

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2015

CORAM:

THE HON'BLE MR. JUSTICE M.M. SUNDRESH

W.P.No.12953 of 2015
and M.P.No.2 of 2015

1.M.Muthuvel
2.A.Firthose
3.T.S.Sridhar
4.M.Nandakumar
5.R.Geetha

Petitioners

vs.

1.Union of India rep by Secretary
Ministry of Labour & Employment
Shram Shakthi Bhavan
Rafi Marg
New Delhi 110 001.

2.Director General
Headquarters Office
ESI Corporation
C.I.G.Road
New Delhi 110 002.

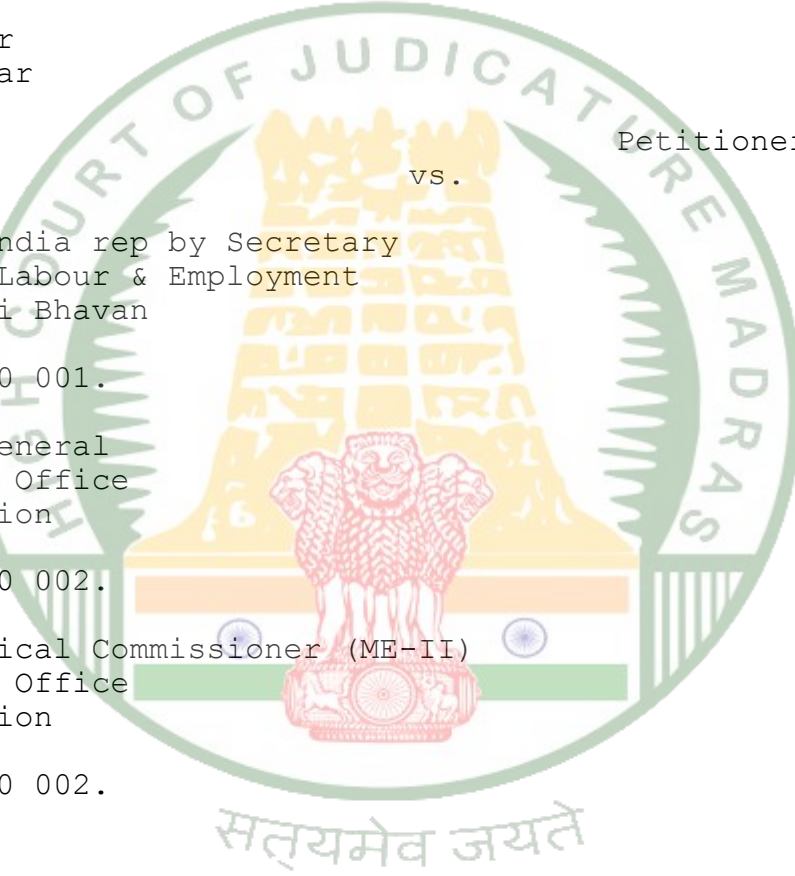
3.Deputy Medical Commissioner (ME-II)
Headquarters Office
ESI Corporation
C.I.G.Road
New Delhi 110 002.

4.Secretary
Ministry of Law
Shastri Bhavan
New Delhi 110 001.

5.Secretary
Ministry of Finance
North Block
New Delhi 110 001.

6.The President
Medical Council of India
New Delhi 110 077.

Respondents



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Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the decision communicated in the Memo. No.L-11/12/3/2010 (Corporate Cell)/ME Cell (Vol.II) dated 18.03.2015 of the respondent-3 and quash the same and consequently direct the respondents 1 and 2 not to admit students for 2015-16 session in MBBS/BDS/PG courses.

