no.1 establishment.

7. The petitioner is a certified "KHADI" institution which works under the framework of KVIC, MSME, Government of India. The KVIC Act 1956, is framed to design, govern, guideline and mandate those involved in "Khadi and village industries" in India. It aims to create livelihoods and foster 'self-reliance' through a flagship scheme of "Khadi Vikas Yojana" and "Khadi Gramodyog Vikas Yojana" to uplift khadi and rural sector.
8. The petitioners state that the activity in which the institution is involved is seasonal by nature and the petitioner no.1 is a seasonal establishment because of the involvement of "Silk". Silk is obtained from the cocoon of silkworm, for this silkworm are reared. The rearing of silkworm to produce raw silk yarn is called Sericulture, which is categorized as 'Unorganized Sector'.
9. The petitioners further state that the respondent authorities carried out an inspection in their establishment on 22.03.2018. The inspection report was not handed over to the petitioners at the time of inspection. However, the same was shown to the petitioners at a later stage upon much persuasion. It appears from the said **inspection report** that the number of employees engaged by the petitioners has been **recorded as 14 including 7 "artisans"**. It is stated in this regard that "artisans" are

not employees of the petitioners. In fact, the “bye-laws” defines “artisan” as self-employed individuals.

10. Hence the writ application.
11. Both parties have filed their written notes and argued extensively. The petitioners case is that the petitioner no.1 is a small establishment and has never employed 10 or more persons at any point of time. In this regard the copies of Attendance Register and Wages Register were provided before the Appellate Authority, however, the same has not been considered.
12. It is stated that the respondent carried out a purported inspection at the establishment of the petitioners and based on such inspection, the respondents sought to cover the petitioner no.1 under the provision of the ESI Act, 1948.
13. It is submitted that an appeal under Section 45AA EPF Act was dismissed by an order dated 07.01.2025, without even considering the issues raised by the petitioner. During hearing of the appeal, the bank account of the petitioners was attached, which was later revoked by an order of the High Court.
14. The petitioners submit that the ESI Act is not applicable to it's establishment, as **it has not employed more than 9(Nine) persons at**

any point of time. It is argued that the “Bye-laws” of Khadi and Polyvastra Artisans Welfare and Pension Trust which is formed under the Khadi and Village Industries Commission Act 1956, defines Artisans as “self employed” persons. Therefore, there is no employer-employee relationship between the petitioner and the Artisans. The Establishment also does not have any control or supervision on the Artisan. In fact the revenue manual of the ESI Authorities also states that “self employed persons” are not covered under ESI.

- 15.** “Khadi” “Sericulture” “Handloom” “weavers” has been statutorily recognized as “Unorganized Sector” under the provisions of the West Bengal Unorganized Sector Workers’ Welfare Act, 2007. Serial number 13, 15 and 33 in the Schedule to the said Act are applicable in this case.
- 16.** It is further stated that a press release by respondent-ESI dated 19.11.2014, notes that 93% India’s Work Force who belong to the unauthorized sector are beyond the scope of the ESI Scheme.
- 17.** The said statement was released while appreciating the coverage aspect of ESIC, it is further argued by the petitioner that Since the Artisans do not come within the scope of the various enactments, various schemes are framed by the Government for them, like the Artisan Welfare Fund Trust (AWFT).

The observation made by the respondents in the order dated 07.01.2025 that the petitioner's khadi establishment is not within the "unorganized sector" is contrary to the provisions of the West Bengal Unorganised Sector Workers' Welfare Act, 2007.

The petitioner no.1 is also regarded as a seasonal Establishment due to its nature of work.

18. It is further stated that the order under Section 45A was passed without hearing the petitioner. The petitioner further states that in the inspection report, it is stated that the individuals under the "allowance" head are members of the managing committee and were not employees. The said persons were provided travel allowance. Further travelling allowance does not form a part of wages, as per the provision of Section 2(22) of the ESI Act, 1948.
19. **It is submitted that an employee cannot be paid only allowance for only one month without regular wages.**
20. The petitioner has answered the said statement in the Inspection report wherein, the authority has stated that provident fund was paid by the petitioner at the rate of 5%. The petitioner submits that the same is erroneous and states that the standard mandatory provident fund deduction is 12% and employer must contribute an equal amount of 12%

also and not 5% under the EFP and MP Act, 1952. The 5% was paid towards welfare fund, which is not mandatory and totally discretionary.

