

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA**

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

Ins.APP.No. 31 of 2012

ORDER DATED 27-02-2012 IN IC 67/2009 OF ESI COURT, PALAKKAD
.....

APPELLANT(S)/APPLICANT:

**HOLY FAMILY ENGLISH MEDIUM L.P. SCHOOL,
MANNUTHY, THRISSUR - 680 651,
REPRESENTED BY ITS MANAGER SR.RANJANA.**

**BY ADVS.SRI.M.B.PRAJITH
SRI.K.K.PREMAJAL**

RESPONDENT(S)/OPPOSITE PARTIES:

- 1. EMPLOYEES' STATE INSURANCE CORPORATION,
REP. BY ITS REGIONAL DIRECTOR,
ROUND NORTH, THRISSUR.**
- 2. RECOVERY OFFICER, E.S.I. CORPORATION,
ROUND NORTH, THRISSUR, PIN - 680 001.**
- 3. ELSY JOSEPH, HOLY FAMILY ENGLISH
MEDIUM L.P. SCHOOL, MANNUTHY,
THRISSUR - 680 651.**

**R1 & R2 BY ADV. SRI.P.SANKARANKUTTY NAIR, SC
R3 BY ADV. SRI.SANDHOSH RAJA**

**THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON
21-11-2015 ALONG WITH INAP. 4/2014 AND CONNECTED CASES,
THE COURT ON 23-12-2015, DELIVERED THE FOLLOWING:**

msv/

(CR)

**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRA, JJ.**

.....
**INSURANCE APPEAL Nos. 31
OF 2012 & 4, 33, 48, 50,
51, 58, 61, 62 & 63 of 2014
& 14, 15, 21, 22, 28, 29, 30,
31, 32, 33 AND 34 OF
2015.**

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Dated this the 23rd December, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

Dismissal of the Insurance cases filed by the appellants/educational institutions before the Employees Insurance Court under Section 75 r/w Sec. 77 of the Employees Insurance Act (for short 'Act') for a declaration that their Institutions are not liable to be covered under the Act; that no contribution is liable to be paid by them under any circumstance; that 'Teachers' are not liable to be considered as employees as defined under Section 2(9) of the Act and thus seeking to set aside the notice/proceedings issued by the authorities of the ESI Corporation, is the subject matter of challenge in all these cases preferred under Section 82 of the Act. In some of the cases,

violation of Article 30(1) of the Constitution of India, for intruding into the minority status/rights is also projected as a ground for interference.

2. One of the main contentions raised in these appeals is as to the incompetency on the part of the authorities concerned to proceed with further steps, in so far as coverage sought to be made is pursuant to a notification issued in terms of Section 1(5) of the Act by the 'State Government', who is stated as not the 'Appropriate Government' in terms of Section 2(1) of the Act. According to the appellant institutions, they are affiliated to the 'CBSE', which is an organ of the Central Government. In the said circumstance, they are under the control of the Central Government and as such, the notification, if at all to be issued, should have been issued by the 'Central Government'. Since no such notification has been issued by the Central Government and the notification dated 08.10.2007 (corrected by the subsequent notification dated 05.05.2008) has been issued by the 'State Government', (who is stated as incompetent to have issued the notification), the proceedings initiated and pursued by the

authorities of the Insurance Corporation are per se wrong and unsustainable in all respects.

3. Another major ground of attack is that 'Teachers' engaged by the appellants hold a pivotal position, vested with the duty of imparting teaching, who mould the career, conduct and overall development of students, ensuring proper upbringing as responsible citizens of tomorrow. This is a 'mission', which is akin to a profession and under no circumstance could a Teacher be equated as a 'worker' or an 'employee' of an establishment. As a natural consequence, there cannot be any coverage under the Act in so far as Teachers are concerned and hence the proceedings require to be interfered.

4. In some of the appeals, preferred by the so called minority institutions, as mentioned already, an additional contention has been raised to the effect that, such appellants are having a vested right 'to establish and administer educational institutions of their choice'; being entitled for protection as a minority community, as envisaged under Article 30(1) of the Constitution of India and that the said right being an absolute

right, [which is not subject to reasonable restrictions unlike fundamental rights under Article 19 of the Constitution of India] stands on a different footing. The notification issued by the State Government and the proceedings initiated and being pursued by the authorities of the Corporation have transgressed into the right under Article 30(1) of the Constitution of India, which hence is sought to be intercepted.

5. The matters were heard quite extensively on different dates and they were finally heard on 21.11.2015. The arguments were led on behalf of the appellants by Mr. N.N. Sugunapalan, the learned Sr. Counsel, effectively supported by Mr.K.K.Premlal. Version on the part of the respondent/Corporation was putforth by Mr. Sandesh Raja and Mr. Ajaya Kumar .

6. With regard to the first question, the learned Counsel for the appellants submits that the no sort of financial assistance by way of 'grant in aid' or otherwise is being obtained by the appellants from the State Government and that the provisions of the Kerala Education Act and Rules are not applicable to the appellant institutions, by virtue of the bar under Section 38 of the

Kerala Education Act. The administration and management of the appellant institutions are in no way controlled by the State Government. On the other hand, control is exercised by the CBSE with regard to almost all the relevant aspects, right from the granting of Affiliation prescribing the norms as to the infrastructure to be provided in the schools, the Staff and Service conditions, Fees payable, Admission of students, constitution of School Managing Committee, necessity to provide for Contributory Provident Fund-Pension scheme and such other aspects. By virtue of the terms in the affiliation bye-laws issued by the CBSE, [a copy of which has been produced as Annexure I in Insurance Appeal No.48 of 2014], it is stated that the President, Vice President and Secretary of the Board are nominated by the Central Government and that the 'Controlling Authority' as provided under clause 4 of the Manual of Rules and Regulations is none other than the Secretary to the Government, Ministry of Education(Ministry of Education and Social Welfare). It is in lieu of the Government, that an organ has been constituted like the CBSE, to exercise control, which otherwise

would have been exercised by the Central Government and as such, it is totally outside of the reach of the State Government , to have exercised any control. It is pointed out that 'education' is a subject included under 'List III' of the Seventh Schedule of the Constitution of India and hence both the Central Government as well as the State are equally competent to legislate upon the subject . The schools established by the appellants are providing the Central syllabus in terms of the norms prescribed by the CBSE, an organ of the Central Government, in conformity with the provisions of the affiliation by-laws and if any lapse or infringement is there, it is only for the CBSE to intervene and take necessary remedial measures. That apart, Clause 35 of the affiliation by-laws specifically makes a reference to the Provident Fund Act/Pension Scheme; whereas no such reference is made to implementation of the provisions of the Employees Insurance Act, as a norm for affiliation. It is further pointed out that the relevant provision (Section 2(1) of the Act) specifically uses the terminology "under the control", which according to the appellant is very much different from "under the authority", as it appears

in several other statutes. For exercising control over the educational institutions, it is not at all necessary for the Central Government to own the educational institutions and that the position is well settled by virtue of the law declared by the Supreme Court on many an occasion. The scope of the words-'under the control', as it appears under Section 2(1) of the Act, is sought to be substantiated with reference to the judgment rendered by the Supreme Court in **(2009) 6 SCC 235 (U.P. Power Corporation Ltd. vs. National Thermal Power Corporation Ltd. & ors.)**, **(2007) 1 SCC 268 (RPF Commissioner vs. Sanatan Dharam Girls Secondary School & ors.)**, **(1998) Suppl.1 SCC 684 (Deepak Theatre , Dhuri vs. State of Punjab & ors.)**, **(1974) 2 SCC 498 (State of Mysore vs. Allum Karibasappa & ors)** and **(1972) 4 SCC 600 (Shamrao Vithal Co-op Bank Ltd vs. Kasaragod Pandhuranga Maliya)**. Reliance is also sought to be placed on the decision rendered by a Constitution Bench of the Apex Court in **Ajay Hasia & others vs. Khalid Mujib Sehravarddi & others's case [(1981) 1 SCC 722]** to explain the term

'instrumentality of the State', thus contending that 'CBSE' is an instrumentality of the Central Government and therefore, the control exercised by the CBSE over the appellant institutions, in fact amounts to control by the Central Government itself, by virtue of which, notification, under section 1(5) of the Act, if at all any, ought to have been issued by the Central Government and nobody else.

