HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.Nos.6363, 5101, 6977, 9546, 12283, 14625, 18294, 18520, 19942, 20541, 20899, 22388, 22557, 24561, 24650, 26255, 26374, 27413, 27630 of 2009

W.P.Nos.1473, 2350, 3023, 3431, 6175, 6381, 7993, 10046, 13163, 17375, 18549, 22111, 22116, 26581, 28419, 28718 of 2010,

W.P.Nos.3307, 2737, 5971, 16351, 21055, 21898, 24078, 24852, 27163, 27214, 29057, 29636 and 34075 of 2011,

and

W.P.Nos. 32047 & 40605 of 2012

COMMON ORDER:

As the issue involved in all these writ petitions is one and the same, they are being disposed of by way of this Common Order.

2. All these writ petitions are filed assailing the G.O.Ms.No.582, Labour, Employment, Training and Factories Department, dated 14.10.2008 issued by the first respondent, by virtue of which, the Government of Andhra Pradesh, in exercise of the powers conferred by Sub-Section (5) of Section 1 of Employees State Insurance Act, 1948 (Central Act 34 of 1948), (for brevity 'the Act of 1948') in consultation with the Employees' State Insurance Corporation and with the approval of the Central Government, extended the provisions of the said Act to Private Educational Institutions (those run by individuals, trustees, societies or other organizations) and Medical Institutions (including Corporate, Joint Sector, trust, charitable and private ownership hospitals, nursing homes, diagnostic Centres, pathological labs) wherein 20 or more persons are employed or were employed on any day of the preceding twelve months, except the Medical and Educational Institutions established and run by Ramakrishna Math and Ramakrishna Mission. That the object and preamble of the Employees State

Insurance Act, 1948 is to provide for certain benefits to employees in case of sickness, maternity and employment injury. That all the petitioners in these writ petitions do not come under 'Factory' as defined under sub-section 12 of Section 2 of the Act of 1948 and there is no manufacturing process being carried on with the aid of power, in the petitioners' institutions. The Act of 1948 is meant to cover workers working in factories, industries, commercial and agricultural establishments but not the petitioners' institutions and it never contemplated to include educational and medical institutions. The educational institutions are covered by Special enactment i.e., A.P. Education Act. All the employees in the petitioners' institutions are teachers and non staff and they are working for salaries but not wages. It is also stated that the ESI Corporation does not have the infrastructure for providing medical facilities to the employees of the proposed new establishments which are covered under the impugned notification and that it was issued in a mechanical manner without conducting any detailed study regarding benefits extended to its employees by various institutions. Though the Government has power under Section 1 (5) of the Act of 1948 by way of delegated legislation, such power cannot be exercised beyond the scope, object and intendment of the Act. Though certain institutions are exempted from coverage of the Act, the same exemption ought to have been extended to the petitioners' schools. There cannot be any distinction or discrimination, between petitioners' institutions and those which were exempted from the coverage of the provisions of the Act of 1948, which is violative of Article 14 of the Constitution of

India. The respondents are depending on private hospitals for the services to be rendered to the citizens at large. Therefore, without considering the policy of the globalization, liberalization, the impugned Gazette has been issued and same is liable to be struck down.

3. Common counter affidavit is filed on behalf of the first respondent denying the averments made in the affidavits filed in support of the writ petitions stating that the petitioners have not made all the affected parties as respondents i.e., the employees of educational and medical institutions, who are the main persons to be affected. Since the petitioners' schools are registered under the Societies Registration Act, they are covered under the provisions of the Act of 1948 as per sub-section 5 of Section 1 of the Act of 1948. Section 1 (5) of the Act of 1948 empowers the appropriate Government to extend the provisions of the Act to any other establishments in consultation with the Employees State Insurance Corporation after giving six months notice. Accordingly, the Government of Andhra Pradesh in consultation with the Central Government issued an intention notification on 23.11.2007 in Official Gazette and called for the objections to the proposed extension of the provisions of the Act to Educational and Medical institutions. Neither the petitioners herein nor any person have raised any objections before the appropriate Government after issuance of the intention notification vide Gazette Notification No.662, dated 23.11.2007 (G.O.Rt.No.2525, LET&F (IMS) Department, dated 13.11.2007). Hence, after a period of eleven months, final notification was issued on 14.10.2008 extending the provisions of the Act of 1948 to Educational and Medical institutions from