- 21.** It is further stated that the statement in the Inspection report that the petitioner did not provide any wage records, identity details or other documents is false, as all these documents and records were provided to the Appellate Authority.
- 22.** The petitioners state that the Inspection report also wrongly holds that the said establishments are rightly covered by the impugned order, in view of the fact that artisans are statutorily recognized as self employed persons. A single Artisan may work for several establishments. They take the raw material (thread) and spun the same at their home and return the cloth. Artisans are basically weavers.
- 23.** The contention in the Inspection report that the petitioner has GST registration and as such does not belong to unauthorized sector is also not in accordance with law. Considering the fact that "Khadi", "Sericulture", "Handloom" has been statutorily recognised as "Unorganized sector" under the provisions of West Bengal Unorganized Sector Workers Welfare Act 2007. Further, Khadi yarn and fabric sold via the Khadi and Village Industries Commission (KVIC), certified outlets, or Khadi Bhandars are exempted from GST. A 0% GST is levyable on such products. However, a mere GST registration does not make a statutorily

recognized unorganized industry to be organized and as such the petitioner prays for setting aside of the impugned orders passed under Section 45A and 45AA dated 02.05.2022 and 07.01.2025 respectively and further a direction upon the respondents to revoke the coverage of the petitioner no.1 under the ESI Act, 1948.

24. It is argued by the **Learned Counsel by the employee State Insurance Corporation** that the Employees State Insurance Authority conducted an enquiry and/or survey on 22.03.2018, at the factory of the said establishment and an inspecting team found from the available records particularly payment registrar, that the said establishment **had 7 weavers/Artisans in his factory**. However from the payment registrar, it was observed that out of 13 Employees, 4 Employees were shown at a separate page under the head “allowance”, and from the said 4 Employees, the said establishment deducted P.F. Contribution and as also allowance constitute part of “wages” under Section 2(22) of the ESP Act 1948. Accordingly the said establishment engaged more than 10 Employees in his factory and squarely came under the ESI Act. Act.
25. It was on the basis of the said Inspection report that the ESI Authority initiated a proceeding under Section 45A of the ESI Act and passed an order on 02.05.2022, assessing an amount of Rs.6, 12, 150/- for the period May 2017 to June 2021.

- 26.** The petitioners appeal under Section 45AA was dismissed. Specific argument of the respondent-ESI herein is that at the time of survey 13 employees were engaged and 7 weaver/Artisans also engaged, though in the payment register the name of 4 persons were separately registered and payment was shown in the register as “allowance” though P.F. was deducted and as such the “allowance” constitutes a part of “wages” under Section 2(22) of the said Act. Accordingly, the said 4 persons are to be treated as Employees within the meaning of Section 2(9) of the said Act, for the purpose of coverage and contribution under the ESI Act, as the said factory has in total 13 employees. As such, the said establishment squarely come to the coverage under the ESI Act.
- 27.** Secondly, as regards the 7 weaver/Artisans found at the time of inspection conducted by the ESI Authority, the establishment did not furnish any documentary evidence being wage records, identity details etc. Accordingly, all of them were treated as employees for the purpose of coverage under the ESI Act.
- 28.** Thirdly, at the time of enquiry it was found that total 13 employees, 7/weavers/Artisans were engaged having GST registration in turn over between 1.5 crore during the financial year 2024-2025 and having the employees status more than 10. As such the establishment squarely comes under the ESI Act.

- 29.** It is thus stated that in view of the fact it appears that the order passed by the authority concerned under Section 45A and Appellate Authority under Section 45AA is valid.
- 30.** A report was placed by the respondent no.1 ESI, in Court, wherein it appears that the respondent ESI has stated as follows:-

“The definition of unauthorized sector as per National Commission for Enterprises in the unorganized sector (NCEUS) the unorganized sector comprises small and scattered units often not registered under any statute with less than 10 (ten) workers and a typically not maintaining regular accounts. Therefore, any establishment registered under the statutory schemes such as GST, EPF or ESI does not fall within the definition.”

31. It is further stated in the said report that:-

“Since the said establishment's turnover is in between 1.50 crores to 5 crores within the financial year 2024-2025, the said establishment is mandatorily required to take GST registration and in fact the said establishment has a GST registration which implies a maintenance of proper books of accounts as per provision of section 35 of CGST Act, issuance of tax invoices, regular filing of return by the said

unit/establishment, is in fact just and proper and as such coverage is in accordance with the provision of law.

Upon inspection coverage was given in respect of the said establishment and thereafter a proceeding under section 45A of the ESI Act, 1948 was started.”