7. With regard to the second question, that 'Teacher' is not an employee coming within the definition of the term 'employee' under Section 2(9) of the Act, it is pointed out that teachers' profession is a 'noble mission', which cannot be considered as a 'work', in or in connection with the establishment as defined under Section 2(9) of the Act. Reliance is sought to be placed on the decisions rendered by the Supreme Court in **(1988) 4 SCC 42 (A Sundarambal V. Government of Goa, Daman & Diu & ors.)**, **(1996) 4 SCC 225 (Haryana Unrecognised Schools Association vs. State of Haryana.)**, **SLP(Civil) 35821 /2013 ((AIR 2014 SC 1259-ESIC Medical Officers Association vs. ESIC and another)**, **AIR 2004 SC 1426,**

(Ahmedabad Private Primary Teachers Association vs. Administrative Officer)(2007) 1 SCC 491 (Muir Mills Unit of NTC(UP Ltd.) vs. Swayam Prakash Srivastava & another). It is also pointed out that the term 'work' as it appears under Section 2(9) of Act is nowhere defined under the Act and as it stands so, interpretation of such words which are not defined in the said Act has necessarily to be done with reference to the meaning as given in the 'Industrial Disputes Act', by virtue of Section 2(24) of the Employees Insurance Act. In the said context, a reference is made to the 'preamble' of the Employees Insurance Act, the 'objects and reasons' mentioned therein and the scheme of the statute to cover employees in the industrial sector at the first instance, so as to provide Sickness benefit, Maternity benefit, Employment injury/dependent's benefit by enacting a new statute, particularly in the context of post Second World War Scenario. Judgments are also cited across the bar, as to the manner of interpretation to be made, placing much emphasis on the principle that, even when provisions of a 'beneficial legislation' are interpreted, it shall

never be beyond reasonable limit to widen the term which should otherwise go against the provisions of the Act and the intention of the law makers. It is further pointed out that, all these aspects were pleaded and argued in detail before the Employees Insurance Court, but it was not properly appreciated while passing the orders under challenge, but for simply holding that there was no other alternative for the Employees Insurance Court but to follow the verdict passed by a Division Bench of this Court reported in **2009(3) KLT 421(C.B.S.E.School Management's Association vs. State of Kerala)** holding that the 'Appropriate Government' envisaged under Section 2(1) of the Employees Insurance Act in the case of the appellant institutions is none other than the 'State Government' and that the notification issued by the State Government was valid in all respects. With regard to the contention that 'Teacher' would not come within the purview of '**employee**' under Section 2(9) of the Act, the Employees Insurance Court in many cases held that definition of the term **workman** under section 2(s) of the ID Act or that of the **employee** under section 2(e) of the Payment of Gratuity Act

or that of the **employee** under section 2(i) of the Minimum Wages Act would not be applicable, as there was a 'wider definition' in so far as Employees Insurance Act was concerned, thus holding that the proceedings pursued by the respondent Corporation were correct and sustainable. According to the appellants, the finding and reasoning are not correct or sustainable in law and they contend that the decision rendered by the Division Bench of this Court in **2009 (3) KLT 421** (cited supra) is liable to be branded as **per incurium** for having not referred to the law declared by the Apex Court in [**Sundarambal vs. Government of Goa, Daman and Diu**][(1988) 4 SCC 42) and such other judgments.

8. With regard to the third ground based on the 'minority status' as raised in some of the appeals, reliance is sought to be placed on the verdicts passed by the Apex Court in **AIR 1958 SC 956 (In Re the Kerala Education Bill)**, **AIR 1963 SC 540** **AIR 1963 SC 540 (*Rev. Sidhrajibhai Sabhai and others vs. State of Gujarat and another*)** and some other decisions as well, including the celebrated decision rendered by '11 Member

Bench' of the Apex Court in **T.M.A. Pai Foundation and others vs. State of Karnataka and others [(2002) 8 SCC 481]**. By virtue of declaration of law as above, it is contended that the right conferred upon the concerned appellants, who are minority institutions, by virtue of Article 30(1) of the Constitution of India, is not liable to be tinkered with, detrimental to their rights and interests.

9. The crux of the submissions made by the learned Counsel for the Corporation is that the contention raised by the appellants with reference to the authority of the State Government to have issued the notification extending coverage under Section 1(5) of the Act, disputing the identity of the 'Appropriate Government' and the interpretation sought to be given to the terms '**under the control**' is devoid of any merit. It is pointed out that the above notification is not under challenge in any of these appeals and the competence of the State Government to have issued such notification has already been considered by a Division Bench of this Court, answering the position in favour of the State/respondent Corporation as per the decision reported in

2009 (3) KLT 421(cited supra). Similar view has been expressed by another Division Bench of this Court in **State of Kerala Vs. Mythri Vidya Bhavan E.M. School (2013 (1)KLT SN36 (Case No.36)** as well. In the former case, the aggrieved Management Association has moved the Apex Court by way of SLP, but no interim order has been passed in the said case. Even otherwise, the present appeals preferred under Section 82 are against the orders passed by the Employees Insurance Court in the cases filed under Section 75. In other words, in so far as there is no power, jurisdiction or competence for the Employees Insurance Court to consider the validity of a notification issued by the Government, but for deciding the issue with reference to sections 75 and 77, authenticity of such notification cannot be indirectly challenged in these appeals.

10. With regard to the contention that 'Teachers' are not workmen under the E.S.I. Act, placing reliance on the ruling rendered by the Apex Court sought to be relied on by the appellant, the learned Standing Counsel for the Corporation submits that there is an ocean of difference between the meaning

of the term 'employee' under section 2(9) of the Employees Insurance Act and meaning of the term employee/workmen in other statutes. Under the ESI Act, it is a much wider term which will take in its sweep all the category of persons if they are employed for wages subject to the ceiling mentioned under the statute. In other words, it is not confined to the specified category as referred to in the definition given under other statutes. This being the position, the decision sought to be relied on by the appellants are not at all applicable to the case in hand and that the relief sought for, if granted, will be contrary to the scheme, purpose and object of the statute; more so when there is no dispute as to the power of the appropriate Government to cover such other establishment of the choice of the Government in view of the enabling provision by virtue of Section 1(5) of the Act, submits the learned Standing Counsel for the Corporation.

11. With regard to the case set up with reference to 'minority status' of the concerned appellants in some of the appeals, the learned Standing Counsel for the Corporation submits that 'minority status' is not a charter to do all mischief.

The labour legislations of the country, particularly being welfare legislations are enacted based on various international conventions and with reference to human rights. The position in this regard has been explained by the Apex Court in **Christian Medical College Hospital Employees' Union and another vs. Christian Medical College Vellore Association and others [(1987) 4 SCC 691]**, holding that provisions of the ID Act are applicable even to a minority institution coming within the purview of Article 30(1) of the Constitution of India. Referring to other judgments as well, the learned Counsel asserts that the position is not at all different, even when it comes to the '11 member' judgment of the Apex Court in ***T.M.A Pai's*** case, wherein the Court has made it clear that the bar is only in respect of the interference with the day to-day administration or Management of the minority institutions and not with regard to the field of welfare legislations involving/including '**Health**'(which forms the basis for the ESI Act).

12. Coming to the first question raised by the appellant as to the competency of the State Government to have issued the

notification extending coverage under Section 1(5) of the Act, it has to be noted at the very outset, that the notification is not forming part of the records, nor is it subjected to challenge. Admittedly, the impugned verdicts have been passed by the Employees Insurance Court repelling the challenge raised against the proceedings issued by the Employees Insurance Corporation insisting to have registration and to effect contribution. Notification was never subjected to challenge before the Employees Insurance Court, nor could the appellants have validly challenged the same before the said Court invoking the power and procedure under Section 75, r/w Section 77 of the Act or under any other provision. Appeal is a continuation of the original proceedings and as such, the issues involved in these cases have to be confined only with reference to the extent of challenge available to the appellants before the Employees Insurance Court/the original authority and never beyond.

13. In so far as the State Government has already issued a notification extending the provisions of the Employees Insurance Act to the appellants' institutions, invoking the power and

procedure under Section 1(5) of the Act and so long as the validity of the said notification issued by the State Government has been upheld by another Bench of this Court, as per the decision reported in **2009 (3) KLT 421 (cited supra)** and further since the validity of the notification was never a subject matter of challenge before the Employees Insurance Court, these appeals preferred against the orders passed by the Employees Insurance Court, declining interference with regard to the consequential proceedings issued by the respondent Corporation are not liable to be entertained with reference to the authority of the State Government to have issued the notification.

