

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).NO. 26515 OF 2012 (L)

PETITIONER:

**SREE AVITOM THIRUNAL HOSPITAL
HEALTH EDUCATION SOCIETY, (REGN. NO.791/1993),
REPRESENTED BY ITS SECRETARY-CUM-TREASURER
S.A.T. HOSPITAL, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM.**

**BY ADVS.SMT.AYSHA YOUSEFF,
SMT.MOLLY JACOB,
SMT.RABIA BEEGAM T.K.,
SRI.JOBI.A.THAMPI,
SMT.M.KABANI DINESH.**

RESPONDENT(S):

- 1. UNION OF INDIA,
REPRESENTED BY SECRETARY,
MINISTRY OF LABOUR, NEW DELHI-110 001.**
- 2. EMPLOYEES STATE INSURANCE CORPORATION,
REP. BY ITS CHIEF EXECUTIVE/DIRECTOR GENERAL,
PANCHADEEP BHAVAN, COMRADE INDRAJIT GUPTA MARG,
NEW DELHI-110 002.**
- 3. RECOVERY OFFICER,
EMPLOYEES STATE INSURANCE CORPORATION,
SUB REGIONAL OFFICE, ST.THOMAS SHOPPING
COMPLEX CROSS JUNCTION, Q.S. ROAD,
KOLLAM-691 001.**
- 4. ASST. DIRECTOR, EMPLOYEES STATE
INSURANCE CORPORATION, SUB REGIONAL OFFICE,
ST. THOMAS SHOPPING COMPLEX,
CROSS JUNCTION, KOLLAM-691 001.**
- 5. STATE OF KERALA,
REPRESENTED BY SECRETARY,
LABOUR AND REHABILITATION DEPARTMENT,
SECRETARIAT, TRIVANDRUM-695 001.**

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**6. ASST. GENERAL MANAGER,
STATE BANK OF TRAVANCORE,
MEDICAL COLLEGE BRANCH,
TRIVANDRUM-695 011.**

**R1 BY ADV. SRI.N.NAGARESH, ASST. S.G. OF INDIA.
R2 TO R4 BY ADV. SRI.P.SANKARANKUTTY NAIR, SC.
R5 BY GOVT. PLEADER SRI.V.K. RAFEEQ.
R6 BY ADV. SRI.P.RAMAKRISHNAN, SC.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER SOCIETY.
- EXT.P2 COPY OF THE ORDER GO(RT) NO.58/94/H& FWD DATED 18/03/1994.
- EXT.P3 COPY OF THE COMPARATIVE STATEMENT OF RATES CHARGED BY THE SOCIETY AND OTHER PRIVATE CLINICAL LABS.
- EXT.P4 COPY OF THE AUDIT REPORT FOR THE YEAR 2010-11.
- EXT.P5 COPY OF THE ORDER DATED 16/12/2011 DETERMINING THE ESI CONTRIBUTION U/S 45A OF THE ESI ACT.
- EXT.P6 COPY OF THE LETTER NO.48-P-12/11/1/2011 APPEAL DATED 09/02/2012 ISSUED BY THE JOINT DIRECTOR/APPELLATE AUTHORITY TO THE SUPERINTENDENT, SAT HOSPITAL.
- EXT.P7 COPY OF THE NOTICE DATED 12/03/2012 ISSUED BY THE ASST. DIRECTOR, ESI CORPORATION, DIVISIONAL OFFICE, KOLLAM TO THE RECOVERY OFFICER WITH COPY TO THE PETITIONER.
- EXT.P8 COPY OF THE REPRESENTATION DATED 31/12/2011 ADDRESSED TO THE 5TH RESPONDENT.
- EXT.P9 COPY OF THE REPRESENTATION NO.363/A1/2011/SATHHES DATED 03/04/2012 OF SECRETARY-CUM-TREASURER, SATHHES ADDRESSED TO THE 4TH RESPONDENT ASSISTANT/DEPUTY DIRECTOR, EMPLOYEES STATE INSURANCE CORPORATION, KOLLAM.
- EXT.P10 COPY OF THE NOTICE OF DEMAND DATED 12/04/2012 ISSUED BY THE RECOVERY OFFICER.
- EXT.P11 COPY OF THE LETTER DATED 04/09/2012 ISSUED BY THE SECRETARY TO GOVERNMENT, LABOUR & REHABILITATION DEPT.
- EXT.P12 COPY OF THE REPRESENTATION ADDRESSED BY THE PETITIONER SOCIETY TO THE DIRECTOR GENERAL AS WELL AS UNION OF INDIA.
- EXT.P12A COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 1ST RESPONDENT.
- EXT.P12B COPY OF THE ACKNOWLEDGMENT CARD EVIDENCING RECEIPT OF P12(A).