- 32.** The petitioner filed an **exception to the said report** wherein it has denied the case of the ESI. It is stated that:-

“Khadi artisans are self-employed individuals involved in the production of Khadi fabrics from yarn. They mostly work from their dwelling places and use their spare time in khadi activity to supplement their family income. They have no age limit, have no service regulation, have no fixed timings and are free to associate or dissociate from the khadi institutions at will. The essential characteristics of an employer-employee relationship, such as a contract of employment, supervision and control are absent. Instead, the artisans often worked independently, and were more akin to "self-employed" individuals, as recognized under the prevalent Bye Laws.”

- 33. On hearing the Learned Counsels for the parties and on perusal of the materials on record, but following is evident:-**

- i. A Khadi mark institution is generally covered under the employees state insurance (ESI) Act, 1948, if it meets the criteria of a factory or establishment typically employing **10 or more persons.**
- ii. Certified Khadi Institutions, which produce or sell hand spun/hand woven products fall within the scope of “establishments” that employ workers making them liable for registration.
- iii. “Artisans” are generally skilled workers or entrepreneurs. An artisan’s status as an employee depends entirely on their specific business structure and relationship with a hiring entity;
- iv. Most artisans are considered self employed, informal or home-based work rather than formal employees, placing them in the unorganized sector, and many rely on middle men for work.

As such the ESI authorities in their inspection report treating the 7 weavers/artisans as “employees” of the establishment for the purpose of coverage under the ESI Act, as no records or documents were produced in respect of the said 7 weavers/artisans, is erroneous and not in accordance with law and have been wrongly treated as employees of the petitioners establishment, considering **their nature of work and attachment with the establishment.**

- v. From the payment register, it was seen that out of 13 employees, 4 employees were shown on a separate page, under the head

“allowance” from whom the establishment was deducting P.F. contribution. Admittedly, the establishment is registered under the CGST Act.

- 34.** The petitioner’s contention that provident fund was paid at the rate of 5%, when the mandatory deduction is 12%, the same was paid as contribution towards welfare fund, is not acceptable, when the said deduction has clearly been made under the provident fund head. As such there appears to be prima facie non payment proper contribution to the provident fund and/or deduction.
- 35.** In ***The regional provident fund commissioner(II) West Bengal vs Vivekananda Vidyamandir & Ors., AIR 2019 SC 1240, decided on 28th February, 2019***, the Supreme Court in respect of the meaning of ‘allowance’ has held:-

“14. Applying the aforesaid tests to the facts of the present appeals, no material has been placed by the establishments to demonstrate that the allowances in question being paid to its employees were either variable or were linked to any incentive for production resulting in greater output by an employee and that the allowances in question were not paid across the board to all employees in a particular category or were being paid especially to those who avail the opportunity. In order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise

required to put in. There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period. It is therefore not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the workmen. The wage structure and the components of salary have been examined on facts, both by the authority and the appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wage camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusions of facts. The appeals by the establishments therefore merit no interference. Conversely, for the same reason the appeal preferred by the Regional Provident Fund Commissioner deserves to be allowed.”

- 36. In the present case,** the said 13 employees were named in the payment register but in separate pages. Herein also the 4 employees who are part of the payment register, though shown to receive allowance with PF deduction, could not be shown, **(Vivekananda Vidyamandir & Ors., (Supra))** to be receiving allowances which were either variable or were linked to any incentive for production and in respect of an employee's out put or skill **(Vivekananda Vidyamandir & Ors., (Supra))**.

- 37. The authority has rightly held that the total number of employees in this case is more than 9 (as claimed by the petitioner), which stands at 13 and is thus rightly covered under the ESI Act.**
- 38.** Maintaining a payment register with two pages, one with 9 employees and the other with 4 employees, being paid allowances with PF contribution, goes against the case of the petitioner, as it appears that the same has been done with the motive to avoid being covered under the social welfare and beneficial scheme, herein the employees state insurance act.
- 39.** Accordingly, the impugned orders dated 02.05.2022 and 07.01.2025 passed under Section 45-A and 45-AA of the Employees State Insurance Act, 1948, to the extent that the petitioner is covered under the ESI Act/scheme, being in accordance with law requires no interference.
- 40. WPA 21943 of 2025 is accordingly disposed of.**
- 41.** All connected applications, if any, stand disposed of.
- 42.** Interim order, if any, stands vacated.
- 43.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul). J]