14. The issue can be approached from a different angle as well. Section 2(1) of the Act reads as follows:

“(1) " appropriate Government " means, in respect of establishments under the control of the Central Government or [a railway administration] or a major port or a mine or oilfield, the Central Government and in all other cases, the State Government.”

15. In the case of the establishments under the control of the Central Government, appropriate Government is the Central

Government and in all other cases except the specified categories, it is the State Government. The scope of Section 1 (5) has to be analysed in the said background, which is reproduced for convenience of reference.

Sec.1(5): “(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 six months' 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.

16. From the above provision, it is quite evident that, though the Act was initially to provide certain benefits to the employees in the case of Sickness, Maternity and Employment injury, making it applicable at the first instance to all factories

(including factories belonging to Government) other than seasonal factories, power was reserved with the appropriate Government to have it extended to any other establishment or class of establishments, industrial, commercial, agricultural **or otherwise.** In so far as the appropriate Government is concerned, before issuance of any such notification, it was mandatory to have had a consultation with the Corporation and six months' notice was to be given, of the intention of the appropriate Government to extend the coverage. If at all the notification is to be issued by the State Government, being the appropriate Government, one more condition has to be satisfied, i.e. 'prior approval' of the Central Government should have been obtained before issuing the notification. In other words, 'prior approval' of the Central Government is necessary to issue a notification by the State Government, even if the State Government happens to be the appropriate Government. 'Approval' is not an empty formality and is not a mere intimation; nor is it a matter of mere consultation. When approval is sought for, proper application of mind has to be there from the part of

the Central Government to decide whether the attempt of the State Government in its capacity as the appropriate Government to extend coverage to the specified establishments or class of establishments-[**industrial, commercial, agricultural or otherwise**], should be permitted/approved to be covered. To put it more clear, only after going through the facts and figures and the circumstances mentioned by the State Government, would there be 'approval' by the Central Government, to issue the notification and it is always open for the Central Government to have rejected the approval as well. This Court has gone through a copy of the notification (dated 08.10.2007) made available and the subsequent corrigendum notification dated 05.05.2008. It is seen that the notification has been issued by the State Government after consultation with the Corporation and also after getting 'prior approval' of the Central Government, after giving six months' notice of its intention to do so. Thus, all the three requirements under Section 1(5) of the Act stand satisfied. In so far as the Central Government has approved issuance of notification by the State Government, the contention raised by

the appellants that the State Government is not the 'Appropriate Government' is of no significance, but for being hyper technical, even if sustainable. Viewed in this angle, the decisions cited across the Bar in support of the contentions raised by the appellants in the above context are not applicable at all.

17. As mentioned already, a Division Bench of this Court has held in **2009(3) KLT 421** (cited supra) that 'Appropriate Government' in the instant case is the State Government and the notification dated 08.10.2007 is valid. Similar view has been expressed by another Division Bench as well in **2013 (1) KLT SN.36 (Case No.36)[State of Kerala vs. Mythri Vidya Bhavan E.M.School]**. Even if the version of the appellants that CBSE is an organ of the Central Government who is exercising control over the appellants' institutions is accepted, it has to be noted that no manner of control is being exercised by the Central Government on the financial/administrative/management or such other matters in the case of the appellants institutions. This Court does not find any reason to disagree with the above findings; more so when the said notification has been issued

based on a conscious decision taken by the Central Government while granting 'prior approval' as stated herein before.

18. Another important aspect to be noted is that, the educational institutions are at liberty to have affiliation to the CBSE; the ICSE or the State syllabus, as the case may be. There is nothing wrong for the educational institutions owned/established by the State Government as well to follow the CBSE/ICSE syllabus, get affiliation and equip the students accordingly. For imparting such teaching and conducting the examinations following the CBSE/ICSE syllabus, it is very much necessary to follow the norms/stipulations as insisted by the CBSE/ICSE, even though the educational institution exclusively belongs to the State Government and the funds for setting up the infrastructure and for payment of salary to the teachers and staff is arranged/satisfied by the State Government. If the version of the appellants that once the CBSE syllabus is followed, it will be under the control of the Central Government is to be accepted, it will be totally alien to the actual facts and figures. In such cases, where the infrastructure and financial requirements are

satisfied by the State Government, still following the ICSE/CBSE syllabus, the State Government will continue to have control on the management/administration of the educational institutions, which will not automatically get transferred to the Central Government, to act as the 'Appropriate Government'. In other words, the limited control exercised by the CBSE on the relevant aspects as in any other case by itself cannot be the sole basis to hold that there is no State control over the educational institutions.

19. Coming to the 'affiliation Bye laws' issued by the CBSE (Annexure I) produced in appeal No. 48 of 2014, under Clause 3 sub clause (3) (i) of the Norms for Affiliation in chapter II, it is stated that the application for obtaining provisional affiliation has to be forwarded either through the State Government or along with a 'no objection certificate' issued by the State Government. It is also mentioned therein that, no objection certificate, once issued to any school, will be considered at par, even if it prescribes a specific period or stage, unless it is withdrawn. It means no objection certificate issued by the State, if withdrawn,

may lead to an adverse circumstance and as such, the conditions forming part of the NOC issued by the State have to be ascertained. Various norms issued by the State Government for granting the NOC were the subject matter of challenge in the cases dealt with by a Division Bench of this Court reported in **2013 (1) KLT S.N. 36 (Case No. 36) [State of Kerala Vs. Mythri Vidya Bhavan E.M. School]**, which included the minimum extent of land required, the compulsory requirement of Malayalam as part of curriculum, minimum strength of students, requirement of payment of salary to employees and teachers at the same scales as in the State Government for the equivalent categories etc. **Clause 3.3.(v)** of the CBSE Bye laws also insists for payment of salaries and allowances to the staff at a rate not less than the corresponding categories of the employees in the State Government school or as per the scale prescribed by the Government of India. The said clause reads as follows:

"(v) The school in India must pay salaries and admissible allowances to the staff not less than the corresponding categories of employees in the State Government schools or as per the scales etc.

prescribed by the Government of India \$ or as per the conditions laid down by the State Government. The schools outside India should pay salaries not lower than those of the teachers in government schools in that country or not less than the salaries and foreign allowances payable to KVS teachers if officially posted to that country. A certificate to this effect should be obtained from the Indian Diplomatic Mission."

20. **Clause 7** dealing with the Financial Resources, under Chapter II Norms for Affiliation, reads as follows:

"7. Financial Resources

1. The school must have sufficient financial resources to guarantee its continued existence. It should have permanent source of income to meet the running expenses of the school so as to maintain it at a reasonable standard of efficiency, to pay salaries to teachers and other categories of staff regularly at least at par with the corresponding categories in the State Government Schools and to undertake improvement / development of school facilities. In case of institutions which are in the receipt of grant-in-aid

from the State Government / U.T. the permanent Source of income shall include the amount of grant-in-aid also.

2. No part of income from the institution shall be diverted to any individual in the Trust /Society / Company registered under Section 25 of the Companies Act, 1956 School Management Committee or to any other person. The savings, if any, after meeting the recurring and no-recurring expenditure and contributions to developmental, depreciation and contingency funds may be further utilized for promoting the school. The accounts should be audited and certified by a Chartered Accountant and proper accounts statements should be prepared as per rules. A copy each of the Statement of Accounts should be sent to the Board every year.

3. The challenging of funds by the management to person (s) or enterprise other than for furthering education in the school will contravene the rules governing affiliation and call for appropriate action by the Board.

21. **Clause 8.5**, under chapter II Norms for Affiliation, dealing with 'Physical Facilities' reads as follows :

"The school should scrupulously observe prescription from the Municipal Authority/District Collectorate/Transport Department regarding drinking water, fire safety and transport precautions in the school. A certificate from the Municipal / Fire / Transport Authority regarding sanitary conditions, water/fire/transport safety should be submitted along with the application. A fresh certificate regarding fulfillment of theses requirements should be obtained and submitted to the Board every five years. The Format of Certificates of fire and water safety are give at appendix VII & VIII. Precautions to be observed for transport are also annexed at Annexure IX"

22. Necessity to submit fresh certificate regarding the fulfillment of the requirements mentioned therein within a span of 'every five years' shows the necessity to comply with the requirements prescribed by the Municipal authority / District Collectorate / Transport Department regarding the drinking water, fire safety and transport precautions in the school and

this by itself is an indicator as to some control, which could be exercised by the State/Departments in different fields. The above norms prescribed by the CBSE refer to the requirement to be satisfied by the Educational institutions in terms of the stipulation by the State / Departments to the specified extent and the necessity to procure / produce the NOC / certificates at the intervals, as specified. As such, when the institution is controlled by the CBSE with regard to the affiliation and such other aspects, it is equally possible to visualize the control exercised by the State / Department, though at a minimum level. However minimum be the extent of control exercised by the State, it cannot be said that since the appellant institutions are following the CBSE/ICSE syllabus, that by itself is enough to hold that there will be no State control and the 'Appropriate Government' will be the Central Government. Anyhow, since this Court has already observed that the '**prior approval**' given by the Central Government to the State Government to issue notification under Section 1(5) of the Employees' State Insurance Act is pursuant to a conscious decision as to the necessity to extend the

provisions of the Act to such institution, the notification issued by the State Government cannot be assailed in any manner; more so when the Notification is not produced or challenged and the State Government who issued the Notification, the Central Government and the CBSE are not parties to the proceedings before this Court.

