

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

WA.No. 1597 of 2015 () IN WP(C).14744/2015

AGAINST THE JUDGMENT IN WP(C) 14744/2015 of HIGH COURT OF KERALA
DATED 05-06-2015

APPELLANT:

MAR SLEEVA COLLEGE OF NURSING, PALAI
CHERPUNKAL P.O., 686 584, REPRESENTED BY ITS MANAGER.

BY ADVS.SRI.BABY ISSAC ILLICKAL
SRI.ISAAC KURUVILLA ILLIKAL

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, PIN-695 001.

2. SECRETARY
LABOUR AND REHABILITATION (F) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

3. DIRECTOR, SUB REGIONAL OFFICE
EMPLOYEES STATE INSURANCE CORPORATION
MALU'S COMPLEX, ST.FRANCIS CHURCH ROAD, KALOOR
ERNAKULAM, 682 017.

4. ASSISTANT DIRECTOR
SUB REGIONAL OFFICE,
EMPLOYEES STATE INSURANCE CORPORATION,
MALU'S COMPLEX, ST.FRANCIS CHURCH ROAD, KALOOR
ERNAKULAM, 682 017.

R1,R2&R4 BY SR.GOVERNMENT PLEADER SRI M.MOHAMMED SHAFI
R BY SRI.P.SANKARANKUTTY NAIR, SC, ESI CORPORATION

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
24-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WA.No. 1597 of 2015
IN WP (C).14744/2015

A P P E N D I X

APPELLANT'S EXHIBITS

ANNEXURE-A1:- TRUE COPY OF THE MINORITY CERTIFICATE DT.21.06.2006.

ANNEXURE-A2:- TRUE COPY OF THE AFFILIATION ORDER FOR THE ACADEMIC YEAR 2014-15.

ANNEXURE-A3:- TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN THE PRIVATE NURSING COLLEGE MANAGEMENT ASSOCIATION OF KERALA & HE 1ST RESPONDENT.

ANNEXURE-A4:- TRUE COPY OF THE APPLICATION DATED 26.05.2015.

ANNEXURE-A5:- TRUE COPY OF THE INTERIM ORDER DT.2.6.2015 IN WPC.NO.14744/2015.

RESPONDENTS' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

P.R.RAMACHANDRA MENON & P.V ASHA, JJ.

W.A No.1597 of 2015

Dated this the 24th day of July, 2015

JUDGMENT

Ramachandra Menon, J.

This Writ Appeal is filed against the verdict passed by the learned Single Judge of this Court, relegating the appellant to approach the Employees Insurance Court for redressal of the grievance.

2. The appellant, allegedly a minority institution coming within the purview of Article 30(1) of the Constitution of India, is running an unaided Nursing College. The appellant was served with Ext.P2 proceedings issued by the authorities of the E.S.I Corporation, to the effect that the said institution did come within the purview of the Employees State Insurance Act, 1948 and as such, contribution was liable to be paid in respect of the employees engaged by the appellant. A total sum of nearly Rs.11.68 lakhs was demanded to be satisfied, simultaneously asking for explanation, if any. On receipt of Ext.P2 notice,

Ext.P3 reply was submitted on 21.01.2015, with reference to the nature of the institution, and as to the dispute raised to satisfy the liability, by virtue of being a minority institution. It is stated that the same was only a preliminary reply. But without considering the same in the right perspective, Ext.P4 order dated 10.02.2015 was passed fixing the liability to an extent of Rs.4,39,080/- lakhs. Being aggrieved by the said order, the appellant sought to challenge the same by filing the writ petition on various grounds. The learned Single Judge observed that the petitioner was having an effective alternative remedy as provided under the Statute and therefore the petitioner was relegated to approach the Employees Insurance Court. So as to enable the appellant to invoke the said remedy, all further proceedings pursuant to the impugned order were ordered to be kept in abeyance for a period of one month. This is under challenge in this appeal.

3. We heard the learned counsel for the appellant as well as the learned Standing Counsel appearing for the Corporation. During the course of the hearing, the learned counsel for the appellant submitted that the nature of challenge raised by the

appellant in the Writ Petition, particularly the `minority status ' under Section 30(1) of the Constitution of India can't be considered by the Employees Insurance Court and as such, interference declined by the learned Single Judge was not correct. This Court finds it difficult to accept the said proposition. The prayers raised by the appellant in the Writ Petition are the following:

“i) call for the records leading to Ext.P4; issue a writ of certiorari, quash and set aside Ext.P4;

ii) declare that Ext.P1 Notification is not applicable to Mar Sleeva College of Nursing Palai.

iii) Grant such other relief as this hon'ble court may deem fit and proper in the facts and circumstance of the case.”

From the above, it is clear that the challenge raised was against Ext.P4, mulcting the petitioner with liability of Rs.4,39,080/- and to declare that Ext.P1 notification issued by the Government was not applicable to the petitioner's institution. In other words, there was no challenge against Ext.P1 notification.

In the above circumstances, this Court is of the view that there is absolutely nothing wrong in the course pursued by the

learned Single Judge by relegating the petitioner to move the Employees Insurance Court. Interference is declined and the appeal stands dismissed.

Sd/-

P.RRAMACHANDRA MENON

Judge

Sd/-

P.VASHA

Judge

rtr/

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.**

A.S. No.1041 of 1998 -G

JUDGMENT

Dated 22nd May, 2015.