For petitioner Mr.R.Natarajan

For R1, R4 & R5 Mr.G.Rajagopalan
Addl. Solicitor General
Asst. by
Mr.Venkatasamy Babu, SPCGOI

For R2 and R3 Mr.AR.L Sundaresan, Senior Counsel
for M/s K.Prabakar

ORDER

The petitioners are a few of the insured persons working in various factories and establishments covered under the Employment State Insurance Act. Section 59B of the Employees' State Insurance (Amendment) Act, 2010, (for short "the Act") reads as under:

"59B. The Corporation may establish medical colleges, nursing colleges and training institutes for its para-medical staff and other employees with a view to improve the quality of services provided under the Employees' State Insurance Scheme".

2. In order to ensure the availability of sufficient doctors and para-medical staff, a decision was taken to start medical colleges. Accordingly, medical colleges inclusive of a Dental College, were started. This was done with a view to improve the quality of services provided under the Employees' State Insurance Scheme. The said decision was reviewed subsequently on the recommendation made by the Sub-Committee. Accordingly, it was decided to discontinue the running of the medical colleges.

3. Number of representations were received. The representations raised concern about the uncertainty of the future of the students, staff, faculty and also the insured persons. These representations were received from the members and the insured persons. Accordingly, the issue was re-considered and it was decided by the approval of the Chairman, that the admissions to on-going MBBS/BDS/PG courses shall be continued. Thus, the said decision was approved by the competent authority, viz., the Chairman. In pursuance of the same, the respondent no.3 issued a memorandum dated 18th March 2015, to the

effect that the admission to the on-going courses shall continue. Accordingly, it was also ratified in the 165th meeting of the ESI Corporation. Challenging the said decision made, as communicated by the respondent no.3 dated 18.03.2015, the petitioners have come forward to file the present writ petition.

4. The learned counsel for the petitioners submitted that the interest of the petitioners would be very much affected by the continuance of the medical courses. The courses are not being run properly. The recommendation of the Sub-Committee, which confirmed the earlier decision, has been reversed unilaterally without any basis. Such a decision being arbitrary cannot be sustained in the eye of law. There is no valid authorisation to the respondent no.3. The paramount interest is that of the insured persons, which has not been taken note of. There is no transparency in the decision made. Therefore, the order impugned will have to be set aside.

5. The learned Additional Solicitor General and the learned Senior Counsel appearing for the respondent Corporation submitted that the petitioners do not have any locus. There is nothing on record to show that their interest has been jeopardized. They do not have any role in the policy decision taken. The decision was taken in accordance with the power conferred under Section 59B of the Act. The State Governments have refused to take over the institutions. In the absence of any arbitrariness in the decision taken, the power of judicial review is expected not to be exercised. Thus, no interference is required.

6. Admittedly, the Colleges were started in tune with the object and rationale as contained under Section 59B of the Act. For the starting of the College, the petitioners did not have any objection. When power is available to the respondent Corporation to review the decision taken earlier, then such a power would also include a further power to review the subsequent decision. The power of judicial review over a policy decision taken in this regard is very limited. The decision has been taken to continue the college by taking into consideration the various factors as seen in paragraph 5 of the counter affidavit filed. This Court cannot substitute its views on the decision taken. The petitioners have not demonstrated the disastrous financial consequence that would arise by the said decision. Admittedly, the building construction has been made in exercise of the power provided under Section 59B of the Act. When the petitioners did not have any objection for the starting of the College, they cannot rely upon the subsequent decision, seeking a direction from this Court to follow the same as against the recent decision taken. While taking the recent decision, relevant materials have been taken into consideration. It was also ratified by the 165th meeting of ESI Corporation. Therefore, this Court does not find any lack of jurisdiction.

7. The learned Senior Counsel appearing for the respondent Corporation submitted that the decision taken earlier to hand over the institutions to the respective State Governments could not be implemented also, for the reason that the request made was turned down by them. It is nothing but prudent on the part of the respondent Corporation to go on with the running of the institutions after putting up construction. The petitioners, being a few of the insured persons, cannot, as a matter of right, make the Corporation use the construction put up for the running of the colleges for any other purpose. The decision was also taken by keeping the larger public interest in mind.