23. Coming to the case of the appellants that 'Teacher' does not come within the purview of the definition of the term 'employee' under Section 2(9) of the Act, it is true that the Apex Court has held in **Sundarambal Vs. Govt. of Goa, Daman and Diu [(1988) 4 SCC 42]** that Teacher's job is a noble profession, that it is a mission and hence that 'Teacher' is not a workman, as defined under Section 2 (s) of the Industrial Disputes Act. The legal position was reiterated by the Apex Court in **Haryana Unrecognised Schools Association Vs. State of Haryana [(1996) 4 SCC 225]** with reference to Section 2 (i) of the Minimum Wages Act 1948, holding that 'Teacher' would not come within the purview of the said Act and as such, the State Government, in exercise of its powers under the said Act, is not

entitled to fix minimum wages for 'Teachers'. Similar observation was made by the Apex Court in **Ahmedabad Pvt. Primary Teachers' Assn. Vs. Administrative Officer and Orthers [AIR 2004 SC 1426 = (2004) 1 SCC 755]** dealing with the definition of the term 'employee' under Section 2 (e) of the Payment of Gratuity Act. It is accordingly, that analogy is sought to be drawn to uphold the distinguishing status of Teachers and hence that the same has to be made applicable in the case of Employees' State Insurance Act as well.

24. It is settled law, that the terms employee, workman, person engaged etc as defined under different Statutes have different meanings and the meaning of the term given in one Statute is not liable to be substituted for the meaning of similar term under another Statute. This is for the obvious reason that purpose of enactment of different Statutes differs very much. As it stands so, the decisions rendered by the Apex Court holding that 'Teacher' is not a workman/employee under a particular Statute need not support the case of the appellants herein, if the meaning of the term employee under Section 2(9) of the

Employees' State Insurance Act is a different one, having wider coverage/implication.

25. For a detailed scrutiny, definition of the terms under different Statutes requires to be looked into, as extracted below:

Section 2 (s) of the Industrial Disputes Act defines the term 'workman' as follows :

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire and reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, included any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, of whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person --

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an

officer or other employee of a prison; or
(iii) who is employed mainly in a managerial or administrative capacity; or
(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of managerial nature.

Section 2 (i) of the Minimum Wages Act defines the term 'employee' as given below :

"employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or material are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not

being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the [Union].

The term 'employee' under Section 2 (e) of the Payment of Gratuity Act (before amendment of the Act in the year 2009) reads as follows :

"(e) 'employee' means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to do any skilled, semi skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."

Section 2 (f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 defines the term 'employee'

as given below :

"employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets, his wages directly or indirectly from the employer, and includes any person, -

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment."

26. Meaning of the term 'employee' under Section 2 (9) of the Employees' State Insurance Act requires to be analysed in comparison with the definition of similar terms under the above Statutes and respective judgments. Hence Section 2(9) of the Employees' State Insurance Act defining the term 'employee' is reproduced below:

"employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and -

(i) who is directly employed by the principal

employer, or any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service.

[and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment] [or any person engaged as apprentice, not being an

apprentice engaged under the Apprentices Act, 1961 (52 of 1961), [and included such person engaged as apprentice whose training period is extended to any length of time] but does not include]-

(a) any member of [the Indian] naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) express [such wages as may be prescribed by the Central Government] a month;

provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period.

27. From the above, it is quite obvious that definition of the term workman/employee under the Industrial Disputes Act, Minimum Wages Act, Payment of Gratuity Act (unamended) more or less refers to the particular nature/specified category of skilled, unskilled, manual etc. where there is a reference to the

nature of work is involved, unlike the definition of the term under the Employees Provident Funds and Miscellaneous Provisions Act and the Employees' State Insurance Act. In so far as the definition of the term 'employee' under the Employees Provident Fund and Miscellaneous Provisions Act is concerned, by virtue of the nature of engagement of the person employed for wages, in any kind of work, manual or otherwise, in or in connection with the work of establishment, the Apex Court observed that these words are wide enough to cover any person engaged for wages under the Employees' Provident Funds and Miscellaneous Provisions Act and hence a 'Teacher' also would come within the purview of the said Act, which hence cannot be restricted to the meaning of the term as in the Industrial Disputes Act, the Minimum Wages Act, etc. It was accordingly held by the Apex Court in **Ahmedabad Pvt. Primary Teachers' Assn. Vs. Administrative Officer and Others [AIR 2004 SC 1426 : (2004) 1 SCC 755]** that definition of the term 'employee' under 2 (e) of the Payment of Gratuity Act (unamended) was not a wider definition, unlike the Employees' Provident Funds Act and

hence 'Teacher' was not liable to be termed as an employee coming within the purview of Section 2 (e) of the Payment of Gratuity Act 1972. The observations of the Apex Court in paragraph 24, 25 and 26 of the said decision are relevant, which hence are reproduced below :

"24. The contention advanced that teachers should be treated as included in the expression "unskilled" or "skilled" cannot, therefore, be accepted. The teachers might have been imparted training for teaching or there may be cases where teachers who are employed in primary schools are untrained. A trained teacher is not described in the industrial field or service jurisprudence as a "skilled employee". Such adjective generally is used for an employee doing manual or technical work. Similarly, the words "semi-skilled" and "unskilled" are not understood in educational establishments as describing nature of job of untrained teachers. We do not attach much importance to the arguments advanced on the question as to whether "skilled", "semi-skilled" and "unskilled" qualify the words "manual", "supervisory", "technical" or "clerical" or the above words qualify the word "work". Even if all the words are read disjunctively or in any other manner, trained or untrained teachers do not plainly answer any

of the descriptions of the nature of various employments given in the definition clause. Trained or untrained teachers are no "skilled", "semi-skilled", "unskilled", "manual", "supervisory", "technical" or "clerical" employees. They are also not employed in "managerial" or "administrative" capacity. Occasionally, even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held employed in "managerial" or "administrative" capacity. The teachers are clearly not intended to be covered by the definition of "employee".

25. The legislature was alive to various kinds of definitions of the word "employee" contained in various previous labour enactments when the Act was passed in 1972. If it intended to cover in the definition "employee" all kinds of employees, it could have as well used such wide language as is contained in Section 2 (f) of the Employees Provident Funds Act, 1952 which defines "employee" to mean "any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment...". Non-use of such wide language in the definition of "employee" in Section 2 (e) of the Act of 1972 reinforces our conclusion that teachers clearly not covered in the definition.

26. Our conclusion should not be misunderstood that teachers although engaged in a very noble profession of education our young generation should not be given any gratuity benefit. There are already in several States separate statutes, rules and regulations granting gratuity benefits to teachers in educational institutions which are more or less beneficial than the gratuity benefits are not available and think of a separate legislation for them in this regard. That is the subject-matter solely of the legislature to consider and decide. "

28. Pursuant to the above decision, the Parliament found it necessary to give a wider meaning to the definition of the term 'employee' under Section 2(e) of the Payment of Gratuity Act 1972, so as to bring 'Teachers' also within the purview of the Statute. It was accordingly, that a Bill was introduced in the Parliament (Bill No. 47/2009 dated 31.09.2012) to amend the Statute, which was passed and received the assent of the President on 31.12.2009, followed by publication in the Gazette of India-Extra Ordinary, on the same date.