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- EXT.P13 COPY OF THE NOTICE DATED 24/08/2012 U/S.45G OF THE ES ACT
ISSUED BY THE 1ST RESPONDENT TO THE MANAGER STATE
BANK OF TRAVANCORE, MEDICAL COLLEGE BRANCH,
TRIVANDRUM.**
- EXT.P14 COPY OF THE LETTER DATED 05/09/2012 ISSUED BY THE
MANAGER, STATE BANK OF TRAVANCORE, MEDICAL COLLEGE
BRANCH, TRIVANDRUM TO THE PETITIONER SOCIETY.**
- EXT.P15 COPY OF THE LETTER DATED 22/11/2012.**

RESPONDENT'S EXHIBITS:-

- EXT.R2 COPY OF THE ORDER NO.T.11/11/54(K)/1/2012-REV.
DATED 22/11/2012 REJECTING EXT.P12 REPRESENTATION.**

//TRUE COPY//

P.S. TO JUDGE

rs.

K. Vinod Chandran, J.

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W.P.(C)No.26515 of 2012

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Dated this the 13th day of February, 2015.

JUDGMENT

1. Petitioner is aggrieved with the coverage made under the Employees' State Insurance Act, 1948 (hereinafter referred to as the "Act") and contribution demanded for the earlier years. Petitioner contends that no contribution was deducted from the salary of the employees. In fact, the coverage of the establishment is not disputed. Petitioner herein is a Society formed under the aegis of the Government, with the Superintendent of the Avittam Thirunal Hospital, as its Secretary. The same has been formed for the purpose of extending a helping hand as a charitable measure, to the patients and by-standers of the hospital, which is a general hospital under the State Government.
2. Petitioner is, admittedly, employing more than 100 persons. The Corporation contends on inspection that the employees are found to be 163. Notice was issued to the Secretary of the Society, requiring contribution in accordance with Section 40 of the Act read with

Regulations 29 and 31 of the Employees' State Insurance (General) Regulations framed under the Act. No response was received from the petitioner, either on the number of employees or the computation of contributions. On the basis of an inspection based on the list of 163 employees provided to the officers of the Corporation, assessment was made under Section 45A of the Act. An amount of Rs.7,88,795/- was demanded as contribution from 16.12.2006 to 31.12.2006. Petitioner filed an appeal, which was rejected for non-compliance of pre-deposit of 25%. Petitioner then moved the State Government pointing out the acute financial crisis of the Society. However, the State Government has absolutely no role, except on the question of exemption under the Act, which the petitioner has not till date taken up.

3. Petitioner has moved the above writ petition seeking a mandamus to respondents 1 and 2 to lift the attachment of the bank accounts and for a direction to command the respondents to refund the amount of Rs.3,77,732/- recovered from the petitioner. Without a challenge to

the assessment order, definitely, such prayers cannot be sought for. As was noticed, no dispute on the coverage of the establishment, under the Act, was ever raised in the writ petition. Petitioner also did not choose to avail of the remedy of appeal as to the quantum of contributions determined; under Section 75 of the Act before the Employees' State Insurance Court.

4. Petitioner, on the basis of Ext.R12(a), filed subsequent to the filing of the writ petition, contends that an application is pending before the appropriate Government for waiver of the amounts. The application itself was filed on 25.10.2012 and no purpose would be served in directing consideration of the same, at this distance of time. Further, the State Government does not have any such power to waive off the contributions payable under the central statute.
5. As was noticed, the prayers in the writ petition cannot be definitely granted. Petitioner was granted an interim stay in the writ petition on 22.2.2013, on condition of payment of Rupees five lakhs. Petitioner is said to have paid such amount. In such circumstances, only

considering the pendency of the writ petition before this Court, the petitioner could either approach the Corporation for payment of the contributions assessed as per Ext.P5 by way of instalments or could take up the issue under Section 75 before the ESI Court. The limitation for invoking the latter remedy is three years from the date of the order. The period between the filing of the writ petition and the disposal of the same, being between 7.11.2004 and today, would be exempted. If the petitioner chooses to approach the Corporation for instalments, the Corporation shall consider the same and the instalments granted shall not interdict them from levying interest or damages, as provided under the Act, which are statutory compulsions, the interest component of which is automatic and the damages component is discretionary.

Writ petition is dismissed with the above observations.

K. Vinod Chandran, Judge.

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