

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.26031, 25744 & 25752 of 2017

Erode Christian College of Arts and Science
College for Women
rep.by its Secretary
CSI Compound, Erode 638 001

.. Petitioner in WP No.26031 of 2017

Valivalam Desikar Polytechnic College
South Palpannaicherry, Nagore Main Road
Nagapattinam 611 003
rep.by Chairman cum Correspondent
Smt.Ezhilarasi Manoharan
W/o Manoharan

.. Petitioner in WP No.25744 of 2017

Shri Balaji Nursery & Primary School
rep.by its Correspondent
D.Palaniappan
S/o Dhakshinamoorthi
18,19 Beeman Street
Behind Old Town Bus Stand
Kumbakonam 612 001

.. Petitioner in WP No.25752 of 2017

-VS-

1. The Government of Tamil Nadu
rep.by its Principal Secretary to Government
Labour and Employment Department
Secretariat, Fort St.George
Chennai 600 009

2. The E.S.I.Regional Corporation
rep.by its Regional Director
143, Sterling Road
Chennai 600 034

.. Respondents 1 & 2 in all the W.P's

3. The Deputy Director Ins IV
Sub Regional Office (Coimbatore)
Employees State Insurance Corporation
1897, Trichy Road, Panchdeep Complex
Ramadhapuram
Coimbatore 641 045

.. 3rd Respondent in WP No.26031 of 2017

4. The E.S.I.Sub Regional Office
rep.by its Deputy Director
39/57, Theerthamalai Vaniga Valagam
Three Roads, Salem 636 009

.. 3rd Respondent in WP Nos.25744 &
25752 of 2017

W.P.No.26031 of 2017 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for entire records in respect of the impugned G.O.Ms.No.237, Labour and Employment (K1) Department dated 26.11.2010, published in Tamil Nadu Government Gazette Notification No.51 Part II - Section 2 dated 29.12.2010 from the file of the first respondent and the consequential proceedings No.5600 110761 0031 303/Ins III/C-18 (ADHOC) dated 22.06.2017 passed by the third respondent purportedly under Section 45A of Employees State Insurance Act (as amended) on the strength of the G.O.Ms.No.237 dated 26.11.2010 and quash the same.

W.P.No.25744 of 2017 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records pertaining to the impugned G.O.Ms.No.237, Labour and Employment (K1) Department dated 26.11.2010 passed by the first respondent published in Tamil Nadu Government Gazette dated 29.12.2010 and the consequential proceedings of the third respondent in Ref.No.63000940320001304/SALEM/INS-I/607/16 dated 21.03.2017 directed the petitioner to remit the contribution and to quash the same.

W.P.No.25752 of 2017 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records pertaining to the impugned G.O.Ms.No.237, Labour and Employment (K1) Department dated 26.11.2010 passed by the first respondent and the consequential proceedings of the third respondent in Ref.No.63000932860001302/INS/SRO/SLM/139/12 dated 27.10.2016 directed the petitioner to remit the contribution and to quash the same.

For Petitioners:: Mr.D.Shivakumaran
in W.P.No.26031 of 2017
Mr.S.Gunalan in W.P.Nos.25744 &
25752 of 2017

For Respondents:: Mr.V.Jayaprakash Narayanan
Special Government Pleader for R1
Mr.C.V.Ramachandramoorthy
for R2 & 3

ORDER

The present writ petitions are directed against the validity of G.O.Ms.No.237, Labour and Employment (K1) Department dated 26.11.2010 passed by the first respondent and the consequential proceedings of the respective third respondent directing the petitioners to make the contributions in respect of their employees under the Employees' State Insurance Act, 1948.