29. The Prefatory Note-Statement of Objects and Reasons for the above amendment would throw some light on the

background, which hence is extracted below:

"Prefatory Note - Statement of Objects and Reasons - The Payment of Gratuity Act 1972 provides for payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishment and for matters connected therewith or incidental thereto. Clause (c) of sub-section (3) of Section 1 of the said Act empowers the Central Government to apply the provisions of the said Act by notification in the Official Gazette to such other establishments or class of establishments in which ten or more employees are employed, or were employed, or any day preceding twelve months. Accordingly, the Central Government had extended the provisions of the said Act to the educational institutions employing ten or more persons by notification of the Government of India in the Ministry of Labour and Employment vide Number S.O.1080 dated the April 3, 1997.

2. The Hon'ble Supreme Court in its judgment in Civil Appeal No. 6369 of 2001 dated the January 13, 2004, in Ahmedabad (P) Primary

Teachers Assn. Vs. Administrative Officer (2004) 1 SCC 755 : 2004-I-LLJ-596 had held that if it was extended to cover in the definition of 'employee', all kind of employees, it could have as well used such wide language as is contained in clause (f) of Section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 which defines 'employee' to mean any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment. It had been held that non use of such wide language in the definition of 'employee' under clause (e) of Section 2 of the Payment of Gratuity Act, 1972 reinforces the conclusion that teachers are clearly not covered in the said definition.

3. Keeping in view of the observations of the Hon'ble Supreme Court, it is proposed to widen the definition of 'employee' under the said Act in order to extend the benefit of gratuity to the teachers. Accordingly, the Payment of Gratuity (Amendment) Bill, 2007 was introduced in Lok Sabha on the November 26, 2007 and same was referred to the Standing Committee on Labour

which made certain recommendations, it was decided to give effect to the amendment retrospectively with effect from the April 3, 1997, the date on which the provisions of the said Act were made applicable to educators.

4. Accordingly, the Payment of Gratuity (Amendment) Bill, 2007 was withdrawn and a new Bill, namely, the Payment of Gratuity (Amendment) Bill, 2009 having retrospective effect was introduced in the Lok Sabha on February 24, 2009. However, due to dissolution of the Fourteenth Lok Sabha, the said Bill lapsed. In view of the above, it is considered necessary to bring the present Bill.

5. The Bill seeks to achieve the above objectives."

From the above, it is clear that 'Teacher' is now an employee under Section 2 (e) of the Payment of Gratuity Act, though not a 'workman' under the Industrial Disputes Act, nor an 'employee' under the Minimum Wages Act.

30. Coming back to the definition of the term 'employee' under Section 2 (9) of the Employees' State Insurance Act, there is a contention for the appellants that the engagement should be

for 'work' in or in connection with the 'work' of the establishment and since Teacher is not performing any 'work' and the job is a 'profession/mission', as explained by the Apex Court in **Sundarambal's** case and other decisions cited supra, Section 2 (9) of the Employees' State Insurance Act cannot include Teachers. It is stated as more so, since the term 'work' is not defined under the Employees' State Insurance Act, and under such circumstances, meaning of the term 'work' has to be read and understood with reference to the analogical term given in the Industrial Disputes Act, by virtue of the stipulation under 2 (24) of the Employees' State Insurance Act. This Court finds it difficult to agree with the said proposition. This is for the reason that definition of the term 'employee' is quite unambiguous under Section 2 (9) of the Employees' State Insurance Act and it is in no way related to the 'work'/'nature of work', unlike other Statutes. In Industrial Disputes Act, Minimum Wages Act, and unamended Payment of Gratuity Act, the nature of work is a criterion, where the definition clause refers to the terms 'skilled, semi skilled, manual' etc. Under the Employees' State

Insurance Act, no such distinction is made with reference to the 'nature of the work' and the term 'work' used is only of a 'general nature' to denote the task and that's all.

31. Meaning of the term 'work' as given in the Blacks Law Dictionary 6th edition is ; 'To exert one's self for a purpose; to put forth effort for the attainment of an object; to be engaged in the performance of a task, duty or the like. The term covers all forms of physical or mental exertions, or both combined, for the attainment of some object other than recreation or amusement. The said term has been explained in the Webster's II New Riverside University Dictionary as: 'something that one is doing, making, or performing, esp. as a part of one's occupation; a. duty or task. b. the amount of effort required or done. It only refers to the efforts taken, which is quite common in the case of anyone, whether it be a Teacher, Doctor, Lawyer or any other professional. That apart, the term 'work' exists in the wider definition of the term 'employee' under Section 2 (f) of the Employees Provident Funds and Miscellaneous Provisions Act, which includes a 'Teacher' as well and in turn

incorporated under Clause 35 of Chapter VII of Annexure I Affiliation Bye laws produced by the appellants themselves in the Insurance Appeal 48 of 2014, insisting to provide for EPF scheme/pension. The term 'work' also now exists in the definition of the 'employee' under Section 2 (e) of the Payment of Gratuity Act, after the amendment effected in the year 2009, which reads as follows :

"'employee' means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factor, mine, oilfield, plantation, port, railway company, shot or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and it governed by any other Act or by any rules providing for payment of gratuity."

Thus, existence of the term 'work' in the definition of the term 'employee' under section 2(9) of the Employees' State Insurance Act does not tilt the balance in any manner, to hold

that 'Teacher' cannot be included therein by virtue of the meaning of the term 'work', with reference to the explanation in the Industrial Disputes Act.

32. There is no objection for either side as to the settled position of law, that as per the Rules of Interpretation, the legislative intent is of paramount importance which is to be looked into as held by a Constitution Bench of the Apex in **RMD Chamar Baughwalla Sharma Magazine, A Firm, Hind Sabda Rachana Harifai, Chaman Lal Khanna, Bannett Coleman and Co. Ltd. Vs. Union of India [AIR 1957 SC 628]**. Subsequent decisions rendered by a 3 member Bench of the Apex Court in **District Mining Officer Vs. Tata Iron and Steel Co. Ltd. [AIR 2001 SC 3134]** and in **Bhatia International Vs. Bulk Trading S.A. [AIR 2002 SC 1432]** also reiterate the same position. If the language of the Statute is plain, no external tool is required for interpreting the same. On the other hand, if the provision is ambiguous, it may require the assistance of external aid, as explained by the Constitution Bench of the Apex Court in **Kartar Singh Vs. State of Punjab [(1994) 3**

SCC 569]. The question is whether definition of the term 'employee' under Section 2 (9) of the Employees' State Insurance Act is plain or obscure?

33. Even a mere reading of the provision gives a clear idea that engagement of a person for wages can be for any work in, or incidental or preliminary to or connected with the work of the establishment. The 'work/activity' of the establishment being imparting of education to students, engagement of a Teacher to meet the said task/work comes within the purview of section 2 (9), which is quite clear in all respects and there is no room for any ambiguity. Since the engagement of a Teacher in an educational institution is to meet the 'task of teaching', such task/work/effort comes within the sweep of the definition of the term 'employee', which is wide enough to accommodate all such situations. In the said circumstances, this Court holds that 'Teacher' is an employee under Section 2(9) of the Employees' Insurance Act. Only such interpretation can promote the object and purpose of the Statute, in view of the law declared by the Supreme Court that the interpretation which promotes the object

of the Statute has to be adopted and not the other one which frustrates the object.

34. In this context, it is relevant to note the observations made by the Apex Court in **1993 (1) LLJ 795 [Cochin Shipping Co. Vs. ESI Corporation]** explaining how to construe a notification issued under Section 1(5) of the Employees' State Insurance Act. The Apex Court observed in 'paragraph 22', that the object of the Statute is to envelope as many establishments as possible without giving any room for doubt, which precisely is what the notification intends to do. It was observed by the Apex Court in **1988 (1) LLJ 235 (SC) in International Ore and Fertilizers (India) (Pvt. Ltd.) Vs. EsI Corporation** that, while construing a welfare legislation like the Employees' State Insurance Act and the notification issued thereunder, a liberal construction should be placed on the provision, so that the purpose of legislation may be allowed to be achieved, rather than frustrated or stultified (paragraph 4). In **M/s Hindu Jea Band, Jaipur Vs. Regional Director ESI Corporation [1987 (1) LLJ 500]**, the Apex Court held in

paragraph 3, that the term 'shop' has not been defined under the Employees State Insurance Act and the said word cannot be construed narrowly since the notification has been issued under Section 1 (5) of the Act, which is a beneficial legislation. It is true that the Apex Court held in **Steel Authority of India Vs. National Union Waterfront Workers & Ors. [(2001) 7 SCC 1]** that the provisions of the Statute, though a beneficial legislation, should not be interpreted beyond the reasonable limits to go it contrary to the object of the Statute or intent of the law makers, such a situation is not available in the instant cases and the Scheme of the Statute is to cover 'any person engaged for wages' in or in connection with the work of the establishment.

