

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 3543 of 2015 (P)

PETITIONER(S):

**THE RAJAS INTERNATIONAL SCHOOL,
HOMEIO COLLEGE ROAD
KURICHY KOTTAYAM, REPRESENTED BY ITS ADMINISTRATOR
SABU MARKOSE**

BY ADV. SRI.M.SREEKUMAR

RESPONDENT(S):

- 1. THE STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
LABOUR AND REHABILITATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM 695001**
- 2. EMPLOYEES STATE INSURANCE CORPORATION,
REPRESENTED BY ITS DIRECTOR, SUB REGIONAL
OFFICE, ST.FRANCIS CHURCH ROAD, KALOOR 682017**
- 3. ASSISTANT DEPUTY DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION
SUB REGIONAL OFFICE, ST.FRANCIS CHURCH ROAD, KALOOR
COCHIN-682017**

**R2-R3 BY ADV. SRI.P.SANKARANKUTTY NAIR, SC, ESI CORPN
R BY GOVERNMENT PLEADER SRI. BIJU MEENATTOOR**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 3543 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: TRUE COPY OF THE LETTER DATED 30.9.2014 FROM THE 3RD
RESPONDENT TO THE PETITIONER**

**EXT.P2: TRUE COPY OF NOTIFICATION G.O.(P) NO.135/2007/LBR DATED
8.10.07**

RESPONDENT(S)' EXHIBITS: NIL

// TRUE COPY //

PA to Judge

SB

K. VINOD CHANDRAN, J.
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W.P.(C) No.3543 of 2015 - P
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Dated this the 20th day of February, 2015

J U D G M E N T

The petitioner, an educational institution affiliated to the Central Board of Secondary Education (CBSE) and the International General Certificate of Secondary Education (IGCSE). The petitioner challenges the coverage of the petitioner's school under the Employees' State Insurance Act, 1948 (for brevity, 'the ESI Act'), as per Ext.P1 communication, which is on the basis of Ext.P2 notification. Ext.P2 notification is brought out under the Act by the Central Government, which was the subject of challenge in **C.B.S.E School Managements' Association v. State of Kerala [2009 (3) KLT 421]**. This Court upheld the notification.

2. However, the learned Counsel for the petitioner seeks to urge a fresh challenge on the notification

itself, relying on a decision of the Hon'ble Supreme Court in **ESIC Medical Officers' Association v. ESIC and Another, [2014 (1) KLT 249]** wherein, the question whether medical professionals treating patients could be held to be workmen within the meaning of the Industrial Disputes Act, 1947.

3. The learned Counsel specifically refers to the reasoning of the aforesaid judgment in paragraph 11, wherein, professionals are said to be outside the scope of the definition of workman under the ID Act. Teachers are professionals, who would stand exempted from such coverage, under the ESI Act, is the contention.

4. The learned Standing Counsel raises two contentions in opposition to the writ petition. One that the writ petition is delayed and that the additional ground urged by the petitioner in challenge of the notification, has been already considered by this Court in **Nirmala College, Chalakkudy v. ESI Corporation, Thrissur and Another**

[2014(3) KHC 354]. This Court had held so in paragraph 23:-

23. Regarding teachers, the appellants have invited the attention of this Court to the recent judicial pronouncement of the Apex Court in ESIC Medical Officer's Association v. ESIC and Another, wherein it was clearly held in paragraphs 10 and 11 that Doctors as well as Teachers are not merely doing any occupation; whereas, they are practicing solemn professions. It is true that teachers are imparting education in schools and it is true that they are practising a solemn profession of imparting education. It is true that they cannot merely be equated with a workman of a factory or industrial establishment. Of course, it has become trite law that the educational institutions are also parts of industries. The decision in ESIC Medical Officers' Association (supra), does not lend any adequate support to the question in hand, as the same is not with regard to the term "employee" within the meaning of the ESI Act, whereas, the same is relating to Section 2(s) of the Industrial Disputes Act.

5. The learned Standing Counsel opposes the writ petition on the ground of delay, since, the notification itself was of the year 2007 and the petitioner has chosen to challenge the same only when notice was issued; when there was an obligation cast on the petitioner to have registered themselves and their employees under the Act. This Court finds that the question of delay and the binding

precedents would stand against the entertainment of the writ petition. However, the learned Counsel for the petitioner submits that the schools started functioning only in February 2014.

In such circumstance, on the aspect of delay and on the aspect of the issues raised being covered against the petitioner; the writ petition cannot be entertained and would stand dismissed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge