

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 8615 of 2015 (B)

PETITIONER :

**SEVASHRAM,
MANGATTUKARA, PULIYANAM (P.O),
ANGAMALLY, ERNAKULAM DISTRICT, PIN -683 572,
RPRESENTED BY ITS SECRETARY MR.P.G.SURENDRAN.**

**BY ADVS.SRI.SHAJI CHIRAYATH
SMT.JIJI M. VARKEY
SRI.M.M.SHAJAHAN**

RESPONDENT(S):

- 1. EMPLOYEES STATE INSURANCE CORPORATION,
(KERALA), REGIONAL OFFICE, PANCHADEEP BHAVAN,
NORTH SWARAJ ROUND, THRISSUR DISTRICT, PIN- 680 020.**
- 2. DEPUTY DIRECTOR,
EMPLOYEES STATE INSURANCE COPORATION,
SUB REGIONAL OFFICE (ERNAKULAM), MALU'S COMPLEX,
ST.FRANCIS CHURCH ROAD, KALOOR, ERNAKULAM DISTRICT,
PIN-682 017**
- 3. RECOVERY OFFICER,
EMPLOYEES STATE INSURANCE CORPORATION,
SUB REGIONAL OFFICE (ERNAKULAM), MALU'S COMPLEX,
ST. FRANCIS CHURCH ROAD, KALOOR, ERNAKULAM DISTRICT,
PIN -682 017.**

R1 TO R3 BY ADV. SRI.P.SANKARANKUTTY NAIR, SC, ESI CORPN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: COPY OF THE MEMORANDUM ASSOCIATION & ALONG WITH
CERTIFICATE OF REGISTRATION OF THE PETITIONER,
DATED 01/03/1995
- EXHIBIT-P2(A): COPY OF THE DECLARATION OF MR.A.J.DEVASSY KUTTY AS A
VOLUNTEER TO THE PETITIONER DATED 09.01.2004.
- EXHIBIT-P2(B): COPY OF THE DECLARATION OF MRS.SHIBA JOSE AS A VOLUNTEER
TO THE PETITIONER DATED 09.01.2004.
- EXHIBIT-P2(C): COPY OF THE DECLARATION OF MRS.LINCY TOMY AS A
VOLUNTEER TO THE PETITIONER DATED 09.01.2004.
- EXHIBIT-P2(D): COPY OF THE DECLARATION OF MRS.RENAJI.V., AS A VOLUNTEER
TO THE PETITIONER DATED 23.01.2004.
- EXHIBIT-P2(E): COPY OF THE DECLARATION OF MR.P.D.VARGHESE AS A
VOLUNTEER TO THE PETITIONER DATED 03.03.2004.
- EXHIBIT-P2(F): COPY OF THE DECLARATION OF MR.M.T.ANTONY AS A VOLUNTEER
TO THE PETITIONER DATED 27.11.2004.
- EXHIBIT-P2(G): COPY OF THE DECLARATION OF MR.RIJO JOSE AS A VOLUNTEER
TO THE PETITIONER DATED 20.07.2005.
- EXHIBIT-P2(H): COPY OF THE DECLARATION OF MR.BENNY THOMAS AS A
VOLUNTEER TO THE PETITIONER DATED 13.04.2006.
- EXHIBIT-P2(I): COPY OF THE DECLARATION OF MRS.MARIYAMMA POULOSE AS A
VOLUNTEER TO THE PETITIONER DATED 18.04.2006.
- EXHIBIT-P2(J): COPY OF THE DECLARATION OF MR.P.O.VARGHESE AS A
VOLUNTEER TO THE PETITIONER DATED 28.04.2006.
- EXHIBIT-P2(K): COPY OF THE DECLARATION OF MR.LIJO JOSE AS A VOLUNTEER
TO THE PETITIONER DATED 18.07.2006.
- EXHIBIT-P2(L): COPY OF THE DECLARATION OF MRS.MOLLY JAMES AS A
VOLUNTEER TO THE PETITIONER DATED 01.09.2006.
- EXHIBIT-P2(M): COPY OF THE DECLARATION OF MRS.SONY DEVASIA AS A
VOLUNTEER TO THE PETITIONER DATED 01.09.2006.
- EXHIBIT-P2(N): COPY OF THE DECLARATION OF MR.M.J.THOMAS AS A VOLUNTEER
TO THE PETITIONER DATED 01.09.2006.