35. The third point mooted by some of the appellants institutions to dispute the applicability of the provisions of the ESI Act is by virtue of the 'minority status' and the protection available under Article 30(1) of the Constitution of India (involved in as many as 15 cases, such as, Insurance Appeals Nos.4, 50, 51, 61, 62 of 2014 and 14, 15, 22, 28, 29, 30,31, 32, 33 and 34 of 2015). The contention of the above appellants is that, their

institutions are having minority status and by virtue of the mandate under Article 30(1) of the Constitution of India, all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions **of their choice**. The key words '**of their choice**', according to the appellants, should be read with the word 'administer' as well. Since financial administration is a pivotal aspect (as no funds or grants are obtained from the Government or such other authority in any manner), no compulsory financial liability can be mulcted by way of extending the provisions of the ESI Act, forms the crux of the contentions . It is also stated that such extension, if any, would directly stand linked with the service conditions, which actually is a prohibited area by virtue of Article 30(1) of the Constitution of India, it being an absolute right, unlike Articles 15 (5) and 19 of the Constitution of India, where reasonable restrictions are possible. It is also added that the only two exemptions possible to bring about such applications/extensions are (1) either as a condition for granting aid by the State or (2) as a condition for recognition or affiliation.

36. In support of the contentions raised by the aforesaid appellants, heavy reliance is placed on the '11 Member' Bench decision of the Apex Court in ***T.M.A. Pai's case [(2002(8) SCC 481)*** with particular reference to Question No.'5(c)'. Reference is also placed on the verdict of the Apex Court in **AIR 1963 SC 540** (6 member Bench)(cited supra) wherein it has been held in paragraph 10, as to the distinguishing feature of Article 30(1) unlike Article 19. The scope of the key words ***of their choice*** as it appears in Article 30(1) of the Constitution of India is sought to be explained by placing reliance on the judgment rendered by a '3 member' Bench of the Apex Court in **2012 (6)SCC 1(Society for Unaided Private Schools of Rajasthan vs. Union of India and another)** and the verdict passed by '7 member' Bench in **AIR 1958 SC 956(In Re the Kerala Education Bill)**. The meaning of the word '*administer*' is sought to be explained with reference to the verdict in ***State of Kerala vs. Very Rev. Mother Provincial (1970)2 SCC 417*** (6 member Bench). The nature and distinct class to which the appellants' institutions belong, running without any grant or aid from Government /

other sources, is sought to be projected with reference to the judgment rendered by the Apex Court in **Pramati Educational and Cultural Trust (Registered) and others vs. Union of India and others** (2014(8) SCC 1) (5 Member Bench) where the applicability of the Education Act, 2009 in respect of aided/unaided institutions was considered .

37. According to the learned Standing Counsel for the ESI Corporation, the idea and understanding of the appellants as to the scope of protection under Article 30(1) of the Constitution of India is thoroughly wrong and misconceived. It is contended that the right given under said Article is to 'establish' and 'administer' the institutions of their choice, which is not a green card to administer the institutions in any manner without any regard to the general laws applicable in the country; more so in connection with the field of health, social security and such other aspects. Heavy reliance is placed on the decision rendered by a '9 member' Bench of the Apex Court in **Ahmedabad St.Xaviers College Society vs. State of Gujarat** (AIR 1974 SC 1389= (1974) 1 SCC 717, which in fact was well considered and

referred to in the subsequent '11 member' Bench judgment in **T.M.A.Pai Foundation and others vs. State of Karnataka and others (2002) 8 SCC 481** as well, wherein the principles laid down have been reiterated to the effect that such right, though absolute in the relevant sphere, is subject to the general laws and that Article 30(1) of the Constitution of India cannot oust the general laws. The decision rendered by '11 Member' Bench in **T.M.A.Pai's case** (cited supra) relied on by the appellants is also sought to be relied on by the learned Standing Counsel for the Corporation as well with specific reference to 'paragraphs 135 to 139'. Reference is also made to the verdict passed by the Apex Court in **Christian Medical College Hospital Employees' Union and another vs. Christian Medical College Vellore Association and others (1987) 4 SCC 691**, which is rendered after considering all the judgments including the decision in **Ahmedabad St.Xavier's College Society vs. State of Gujarat [(1974)1 SCC 717]** holding that the general laws cannot be ousted merely with reference to Article 30(1) of the Constitution of India.

38. **In Re the Kerala Education Bill, 1957** case (AIR 1958 SC 956), reference was made by the President of India under Article 143(1) of the Constitution of India for opinion of the Apex Court on certain questions of law of considerable public importance touching certain provisions of the Kerala Education Bill 1957. With reference to Article 30(1) of the Constitution of India, it was observed by the Apex Court that the Article gives all minorities, whether based on religion or language, two rights namely; the right to establish and the right to administer educational institutions of their choice. It was also noted that the key words are '**of their choice**', that the dominant word is '**choice**' and as such, the content of that Article is as wide as the choice of the particular minority community may make it. (paragraph 23). But on the next breath, the Apex Court has made it clear in paragraph 31 of the very same verdict, that the 'right to administer' cannot obviously include the 'right to maladminister'. The observations therein are to the following effect:

“The Directive Principles cannot ignore or override the

fundamental rights but must, as we have said, subserve the fundamental rights. We have already observed that Article 30(1) gives two rights to the minorities, (1) to establish and (2) to administer educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided. Learned Attorney-General concedes that reasonable regulations may certainly be imposed by the State as a condition for aid or even for recognition.

39. It is true, in **AIR 1963 SC 540 (Rev. Sidhrajibhai Sabhai and others vs. State of Gujarat and another)**, the Apex Court has observed in paragraph 10, that unlike Article 19, the fundamental freedom under clause (1) of Article 30, is

absolute in terms; it is not made subject to any reasonable restrictions of the nature the fundamental rights enunciated in Article 19 may be subjected to. It was declared that all minorities, linguistic or religious, have, by Article 30(1), an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would, to that extent, be void. But the position was clarified in the next two sentences of the very same paragraph, which reads as follows:

"This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions; it is a right to establish and administer what are in truth educational institutions-institutions which cater to the educational needs of the citizens, or sessions thereof. Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed: they secure the proper functioning of the institutions, in matters educational.

40. The point considered by the Supreme Court was regarding the stipulation to reserve 80% of the seats and the threat to withhold grant-in-aid and recognition of the College, in case of any failure, which was held as infringement of the fundamental freedom guaranteed to the petitioners under Article 30(1) of the Constitution of India. In the instant case, it is not with regard to any such exclusive right of the appellants' institutions in the matter of admissions or other similar instances, but is a matter of extension of coverage under the ESI Act, which is a welfare legislation to provide sickness/maternity/employment injury benefit to the eligible persons, which stands well protected within the exceptions drawn by the Apex Court itself.

41. In **(2012) 6 SCC 1 (Society for Unaided Private Schools of Rajasthan vs. Union of India and another)**, a '3 Member' Bench of the Apex Court (by majority) observed in paragraphs 57 and 58 as follows:

"57. Article 30(1) gives the minorities two rights:(a) to establish, and (b) to administer educational institutions of their choice. The real import of Article 29(2) and Article 30(1) is that they contemplate a minority institution with a

sprinkle of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution. The key to Article 30(1) lies in the words "of their choice".

58. The right established by Article 30(1) is a fundamental right declared in terms absolute unlike the freedoms guaranteed by Article 19 which is subject to reasonable restrictions. Article 30(1) is intended to be a real right for the protection of the minorities in the matter of setting up educational institutions of their own choice. However, regulations may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition. However, such regulation must satisfy the test of reasonableness and that such regulation should make the educational institution an effective vehicle of education for the minority community or for the persons who resort to it. Applying the above test in Sidhrajibhai Sabbai vs. State of Gujarat, this Court held the rule authorising reservation of seats and the threat of withdrawal of recognition under the impugned rule to be violative of Article 30(1)".

It was a case with regard to the constitutional validity of the Right of children to free and compulsory Education Act, 2009(RTE Act, 2009). The conclusions, as it appears in paragraph 64, is extracted below:

“64. Accordingly, we hold that the Right of Children to Fee and Compulsory Education Act, 2009 is constitutionally valid and shall apply to the following:

(i) a school established , owned or controlled by the appropriate Government or a local authority;

(ii) an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

Later, a 'Five Member' Bench of the Apex Court in **(2014)8 SCC 1, (Pramati Educational and Cultural Trust (Registered) and others vs. Union of India and others)** held that the power under Article 21-A of the Constitution vested on the State cannot extend to making any law which will abrogate the right of the minorities to establish and administer schools of their choice. The observations in paragraph 55 are to the following effect:

“In our view , if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated . Therefore, the 2009 Act insofar it is made

applicable to minority schools referred to in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this Court in Society for Unaided Private Schools of Rajasthan v. Union of India insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.

So the verdict passed by the '3 member' bench of the Apex Court in **(2012) 6 SCC 1** (**Society for Unaided Private Schools of Rajasthan vs. Union of India and another**) was overruled to some extent, asserting the minority status and consequence.

42. As pointed out by the learned Standing Counsel for the Corporation, a 'five member' Bench of the Apex Court has made the position clear in the judgment in **AIR 1963 SC 540** (cited supra) itself; that it is of course with the State to prescribe regulations in respect of the specified instances which includes 'Health' as well. In the instant case, it is not a matter of mere regulation but a measure of proper 'enactment' (ESI Act) itself. Employees of the Educational institutions which belong to the minority Communities cannot be an exception, in so far as

Health and Social Security measures are involved. This is more so, in view of the observations made by the Apex Court in **St. Xavier's College case (AIR 1974 SC 1389)**.

43. The observation made by the Apex Court in paragraph '9' of the verdict in **St. Xavier's College case** (cited supra) as to the object of Article 30(1) of the Constitution of India or in other words, why it was introduced is very relevant. Obviously, the purpose was only to bring about equality between the minority and majority. If the argument of the appellant is accepted (to the effect that all general laws should yield to their minority status), no law of any fiscal nature/implication, even for payment of tax under different enactments can be made applicable to the minority institutions, which is not the intention of the law makers. From the above, it is crystal clear that proper regulations can be imposed to promote 'Health' of the employees and since extension of coverage under the E.S.I. Act itself is a positive measure in this regard, to promote 'Health' by way of providing Sickness benefit, Maternity benefit, Employment injury benefit etc., such general law is not liable to be ousted with

reference to the minority status under Article 30(1) of the Constitution of India.

44. The decision rendered by the '9 Member' Bench in ***St.Xavier's case*** (cited supra) was considered by the subsequent '11 Member' Bench of the Apex Court in ***T.M.A. Pai's case*** ((2002)8 SCC 481). Also by making a reference to the ***St. Stephen's College vs. University of Delhi (1992) 1 SCC 558***, the position of law has been made clear as discernible from paragraphs 134 to 139 of the judgment, which are extracted below:

“134 If we keep these basic features ,as highlighted in St.Stephen's case in view, then the real purpose underlying Articles 29(2) and 330 can be better appreciated.

135 We agree with the contention of the learned Solicitor-General that the Constitution in Part III does not contain or give any absolute right. All rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part. It is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minorities, which would enable them to establish and administer educational institutions in a manner so as to be in conflict with the other Parts of the

Constitution. We find it difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them.

136. Decisions of this Court have held that the right to administer does not include the right to maladminister. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also—for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

137. It follows from the aforesaid decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1)

138 As we look at it, Article 30(1) is a sort of guarantee

or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-a-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in St.Xavier's College case at SCR p.192 that:(SCC p.743,para 9)

"The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality."

In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of

the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do.

139. Like any another private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g. method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30.”

The above observations, particularly in paragraph 138, make it evident that laws of the land including the rules and regulations **must apply equally** to the majority institutions as well as to the minority institutions and that the minority institutions must be allowed to do what the non-minority institutions are permitted to do.

45. **In (1987) 4 SCC 691 (Christian Medical College Hospital Employees Union and another vs. Christian Medical College Vellore Association and others)**, the disciplinary action taken by the Management was challenged from

the part of the workmen by raising an industrial dispute. The award passed by the Labour Court /Industrial dispute came to be challenged at the instance of the Management before the Madras High Court, where the plea of the Management with reference to the minority status under Article 30(1) of the Constitution of India was accepted and the verdict passed by the Labour Court/Industrial Tribunal was intercepted. This was challenged by the Union before the Apex Court. The matter was considered along with the Special Leave Petition filed by the State of Tamilnadu. The question that arose for consideration was whether Section 9A, 10, 11A, 12 and 33 of the I.D. Act, 1947 were applicable to the educational institutions established and administered by the minorities which were protected by clause (1) of Article 30 of the Constitution of India . After elaborate discussion of the facts and figures, the relevant provisions of law and precedents, the Apex Court held in 'paragraph 18' of the judgment that the I.D. Act which provides for reference of an industrial dispute to the Industrial Tribunal or Labour Court was not violative of Article 30(1) of the Constitution of India and that

it has to be borne in mind that these provisions have been conceived and enacted in accordance with the principles accepted by the International Labour Organisation and the United Nations Economic Social and Cultural Organisation. The observation as contained in the said paragraph are extracted below:

“18. In view of the observations of this Court in All Saints High School case, Frank Anthony Public School case and Y. Theclamma case it has to be held that the provisions of the Act which provide for the reference of an industrial dispute to an Industrial Tribunal or a Labour Court for a decision in accordance with judicial principles have to be declared as not being violative of Article 30(1) of the Constitution of India. It has to be borne in mind that these provisions have been conceived and enacted in accordance with the the principles accepted by the International Labour Organisation and the United Nations Economic, Social and Cultural Organisation. The International Covenant on Economic, Social and Cultural Rights, 1966 which is a basic document declaring certain specific human rights in addition to proclaiming the right to work as a human right treats equitable conditions of work, prohibition of forced labour, provision for adequate remuneration, the right to a limitation of work hours, to rest and leisure ,

the right to form and join trade unions of one's choice, the right to strike etc. also as human right. The Preamble to our Constitution says that our country is a socialist republic . Article 41 of the Constitution provides that the State shall make effective provision for securing right to work. Article 42 of the Constitution provides that state shall make provision for securing just and humane conditions of work and for maternity relief. Article 43 of the Constitution states that the State shall endeavour to secure by suitable legislation or economic organisation or in any other way to all workers agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. These rights which are enforced through the several pieces of labour legislation in India have got to be applied to every workman irrespective of the character of the management. Even the management of a minority educational institution has got to respect these rights and implement them. Implementation of these rights involves the obedience to several labour laws including the Act which is under consideration in this case which are brought into force in the country . Due obedience to those laws would assist in the smooth working of the educational institutions and would facilitate proper administration of such educational institutions . If such laws are made inapplicable to minority educational institutions, there is very likelihood of such institutions being subjected to

maladministration . Merely because an impartial tribunal is entrusted with the duty of resolving disputes relating to employment, unemployment, security of work and other conditions of workmen it cannot be said that the right guaranteed under Article 30 (1) of the constitution of India is violated . If a creditor of a minority educational institution or a contractor who has built the building of such institution is permitted to file a suit for recovery of the money or damages as the case may be due to him against such institution and to bring properties of such institutions to sale to realise the decretal amount due under the decree passed in such suit is Article 30 (1) violated?. Certainly not. Similarly the right guaranteed under Article 30(1) of the Constitution is not violated, if a minority school is ordered to be closed when an epidemic breaks out in the neighbourhood , if a minority school building is ordered to be pulled down when it is constructed contrary to town planning law or if a decree for possession is passed in favour of the true owner of the land. When a school is build on a land which is not owned by the Management of a minority school. In the same way, if a dispute is raised by an employee against the management of a minority educational institution such dispute will have necessarily to be resolved by providing appropriate machinery for that purpose. Laws are now passed by all the civilized countries providing for such a machinery. The Act with which we are concerned in this case is an Act which has been brought

into force for resolving such industrial disputes. Sections 10, 11-A, 12 and 33 of the Act cannot, therefore, be construed as interfering with the right guaranteed under Article 30(1) of the Constitution of India. Similarly, Section 9-A of the Act, which requires the management to issue a notice in accordance with the said provision in order to make changes in the conditions of service which may include changes in the hours of work, leave rules, introduction of new rules of discipline etc. cannot be considered as violative of the right guaranteed under Article 30(1) of the Constitution of India. The High Court was in error in thinking that the power of the Industrial Tribunal or the Labour Court under the Act was uncanalised, unguided and unlimited and in thinking that the said power was equivalent to the power of Vice Chancellor or any other officer nominated by him functioning under the Gujarat University Act, 1949 which was subject matter of decision in the St.Xavier's College case. Accordingly we are of the view that the provisions of Section 9-A, 10, 11-A, 12 and 33 of the Act are applicable to the minority educational institutions like the Christian Medical College and Hospital at Vellore also. "

While answering the 12 questions framed by the Apex Court, particularly in relation to the minority rights, questions 3(b) and 5(c) and the answers are very relevant, in so far as the present appeals are concerned and hence they are extracted below:

"Q.3b) to what extent can professional education be treated as matter coming under minorities' rights under Article 30?

A. Article 30(1) gives religious and linguistic minorities the right to establish and administer educational institutions of their choice. The use of the words "of their choice" indicates that even professional education institutions would be covered by Article 30."

"Q.5(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a University or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching and administrative control over them. The management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection

of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievance of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate Tribunals could be constituted and till then, such Tribunals could be presided over by a judicial officer of the rank of District Judge .

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charged capitation fee."

46. It has been held by the Apex Court in the decision reported in (1992) 4 SCC 245 **(Cochin Shipping Co. vs. E.S.I. Corporation)** that the notification issued under Section 1(5) of the Employees' State Insurance Act by the appropriate Government extending coverage to the respective establishments

is, by virtue of a beneficial /welfare legislation and as such, the provision has to be construed liberally in favour of the beneficiaries. But referring to the observations made by the '5 Member Bench' of the Apex Court in **Steel Authority of India Ltd. and others vs. National Union Waterfront Workers and others (2001) 7 SCC 1** (paragraph 105), it is contended by the appellants that, as made clear by the Constitution Bench of the Apex Court, the principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to 'reading in' the provisions of the Act what the legislature has not provided, whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The Apex Court, in the said case, was mainly considering whether the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 envisage the concept of 'automatic absorption' of contract labourers by the principal employer, on issuance of abolition notification and such other incidental issues. The above observation however does not support the case of the appellant institutions in any manner, as

the purpose of the enactment(ESI Act) itself is to extend Sickness benefit/Maternity benefit/Employment injury benefit to the eligible employees. The provisions of such a welfare legislation have to be interpreted liberally. This Court finds support from another judgment rendered by the Supreme Court in **Royal Talkies vs.n E.S.I. Corporation (1978) 4 SCC 204**, wherein the issue was with reference to the definition of the term 'employee' under Section 2(9) of the ESI Act. The Apex Court held that, in interpreting the statute, if two interpretations are possible, the duty of the Court is to choose the one which advances the welfare of the weaker sections of the society.

47. Still, there was an occasion for the Hon'ble Supreme Court to consider the scope of the provisions of the very same enactment (ESI Act), particularly in relation to the notification issued under Section 1(5) of the Act, wherein the Apex Court held that the words '**or otherwise**' occurring after the words **industrial, commercial or agricultural** establishments in Section 1(5) of the ESI Act, indicates that the Government can

extend the ESI Act or any provision thereof to any other establishment or class of establishment . As pointed out by the Apex Court, the genus lies in the words 'any other establishments' or 'class of establishment'; whereas the three words 'industrial', 'commercial' and 'agricultural' represent different species. It was made clear by the Apex Court in paragraph '6' of the said judgment that, since the legislature did not want to restrict operation of the ESI Act to the above three species, it had used the catch words "or otherwise" which will take in its sweep the notified establishment as well. The contention of the appellants that, unlike the EPF Act, the words '**or otherwise**' as contained in Sec.2(f) of the said Act are conspicuously absent in the definition of the term 'employee' under Section 2(9) of the ESI Act and hence it is a restrictive definition, is not having any significance and the entire establishments/educational institutions have been made coverable by virtue of the notification issued under Section 1(5) of the Act, where the words '**or otherwise**' are very much included .

48. How to construe a notification issued under section 1

(5) of the ESI Act has been made clear by the Apex Court on many an occasion. In the decision in **M/s. Cochin Shipping Co. vs. E.S.I. Corporation (1992) 4 SCC 245**, the Apex Court has observed that the the objective is to envelop as many as establishments as possible, without leaving any room for doubt. Still further, in **International Ore & Fertilisers (India) Pvt. Ltd. vs. E.S.I. Corporation [1988 1 LLJ 235(SC)]**, the Apex Court observed that, while construing a welfare legislation like the ESI Act and the notification issued thereunder, a liberal construction should be placed on their provisions so that the purpose of the legislation may be allowed to be achieved, rather than frustrated or stultified. It was asserted by the Apex Court that the words in the Act cannot be construed narrowly, especially when it is a beneficial legislation like the ESI Act. In **M/s. Hindu Jea Band, Jaipur vs. Regional Director, E.S.I. Corporation (AIR 1987 SC 1166)**, while considering the scope of the notification issued under Section 1(5) of the Act and the challenge raised, it was observed that there cannot be any narrow construction on the expression 'shop' which

appears in the notification issued under Section 1(5) of the Act, which is a beneficial legislation and the word 'shop', though not defined under the Act, was, no doubt, an establishment (other than a factory) to which the Act can be extended under Section 1(5) of the Act, provided other requirements are satisfied.

49. After issuing the original notification dated 08.10.2007, the same was sought to be corrected by the appropriate Government by issuing a corrigendum notification dated 5.5.2008 whereby the word '**aided**' was deleted. By virtue of the correction as above, the aided schools and the employees/teachers engaged in such schools were taken outside the purview of the ESI Act. The obvious reason is that the employees/teachers of aided schools are otherwise covered by separate service rules, by virtue of which, they enjoy the Sickness benefit, Maternity benefit etc, and no coverage is necessary under the ESI Act. It is also relevant to note that, by virtue of the clear mandate under Section 1(5) of the ESI Act, when the appropriate Government is the State Government, notification under Section 1(5) can be issued only with the 'prior

approval' of the Union Government. 'Prior approval' involves a conscious exercise/scrutiny into the facts and figures, whereby a clear sanction is given to proceed with further steps. This being the position, the notification issued by the State Government under Section 1(5) of the Act is having the authority/clearance/sanction of the Central Government, which in turn does not stand vitiated in any manner, as the need, necessity and occasion to have issued such a notification has been evaluated, analysed, appreciated and certified by the Central Government.

50. It is stated by the appellants that the decision rendered by a Division Bench of this Court in **2009(3) KLT 421** (cited supra) is 'per incurium' for not having referred to the Apex Court's decision holding that 'Teacher' is not a workman [**Sundarambal vs. Government of Goa, Daman and Diu**][(1988) **4 SCC 42**)] and such other verdicts. But no case of the Supreme Court is brought to the notice of this Court, to the effect that the appropriate Government in the case of educational institutions as that of the appellants herein, is the Central Government. The meaning of the term workman/employee as

defined under different statutes differ quite a lot as discussed already and the meaning of the term under one statute cannot be mechanically applied to similar term under a different statute. Two separate Division Benches of this Court have already held that the appropriate Government is the State Government. The appellants rely on the decisions rendered by the Apex Court reported in **Municipal Corporation of Delhi vs. Gurnam Kaur** [(1989)1 SCC 101], **Commissioner for Hindu Religious and Endowments and another v. C. Lakshminarasimhaiah** [1990 Suppl.SCC. 164], **M.P. Rural Road Development Authority vs. L.G.Chaudhary Engineers & Contractors** (2012) 3 SCC 495) and **State of Assam vs. Ripa Sarma** [(2013) 3 SCC 63] to contend that the judgment rendered by the Division Bench of this Court in **2009 (3) KLT 421**(cited supra) is 'per incurium' and that it cannot have any precedent value. The aforesaid judgments only deal with the circumstances when a judgment can be treated as 'per incurium' and the consequence to follow. Since no decision is brought to the notice of this Court that, in the case of establishments like the appellants, the

appropriate Government envisaged under Section 2(1) of the Act is the Central Government and not the State Government; the above contention does not hold any water at all.

In the above facts and circumstances, we find that the appellants have not established any tenable ground to call for interference with the verdict passed by the Employees Insurance Court. The challenge raised against the impugned notice / proceedings fails. Interference is declined and all these appeals are dismissed as devoid of any merit.

**P.R. RAMACHANDRA MENON,
JUDGE**

**ANIL K. NARENDRA,
JUDGE**