the date of publication in the Official Gazette and that there is no mechanical nature involved in the process, as such, the same is legal, valid and proper. That the ESI (Medical) scheme provides full range of medial care i.e., out-patient services, specialist services, hospital services through a net work of dispensaries, diagnostic centers and ESI hospitals etc., Super Speciality treatments are being provided to the beneficiaries through the Country's most advanced corporate medical institutions for which payment is directly made by Employees State Insurance Corporation to the institutions concerned besides providing cash benefits to the employees under the scheme. The Employees State Insurance Corporation had carried out detailed survey about the institutions including the benefits being provided by these establishments to their employees and only after examining the same, it was recommended to extend the scheme to those drawing wages up to Rs.15,000/- per month alone and not to others. The employees who are drawing wages up to Rs.100/- per day are exempted from paying employees share of contribution, but are entitled to all the benefits, both cash and medical care available under the scheme. That the Act of 1948 being a welfare piece of legislation intended to provide multifaceted and comprehensive social security cover to the vulnerable sections of the society.

4. That some of the petitioners and their establishments though engaged in the dispensation of medical care, they are basically commercial establishments, as most of them are covered by the Companies Act, 1956. Therefore, there is no reason to accord any special treatment to these commercial

establishments in case of social security legislation alone. That the Medical Insurance Policies furnished by some of the petitioners are much inferior to the medical care available under the ESI Scheme. That the ESI Corporation is adequately equipped to cater to all such needs with its existing as well as upgraded infrastructure and it has tie-up with all major Super Speciality Hospitals to provide cashless service without any cap in expenditure to all entitled beneficiaries. If at all the petitioners are providing better benefits similar or superior to the benefits provided under this Act, they can seek exemption under Section 87 of the Act. Even if some hospitals are providing better medical facilities to their employees in their own hospitals, it cannot be a ground to keep away all the employees/hospitals from the scheme.

5. The 2nd respondent filed counter affidavit on similar lines to that of the first respondent stating that after issuance of Intention Notification dated 23.11.2007 in Official Gazette, final notification was issued on 14.10.2008 extending the provisions of ESI Act to Educational Institutions from the date of publication in the official Gazette and when the said notification has become final, now it is not appropriate for the petitioners to agitate the same and such notifications issued by the appropriate government are upheld by the Courts. It is stated that the employees/teachers, lecturers will also be employed for wages/salaries as per the provisions of Section 2(22) of the Act of 1948. That the ESI scheme is extended to the employees who draw wages up to Rs.10,000/- per month alone and not to others as they are vulnerable sections of the society, the petitioners should not have any objection to the benefits both

cash and medical care available under the scheme. The employees who are drawing wages up to Rs.70/- per day are exempted from paying employees share of contribution, but are entitled to all the benefits.

6. Heard learned counsel for the petitioners as well as learned Standing Counsel for the respondents and both the counsel have advanced their arguments in tune with the averments in the writ affidavits and counter affidavits, respectively.

7. Sri Koka Satyanarayana Rao, learned counsel for the petitioners in W.P.Nos.20541 of 2009, 2350, 3431, 10046, 17375 of 2010 and Sri A.K.Jayaprakash Rao, learned counsel for the petitioners in some other writ petitions in support of their contentions, relied on the judgments reported in **Unni Krishnan, J.P and Ors etc. v. State of Andhra Pradesh[1], Royal Talkies, Hyderabad and others v. Employees State Insurance Corporation[2], State of U.P v. Jai Bir Singh[3], Employees' State Insurance Corporation and others v. Jardine Henderson Staff Association and others[4], Lipton (India) Ltd., and another v. The Secretary to Government Employment and Social Welfare (Labour-I), Government of Andhra Pradesh, Hyderabad and others[5], Jagbir Singh v. Haryana State Agriculture Marketing Board and another[6], S.Prakasha Rao and another v. Commissioner of Commercial Taxes and others[7], Regional Director, Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries[8] and Employees' State Insurance Corporation v. Distilleries & Chemical Mazdoor Union and others[9].**

Sri S.Nageswar Reddy, Sri K.Ram Reddy and Sri Patil Shanker Rao, learned counsel for the petitioners in some of the writ petitions have adopted the arguments advanced by Sri Koka Satyanarayana Rao and Sri A.K.Jayaprakash Rao, learned counsel for the petitioners.

8. On the other hand, Sri B.G.Ravinder Reddy, learned Standing Counsel for the respondent Corporation relied on the judgments reported in **Mumbai Kamgar Sabha and another v. State of Maharashtra and others**[10], **M/s.Hindu Jea Band, Jaipur v. Regional Director, Employees' State Insurance Corporation, Jaipur**[11], **M/s.Cochin Shipping Co v. E.S.I Corporation**[12], **Whirlpool of India Ltd., v. Employees' State Insurance Corporation**[13], **M/s. Sadaf Enterprises v. Regional Director, Employees State Corporation, Kanpur and another**[14] and the judgment of Madras High Court in W.P.Nos.2471 of 2007 and batch.

9. In view of above factual matrix, the short question that arises for consideration in these writ petitions is whether the impugned notification i.e., G.O.Ms.No.582, Labour, Employment, Training and Factories Department, dated 14.10.2008 issued by the first respondent, in exercise of the powers conferred under sub-section (5) of Section 1 the Act of 1948 extending the provisions of the said Act to Private Educational Institutions (those run by individuals, trustees, societies or other organizations) and Medical Institutions (including Corporate, Joint Sector, trust, charitable and private ownership hospitals, nursing homes, diagnostic Centres, pathological labs) wherein 20 or more persons are employed or were employed any day of the preceding twelve months, is legally valid? If so, whether exclusion of the Medical and Educational Institutions established and run by Ramakrishna Math and Ramakrishna Mission from the purview of the

notification is discriminatory? If so, the impugned notification covering the petitioners alone are liable to be struck down on the ground of violation of Article 14 of the Constitution of India.

10. Learned counsel for the petitioners vehemently contended that the educational institutions cannot be classified as establishment or a class of establishments, industrial, commercial, agricultural or otherwise, as such, cannot be covered under Section 1(5) of the Act of 1948. He would further contended that the establishment under Section 1(5) of the Act relates to establishments carrying on business, trade or profession or any work in connection with or identical or ancillary to any business, trade or profession as it is clarified by the words 'industrial, 'commercial', 'agricultural' or 'otherwise' under Section 1(5) of the Act of 1948. He further submits that the educational institutions are neither industrial nor commercial or professional establishments under Section 1(5) of the Act of 1948, as such, impugned notification issued by the State Government is not valid.

The preamble to the Act of 1948 reads as follows:

> "An Act to provide for certain benefits to employees in case of sickness, maternity and 'employment injury' and to make provision for certain other matters in relation thereto." The Act extends to the whole of India except the State of Jammu and Kashmir.'
>
> By sub-section 4 of Section 1 of the Act of 1948, the Act is made applicable 'in the first instance' to all factories (including factories belonging to the Government) other than seasonal factories.

Section 1(5) of the Act of 1948, in exercise of powers under which the impugned notification has been issued, reads as follows:

> "Section 1(5): The appropriate Government may, in consultation with the Corporation, and (where the appropriate Government is a State Government, with the approval of the Central

> Government), after giving six months' notice of its intention of so doing by notification in the official Gazette, extend the provisions of this Act or any of them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.
>
> Provided that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State."

A perusal of preamble and provisions of the of the Act of 1948, there cannot be any doubt that it is a welfare legislation intended to provide for insurance in case of illness, disablement, maternity or employment injury. The Act of 1948 is made applicable in the first instance to all the factories including factories belonging to Government other than seasonal factories in view of Section 1(4) of the Said Act. Section 1(5) of the Act empowers the Government to apply the Act to other establishments also if it so desires. The Act provides for the extension of benefit to the employees in other establishments or class of establishments, industrial, commercial, agricultural or otherwise. The appropriate Government has to take initiative for extending the benefit by way of a notification.

11. The Act of 1948 also provides for medical benefits, sickness benefits, maternity benefits, disablement benefits and dependent benefits to the employees besides grant of cash benefits to the employees in recognized contingencies of sickness, maternity and employment injury. The area of the application and operation of the Act of 1948 is moderately ample. A plain reading of Section 1(5) of the Act, it is apparent that the Act is applicable to all factories other than the seasonal

factories and it may be extended in part or wholly to any establishment or establishments or class of establishments. The exclusion clause with regard to application of the Act of 1948 is given under Section 2(9) of the Act of 1948 while giving definition to term 'employee', which shows that intention of legislature is to cover all kind of factories (excluding seasonal factories) and establishments irrespective of their nature.

12. Now, it is to be seen whether the educational institutions can be termed and treated as class of establishments for application of the Act of 1948. For the sake of convenience, Section 2(ka) of the Industrial Disputes Act, 1947 reads as follows:

> "2(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:
>
> Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then.
>
> (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
>
> (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof, shall be deemed to be an industrial establishment or undertaking."

In view of the definition referred to above, 'industrial establishments' means an establishment in which any industry is carried on. According to Section 2 (j) of the Industrial Disputes Act, 1947, educational institution is an industry, as held by the Hon'ble Apex Court in the case of **Bangalore Water**

Supply and Sewerage Board v. A.Rajappa and others[15]**.** The Hon'ble Apex Court, while dealing with the issue of educational institutions held that educational institutions are having all the necessary ingredients to constitute them as an industry and held as under:

> "121. The final ground accepted by the Court is that education is a mission and vocation, rather than a profession or trade or business. The most that one can say is that this is an assertion which does not prove itself. Indeed, all life is a mission and a man without a mission is spiritually still-born. The high mission of life is the manifestation of the divinity already in man. To christen education as a mission even if true, is not to negate its being an industry. We have to look at educational activity from the angle of the Act, and so viewed the ingredients of education are fulfilled. Education is, therefore, an industry and nothing can stand in the way of that conclusion."

The main thrust of the argument of the writ petitioners is that educational institution is not an Industry. In view of law laid down by the Hon'ble Supreme Court in the above referred judgment, it can safely be concluded that educational institutions are industries, as such, the argument advanced by the learned counsel for the petitioners cannot be countenanced. The educational institution being an industry, the same is covered in the term 'class of establishments' as stated in Section 1(5) of the Act of 1948. Therefore, the only possible view that could be taken in the face of words contained in Section 1(5) of the Act of 1948 is that educational institutions are also covered by the expression 'industrial establishment'. More over, the term 'otherwise' in Section 1(5) of the Act of 1948 empowers the Government to include the establishment which are not even industrial, commercial or agricultural and it is intended to provide social security to the employees. As discussed supra, it cannot be said that educational institution is not an industry.

13. Learned Counsel for the respondent Corporation submits that the State Government is the appropriate government for issuing notification with regard to applicability of the provisions of the Act to any class of establishments. In support of his contention, he relied on the judgment reported in **Mumbai Kamgar Sabha and another v. State of Maharashtra and others (supra),** wherein the Bombay High Court held as follows:

> "6. …………The appropriate Governments were given the discretion to apply the provisions of the Act or any of them. Where the State Government was the appropriate government it had not only to consult the corporation an obligation imposed upon it in common with the Central Government but was further obliged to get the Central Government's approval to notifications it proposed to issue. The deducible inference is that the legislature was aware of the radical nature of the legislation and the need to proceed cautiously having regard to the limitations, which, though unstated, were obvious. In the face of the enthroned gradualism can it possibly be said that the discretion vested in the government vide sections (5) (sic) is as circumscribed as that canvassed on behalf of the petitioners? The government can extend the Act or any portion thereof. It can do so vide any other establishment (in contradistinction to factories other than seasonal factories) or class of establishments. The class contemplated may be industrial, commercial, agricultural or otherwise. That there can be establishments of a character other than industrial, commercial or agricultural cannot be disputed. An example of this is a travel agency. That being the position it will be erroneous to hold that the words "or otherwise" are to be read in a restricted sense and take their colour from the three words preceding them. These preceding words cannot supply the idea of a genus. Indeed the genus lies in the words "any other establishment or class of establishments". The three words which follow each represent a specie. But the legislature did not want to restrict the operation of the Act to these 3 species and therefore, used the catch-all words "or otherwise".

A plain reading of Section 1(5) of the Act of 1948, it is clear that the word 'otherwise' used in Section 1 (5) of the Act has wide amplitude. The legislature, in exercise of its wisdom, has empowered the Government to bring in not merely the industrial, commercial or agricultural establishments, but also other establishments including the educational establishments. When the provisions of the Act of 1948 can be made applicable to educational establishments or the institutions, then the word 'employee' would accordingly apply to the employees working therein. The word 'otherwise' used in Section 1 (5) of the Act of 1948 cannot be given restrictive meaning by applying the principle of *ejusdem generis*. Therefore, the scope of the words 'or otherwise' used in Section 1(5) of the Act cannot be restricted to some class of establishments.

14. In regard to the learned counsel for the petitioners' argument that the impugned G.O exempted medical and educational institutions established and run by Ramakrishna Mutt and Ramakrishna Mission and same is discriminatory. The choice of establishments to be covered under the impugned G.O by the Government, is a matter within the discretion of the appropriate Government and that it is for the respective Government to decide which sections of the establishments are to be brought under the ESI scheme and also such allied matters, as the said power was delegated to them under Section 1(5) of the Act of 1948. The contention that exclusion of medical and educational institutions established and run by Ramakrishna Mutt and Ramakrishna Mission, is discriminatory in nature and that the same is in violation of Article 14 of the Constitution of India, cannot be accepted.

In **The Employees' State Insurance Corporation, Bombay v. Fariyas Hotels Pvt. Ltd., and others**[16] the High Court of Bombay held as follows:

"12. Finally Mr. Chinoy submitted that the notification is

> discriminatory and violative of Article 14 of the Constitution. It was urged that the notification differentiates between the establishments referred to in the notification and those not referred to therein and also those stated in the areas mentioned in the notification and the areas not mentioned in the notification. It was contended that there is no rational nexus for such differentiation which could be related to the object of the Act. We are unable to see any merit in the contention because S.1(5) of the Act enables the State Government to extend the scheme to any establishment or class of establishments and the expression 'class of establishments' clearly indicates that the State Government can differentiate between establishments and also between those situated in different areas. The object of the Act is to extend certain benefits to the employees in case of sickness, maternity and employment injury and differentiation between the establishment and even on the basis of area as a rational nexus to secure the object of the Act. As pointed out by Karnataka High Court, similar submissions was rejected by the Supreme Court observing that it was settled law that in order to give effect to the policy of the Government clearly indicated in the statute in question, it is open to the executive authority to make a geographical classification so as to apply the law to selected areas with a view ultimately to cover the whole territory for which the law was enacted. In our judgment, it is necessary to classify on geographical basis for the purpose of enforcing the Act by stages because otherwise the implementation of the Act itself would become extremely difficult, if not impossible. The challenge to the notification under Art. 14 of the Constitution of India therefore must fail. In our judgment, the impugned notification does not suffer from any infirity and the Company is not entitled to any relief."

Section 1(5) of the Act of 1948 enables the State Government to extend the scheme to any establishment or class of establishments and the expression 'class of establishments' clearly indicates that the State Government can differentiate between establishments and also between those situated in different areas. The main object of the Act is to extend certain benefits to the employees in case of sickness, maternity and employment injury and differentiation between the establishment and even on the basis of area as a rational nexus to secure the object of the Act. The impugned G.O is issued by the executing authority in pursuance to the policy of the Government to provide social security to the employees. Therefore, it is for the Government to make a classification so as to apply the provisions of the Act to selected areas with a view ultimately to cover whole territory for which the law was enacted.

15. Learned counsel for the petitioners' argued that the petitioners' institutions are not business establishments under the A.P. Shops and Establishment Act and it is not a business centre or service centre.

In **M/s.Cochin Shipping Co. v. E.S.I.Corporation (supra)** the Hon'ble Supreme Court held as follows:

> "13. The Employees State Insurance Act is an Act to provide certain benefits to employees in case of sickness, maternity and employment injury and make provision for certain other matters in relation thereto. The Act is an outcome of a policy to provide remedy for the widespread evils arising from the consequences of national poverty. Indeed, it is a piece of social security.
>
> 14. Under Section 1 (4), in the first instance, it is made applicable to all factories. The Act envisages the extension of benefit to the employees in other establishments or class of establishments, industrial, commercial, agricultural or otherwise. The extension of benefit is to be done by means of a notification by the appropriate Government. Thus the benefits conferred by the Act cover a large area of employees than what the Factories Act and the akin legislations intended. The conclusion is inescapable that it is a welfare legislation. The endeavour of the Court should be to place a liberal construction so as to promote its objects to which a reference has been made."

In **Whirlpool of India Ltd., v. Employees' State Insurance Corporation (supra),** the Hon'ble Supreme Court held as follows:

> "5. The Act is a social legislation enacted to provide benefits to employees in case of sickness, maternity and employment injury and to make a provision for certain other matters in relation thereto. Broadly this is the purpose for which the Corporation has been established under Section 3 of the Act. The main source of the Employees' State Insurance Fund is the contributions paid to the Corporation (Section 26). The benefits to be provided to insured persons and others are as provided in Chapter V, in particular, Section 46 thereof. The words and expressions used but not defined in the Act and defined in the Industrial Disputes Act, 1947, are to have the meanings respectively assigned to them in the Industrial Disputes Act. Undoubtedly, any provision of which two

interpretations may be possible would deserve such construction as would be beneficial to the working class but, at the same time, we cannot give a go by to the plain language of a provision."

The petitioners' institutions are established under the Educational Society and registered under the Societies Act. As per Section 1 (5) of the Act of 1948, the Societies registered under the Societies Act are also covered. Section 1(5) of the Act of 1948 also empowers the appropriate Government to extend the provisions of the Act to any other establishments in consultation with the Employees State Insurance Corporation after giving six months notice. Accordingly, the Government of Andhra Pradesh in consultation with the Central Government issued an intention notification on 23.11.2007 in Official Gazette and called for the objections to the proposed extension of the provisions of the Act to Educational and Medical Institutions.

While interpreting the definition of the term 'establishment' found under Section 1(3) of the Payment of Gratuity Act, the Hon'ble Supreme Court in the judgment reported in **State of Punjab v. Labour Court**[17] has held that the term 'establishment' need not be having any reference to the establishments covered by the provisions of the Shops and Establishments Act, and it should have a general meaning. Therefore, term 'establishment' under Section 1(5) of the Act of 1948 will include every establishment which need not have the characteristics of industrial, commercial or agricultural establishments. Any establishment can be validly notified by the appropriate Government to be covered by the provisions of the Act.

As per law laid down by the Hon'ble Supreme Court in the above judgments, it is imperative to construe the Act liberally to attain its objective, as such, it cannot be said that the petitioners' institutions are not establishments under the provisions of the Act of 1948.

16. Learned counsel for the petitioners contended that since the petitioners have not deducted the contributions of the employees, the payment of employees' contribution should be made from the date of the order of the writ petition but not from the date of notification. He would further contend that the petitioners have provided the required medical facilities for their employees. In support of his contention he relied on the judgment reported in **Employees' State Insurance Corporation and others v. Jardine Henderson Staff Association and others (supra),** wherein it is observed as follows:

> "66. The act of Court can prejudice no party either the ESI or the respondent-companies. We, therefore, relieve the respondents from making any contributions for the period in question and direct them to make the contribution as directed by the Division Bench of the High Court. It is stated that some of the respondents have already filed exemption applications and that the appellant-Corporation has also granted them necessary relief. We also permit the other respondents who have not filed any exemption application may now file the same and if such application for exemption is filed, it is for the authorities to consider the same on merits and in accordance with law.

Learned Standing Counsel for the respondent Corporation contended that when once the provisions of the Act and impugned notification is upheld by this Court, then the coverage of the same shall be made only from the date of the notification issued under Section 1(5). In support of his contention, he relied on the judgment of **Muthu Rathina Arangam Matriculation School, Kundanpalayam, Puducherry v. Senthil Education Society** in W.P.Nos.2471 of 2007 & batch, wherein it is held as follows:

> "39. Mr. G.Masilamani, learned Senior Counsel appearing for some of the petitioners pleaded that if ultimately this court should hold if

> the provisions of the ESI Act are applicable to the petitioners, then the coverage should be made only from the date of the judgment and not from the date of the notification issued under Section 1(5). However, this Court cannot grant any such relief, since passing such an order would amount to prevent the respondents from enforcing the provisions of a valid law. In a writ in the nature of mandamus, the High Court acting under Article 226 of the Constitution of India cannot direct the authorities either to disobey the law or to act contrary to the provisions of the enactment."

In view of the aforesaid judgment and the reasons given therein, the contention of the learned counsel for the petitioners that the payment of contribution of employees should be from the date of judgment is rejected.

17. It is pertinent to note that neither the petitioners nor any person on behalf of the petitioners have raised any objections before the appropriate Government after issuance of the intention notification. It is not the case of the petitioners that they have filed objections to the intention notification issued by the first respondent on 23.11.2007 in official Gazette. Therefore, a final notification was issued on 14.10.2008, after expiry of nearly eleven months, extending the provisions of the Act of 1948 to Educational and Medical Institutions from the date of publication in the official Gazette.

In this regard, the High Court of Madras in the judgment of **Maharaja College of Arts and Science v. The State of Tamil Nadu** passed in W.P.No.2872 of 2011 and other connected writ petitions on 14.03.2011, held as follows:

> "The petitioners who have not raised any particular objections cannot be now be heard to plead that either they were not heard or there was not satisfaction by the Government in finalizing the satisfaction."

Hence, it is not appropriate for the petitioners' institutions to agitate after issuance of final notification. Moreover, the Act of 1948 is beneficial legislation and in case of any ambiguity, it requires to be interpreted in favour of those, who are to be benefited by the application of the Act.

18. Learned counsel for the petitioners vehemently argued that ESI Corporation is not having sufficient infrastructure to provide treatment for the factories, the question of providing treatment for the employees working in schools does not arise and that the petitioners are offering better medical facilities to their employees. In support of his contention, he relied on the judgment reported in **Employees' State Insurance Corporation v. Distilleries & Chemical Mazdoor Union and others (supra),** wherein the Hon'ble Supreme Court held as follows:

> "31. The High Court, in our opinion, while disposing off the writ petition filed by the Union has taken a just, pragmatic, fair and judicious view after considering all the equities and facts and circumstances of the case. Extreme hardship might have been caused to both the employer as well as the employee since no medical facilities have been availed by the workmen from ESIC and the employer had provided medical facilities to the workmen as per the Court orders and also had paid medical allowances."

The said argument is opposed by the learned Counsel appearing for the Corporation by stating that the ESI Corporation has good infrastructure, that it has tie-up with many super speciality hospitals and referral hospitals. The ESI Corporation is providing comprehensive medical care besides cash benefits to the employees. It is pertinent to mention that none of the employees of the petitioners have filed these writ petitions nor they are arraigned as the respondents to these writ petitions. Moreover, whether the petitioners have better medical facilities than that of the ESI Corporation is a disputed question of fact, which cannot be resolved in the proceedings under Article 226 of the Constitution of India.

19. It is an admitted fact that the petitioners seek to challenge

the impugned notification which is in favour of their employees and in none of the writ petitions, employees who are to be benefited by the application of the ESI Act have been made as parties. The Hon'ble Supreme Court in the judgment of **Fertilizers & Chemicals Travencore Ltd., v. ESI Corporation**[18]**,** in the context of the exclusion of the ESI Act in its application to the employees clearly held that in such cases, the employees should be made either individually or in a representative capacity as parties to such proceedings, without which the court cannot adjudicate such issue. Moreover, the other High Courts i.e., the High Court of Jammu and Kashmir in the case of **Private Schools Coordination Committee v. State & Others [2011 LAB.I.C.997],** High Court of Allahabad in **Maharishi Shiksha Sansthan and Maharishi Vidya Mandir through its Principal v. State of U.P through Secretary, Labour and Employees State Insurance Act [2009 (1) AWC 267]** have also upheld the similar notifications, which is impugned in these writ petitions. The other decisions relied on by the learned counsel for the petitioners are not applicable to the facts and circumstances of the case on hand, as such, they have not been considered.

In the light of the above factual matrix and the legal precedents, no case is made out by the writ petitioners warranting interference with the impugned G.O by exercising the power of judicial review under Article 226 of the Constitution of India. Accordingly, all the writ petitions are dismissed. However, it is open for the petitioners to file applications for exemption as per the provisions of the Act. Since they stated that they have provided required medical facilities and it is for the competent authority to deal with the same, as per law.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in these writ petitions, shall stand closed.

A.RAJASHEKER REDDY, J

06.10.2015.
KVS

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.Nos.6363, 5101, 6977, 9546, 12283, 14625, 18294, 18520, 19942, 20541, 20899, 22388, 22557, 24561, 24650, 26255, 26374, 27413, 27630 of 2009

W.P.Nos.1473, 2350, 3023, 3431, 6175, 6381, 7993, 10046, 13163, 17375, 18549, 22111, 22116, 26581, 28419, 28718 of 2010,

W.P.Nos.3307, 2737, 5971, 16351, 21055, 21898, 24078, 24852, 27163, 27214, 29057, 29636 and 34075 of 2011,
and
W.P.Nos. 32047 & 40605 of 2012

Date: 06.10.2015

kvs

---

[1] 1993 (1) S LR 743 = AIR 1993 SC 2178

[2] (1978) 4 Supreme Court Cases 204

[3] (2005) 5 Supreme Court Cases 1

[4] AIR 2006 Supreme Court 2767

[5] AIR 1978 Andhra Pradesh 146

[6] (2009) 15 Supreme Court Cases 327

[7] (1990) 2 Supreme Court Cases 259
[8] (1985) 1 Supreme Court Cases 218
[9] (2006) 6 Supreme Court Cases 604
[10] 1991 LAB.I.C.1206
[11] (1987) 2 Supreme Court Cases 101
[12] (1992) 4 Supreme Court Cases 245
[13] (2000) 3 Supreme Court Cases 185
[14] 1981 LAB.I.C 490
[15] AIR 1978 SC 548= (1978) 2 SCC 213
[16] 1988 LAB.I.C.754
[17] (1980) 1 SCC 4
[18] (2009) 9 SCC 485