



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2015

Coram

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. (MD) .No.15167 of 2015

and

M.P. (MD) Nos.1&2 of 2015

Achyutha Academy Matriculation
Higher Secondary School,
(Formerly known as 'Sachan Matriculation School')
67/4, Thadicombu Road, Dindigul,
Rep.by its Correspondent.

:Petitioner

vs.

1.State of Tamil Nadu,
Rep.by its Principal Secretary,
Labour and Employment Department,
Fort St.George, Chennai - 600 009.

2.The Emplolyees State Insurance Corporation,
Regional Office (Tamil Nadu),
Rep.by its Regional Director,
143, Sterling Road,
Chennai - 600 034.

3.The Employees State Insurance Corporation,
Sub-Regional Office,
Rep.by its Assistant Director,
2nd West Street, K.K.Nagar,
Madurai - 625 020.

: Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorari, calling for the records of the 1st respondent herein in G.O.(Ms)No.237, Labour and Employment (K1) Department, dated 26.11.2010 and consequential notice issued by the 3rd respondent in his notice No.57000714380001303/62520151207/441/15 dated 3.7.2015 and to quash the same.

For Petitioner : M/S.Hamakarthiskeyan for Mr.Elanchezian

For Respondent-1 : Mr.S.Sadeeskumar,
Addl.Govt.Pleader

For Respondent-2 & 3 : Mr.K.C.Ramalingam for ESIC

O R D E R

This Writ Petition is directed against the Government Order in G.O. (Ms)No.237, Labour and Employment (K1) Department, dated 26.11.2010 and consequential notice issued by the 3rd respondent in his notice No.57000714380001303/ 62520151207/441/15 dated 3.7.2015 and to quash the same.

2. Mr.S.Sadashkumar, the learned Additional Government Pleader takes notice for the 1st respondent and Mr.K.C.Ramalingam, learned standing counsel takes notice for respondents 2 and 3.

3. The petitioner is the Achyutha Academy Matriculation Higher Secondary School, (Formerly known as 'Sachan Matriculation School') represented by its Correspondent, and claims to be an unaided, non-commercial and non-profitable one. While so, the first respondent issued a Government Order in G.O.(Ms)No.237, Labour and Employment (K1) Department, dated 26.11.2010, extending the provisions of Employees State Insurance Act, 1949, pursuant thereto, the 3rd respondent issued a demand notice, dated 03.07.2015, claiming contribution of Rs.6,37,065/- on ad-hoc basis, for the period commencing from September 2012 to May 2015.

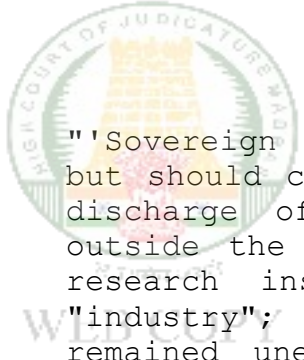
4. The grievance of the petitioner is that the educational institution cannot be brought under the ESI Act. In support of his argument, the learned counsel appearing for the petitioner has relied upon the order passed by the Hon'ble First Bench of this Court in the case of **Maharaja College of Arts and Science Rep.by its Chairman, Coimbatore vs. the State of Tamil Nadu** in **W.P.Nos.15255 of 2015** etc batch, dated 09.06.2015. The relevant portion of the order reads as under:-

"Learned counsel for the parties state that as recorded in the order dated 05.05.2005 reported in 2005 (5) SCC 1 (State of U.P Vs. Jai Bir Singh), the question of law has been referred to the Larger Bench of the Honourable Supreme Court, i.e., whether the Employees' State Insurance Act, 1948, would apply to educational institutions. Interim orders have been operating in the present matter.

2. In view of the aforesaid position, the writ appeals and the writ petitions are disposed of by agreement that the interim orders would continue till the disposal of the matter by the Honourable Supreme Court and the parties would naturally remain bound by the legal position enunciated by the Honourable Supreme Court on such decision being rendered."

5. Following the same, a Division Bench of this Court has passed an order in W.A.No.1233 of 2011 etc batch, dated 09.06.2015.

6. The order passed by the Hon'ble Apex Court in the case of **State of U.P. Vs. Jai Bir Singh** reported in **(2005 (5) SCC 1)** also shows that Hospitals, Educational and Research Institutions etc., should be kept outside the purview of "industry". The relevant portion of the judgment reads as follows:-



"Sovereign function", should not be confined to its traditional concept but should comprehend public welfare activities which Govt, undertakes in discharge of its constitutional obligations and as such should fall outside the purview of "industry". Hence, hospitals and educational and research institutions, etc. should be kept outside the purview of "industry"; (vii) Even though the Act was amended in 1982 yet it has remained unenforced and confusion still prevails; (viii) The judicial interpretation seems to be one of the inhibiting factors in enforcement of the amended definition. Pressing demands of the competing sectors of employers and employees and the helplessness of the legislature and the executive in bringing into force the amended definition makes reference imperative; (ix) In *Bangalore Water* case not all the Judges in interpreting the definition clause invoked the doctrine of *noscitur a sociis*. Unanimous decision of a Bench of six Judges in *Safdarjung Hospital*, (1970) 1 SCC 735 expressing the view that although "profit motive" is irrelevant, in order to encompass the activity within "industry" the activity must be "analogous to trade or business in a commercial sense" and mere enumeration of "public utility services" in S. 2(n) read with the First Schedule of the Industrial Disputes Act, should not be held decisive, affirmed; (x) Experience of past years showing that the majority view in *Bangalore Water Supply*, instead of ushering in industrial peace, has given rise to large number of awards granting reinstatement in service and huge amounts of back wages to workers compelling the employers having moderate assets to close down their industries causing harm not only to employers and workers but the public in general, they being the ultimate beneficiaries; (xi) Interpretation should be a balanced one having regard to the interests of the workers, the employers as also the public. Object of the Act has to be kept in view; (xii) Liberal professions based on talent, skill and intellectual attainment such as those of lawyers, doctors, chartered accountants, architects, etc. should not fall within "industry" – It is therefore, for the larger Bench of the Supreme Court to interpret the definition clause in the present context with the experience of all these years, and keeping in view the unenforced amended definition of "industry".

7. As the issue involved in the present writ petition is also covered by the above decisions, the writ petition is disposed of in terms of the above Judgments. It is made clear that once a *kegak* issue is decided, then the principles laid down therein will automatically apply to the petitioner institution also.

8. With the above observation, the writ petition stands disposed of. Consequently, connected miscellaneous petitions are closed. However, there is no order as to costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar



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+1cc to M/S.Ms.Hamakarthiskeyan, Advocate, in SR.No. 50268

+1cc to M/S. K.C.Ramalingam, Advocate, in SR.No. 50812

+1cc to Special Government Pleader in SR.No.50404.

TS/30.09.2015/4P - 7C NGM-SS /SAR -I

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