WP(C).No. 8615 of 2015 (B)

- EXHIBIT-P2(O): COPY OF THE DECLARATION OF MR.GEORGE.P.CHACKO AS A VOLUNTEER TO THE PETITIONER DATED 01.09.2006.
- EXHIBIT-P2(P): COPY OF THE DECLARATION OF MRS.ANNIE GEORGE AS A VOLUNTEER TO THE PETITIONER DATED 05.05.2007.
- EXHIBIT-P2(Q): COPY OF THE DECLARATION OF MRS.SHELJA M.M., AS A VOLUNTEER TO THE PETITIONER DATED 01.08.2007.
- EXHIBIT-P2(R): COPY OF THE DECLARATION OF MR.P.O.DEVASSY, AS A VOLUNTEER TO THE PETITIONER DATED 03.12.2007.
- EXHIBIT-P2(S): COPY OF THE DECLARATION OF MR.SADASIVAN NAIR @ C.S.MENON, AS A VOLUNTEER TO THE PETITIONER DATED 03.12.2007.
- EXHIBIT-P2(T): COPY OF THE DECLARATION OF MRS.SOMIYA VIJAYAN, AS A VOLUNTEER TO THE PETITIONER DATED 15.02.2008.
- EXHIBIT-P2(U): COPY OF THE DECLARATION OF MR.A.S.SURENDRA KUMAR, AS A VOLUNTEER TO THE PETITIONER DATED 10.12.2008.
- EXHIBIT-P3: COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT PURSUANT TO SECTION 45-A OF EMPLOYEES' STATE INSURANCE ACT 1948 DATED 13.02.104.
- EXHIBIT-P4: TRUE COPY OF ORDER OF 3RD RESPONDENT DATED 24.02.2014.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J

WPC No.8615 of 2015

Dated this the 13th day of July, 2015

JUDGMENT

Challenging Ext.P3 order passed by the second respondent, the petitioner has come up before this Court.

2. According to the petitioner, the petitioner is a charitable society, registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. The second respondent alleges that the petitioner society failed to pay contributions in respect of wages accounted under the head of accounts Building Addition, Canteen Account, Nursing School Account etc. in accordance with Section 40 of the Employees State Insurance Act, 1995 read with Regulations 29 and 31 of the Employees State Insurance (General) Regulations.

3. According to the petitioner, the petitioner is not conducting a factory/establishment in its premises. The petitioner is engaged in organizing self help group for the

economic upliftment. All members are volunteers of the petitioner society and all of them are engaged in social activities in order to achieve its objects. The petitioner is not providing employment to any person. There exists no employee-employer relationship between the society and its members. The petitioner's charitable society is not liable to pay any contribution as demanded by the respondents. According to the petitioner, the second respondent has no right or authority to assess the petitioner directing to pay contribution for the amount expended towards gift/honorarium to its members. The voluntary social charitable activities are not all, an employment as defined under the Employees' State Insurance Act or any other labour legislations. Moreover, members and volunteers are not carrying out any day to day activities. The petitioner is providing shelters to helpless people. The second respondent without considering the nature of the voluntary social charitable activities of the society, arbitrarily passed Ext.P3 order directing the petitioner to pay a sum of ₹4,27,928/-

towards employees State Insurance Contribution. It is with this background the petitioner has come up before this Court.

4. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondent Corporation.

The learned standing counsel for the respondent Corporation would submit that the petitioner has an alternate remedy of approaching the Employees State Insurance Court under Section 75 of the Act. As the petitioner has not availed of that remedy, this writ petition is closed reserving the right of the petitioner to approach the aforesaid court within the time frame prescribed by the statute. All questions are left open to be decided by the Employees Insurance Court.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

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true copy

P.S.TO JUDGE