8. The competent authority was also authorised by the Corporation at its 165th meeting to take further decision in this regard, which was duly approved subsequently, as discussed earlier. The report of the Sub-Committee is only recommendatory in nature and thus, not binding for all time. The decision was taken initially to set up medical colleges with a view to improve the medical college facility to the insured persons and their dependants. Merely because the petitioners are insured persons, they cannot be allowed to have a substantial say in the running of the Corporation. Unless this Court finds any perversity in the decision made and on extraneous consideration, the power of judicial review is not expected to be exercised. The decision was also made by keeping in mind the amount spent already. Apart from other considerations, it will also lead to upgradation of the hospital facilities and services in future.

Thus, on a conspectus of above, this Court does not find any reason to allow this writ petition. Accordingly, this petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(J)

dt:12/10/2015

True Copy

Sub-Assistant Registrar

gms

To

1.Union of India rep by Secretary
Ministry of Labour & Employment
Shram Shakthi Bhavan
Rafi Marg, New Delhi 110 001.

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Headquarters Office
ESI Corporation, C.I.G. Road
New Delhi 110 002.

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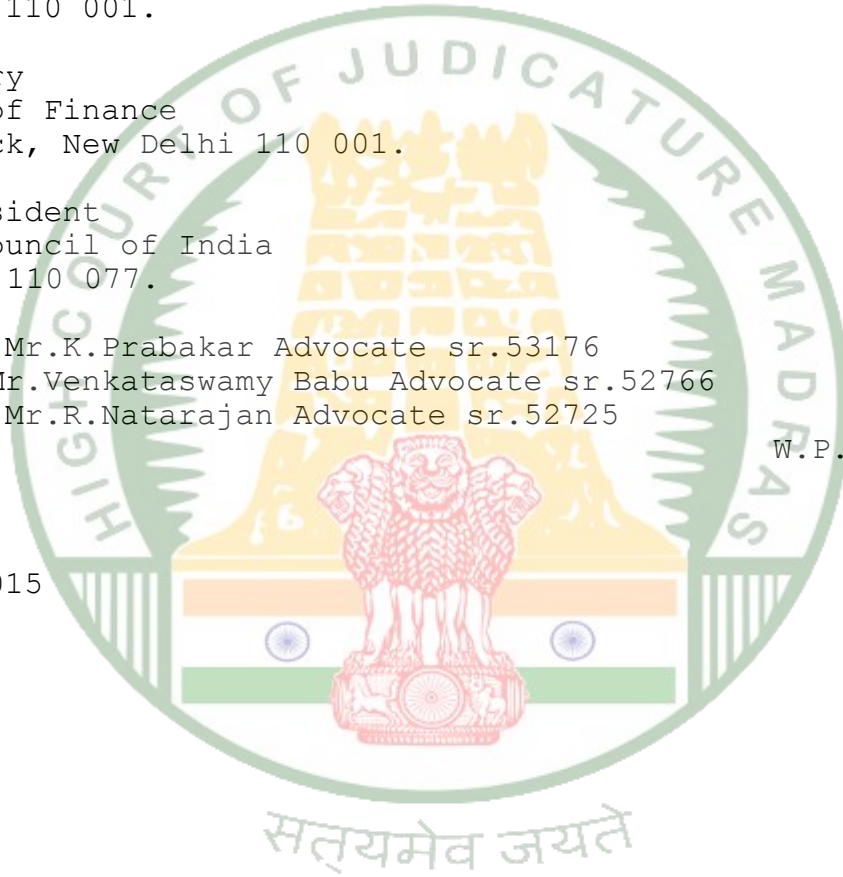
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+2 ccs to Mr. K. Prabakar Advocate sr. 53176
+1 cc to Mr. Venkataswamy Babu Advocate sr. 52766
+2 ccs to Mr. R. Natarajan Advocate sr. 52725

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