2. Heard the learned counsel for the parties.

3. Since the issue raised is common in all the writ petitions, for convenience, the facts as pleaded in W.P.No.26031 of 2017 are narrated in this order. The petitioner is a minority educational institution run by the trustees, but not amenable to the Employees' State Insurance Act. While so, the third respondent-Regional Deputy Director Ins IV, Sub Regional Office, Employees State Insurance Corporation sent a letter to the petitioner intimating the coverage of the educational institutions like the petitioner under the Employees State Insurance Act and thereupon called upon the petitioner to remit the contributions. In the said letter, the third respondent also directed the petitioner to register all the employees immediately and arrange to distribute the identity cards to all the workers including the contract workers. After sometime, a show cause notice was also issued to the petitioner on 22.6.2017 based on the impugned G.O.Ms.No.237 dated 26.11.2010 calling upon them to file the statement with particulars about the contributions due and payable under the ESI Act. The third respondent has issued the aforementioned show cause notice dated 22.6.2017 without knowing the order passed in a batch of writ petitions by this Court. This Court, by order dated 16.6.2015 in W.A.Nos.918 of 2013, has held that the question of law "whether the Employees' State Insurance Act, 1948 would apply to educational institutions?" has been referred to a larger bench of the Hon'ble Supreme Court as recorded in the order dated 5.5.2005 in State of Uttar Pradesh v. Jai Bir Singh, (2005) 5 SCC 1, that the parties would be bound by the legal position to be enunciated by the Supreme Court and in the meanwhile, interim orders would continue till the disposal of the matter by the Supreme Court. This clearly shows that the issue as to whether the educational institutions are also covered by the ESI Act is pending for consideration. Therefore, the matters are to be kept pending by granting an order of stay of operation of the aforementioned Government Order in respect of the educational institutions.

4. Per contra, the learned Special Government Pleader for the State and the learned standing counsel for the ESI, placing on record the judgment passed by the Hon'ble Division Bench in W.A.No.608 of 2017 dated 6.7.2017 (ESI Regional Corporation

(Tamil Nadu) represented by its Regional Director, Chennai and two others v. Avila Convent Matriculation Higher Secondary School, Coimbatore and another), submitted that now much development had taken place because, when a similar issue arose before the Kerala High Court, after considering the identical contentions made by the petitioners therein that the educational institutions are not falling within the ambit of the ESI Act, repelling the said contentions, the Division Bench of the Kerala High Court, by order dated 3.7.2009, held that the educational institutions are also to be brought under the purview of the ESI Act and the said judgment was also affirmed by the Supreme Court by dismissing the S.L.P.Nos.28285 of 2009 etc., filed by the educational institutions, in its order dated 15.3.2016, holding as follows:-

"Heard Learned counsels for the parties and perused the relevant material. We do not find any legal and valid ground for interference. The Special Leave Petitions are dismissed.

As a sequel to the above, all pending interlocutory applications are disposed of."

In view of the dismissal of the S.L.P's, the Division Bench of this Court in the aforementioned judgment dated 6.7.2017 disposed of a similar matter.

5. Since the order passed by the Division Bench of the Kerala High Court holding that the educational institutions are also amenable to the ESI Act and they should also make their contributions has been affirmed by the Apex Court, this Court, bound by the order passed by the Division Bench dated 6.7.2017, is not inclined to entertain the present writ petitions.

6. In one another order passed by the Division Bench of this Court in W.P.No.22948 of 2017 dated 6.9.2017 (GRG Matric Higher Secondary School, Coimbatore v. State of Tamil Nadu represented by its Principal Secretary to Government, Labour and Employment Department, Chennai and two others), while dismissing the writ petition, taking into consideration the difficulties expressed by the petitioner school therein, the arrears of ESI contribution as on 31.8.2017 were ordered to be paid in 12 equal monthly instalments with a further direction to the petitioner therein to pay the ESI contribution on regular basis without fail from the month of September, 2017.

7. In the light of the above, the petitioners herein are permitted to pay the arrears of ESI contributions as on 30.09.2017 in 12 equal monthly instalments and it is made clear that from the month of October, 2017, the petitioners are directed to pay the ESI contributions on regular basis without fail. The writ petitions are disposed of accordingly.

Consequently, W.M.P.Nos.27633, 27634, 27168, 27169, 27176 & 27177 of 2017 are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Principal Secretary to Government
Labour and Employment Department
Secretariat, Fort St.George
Chennai 600 009
2. The Regional Director
E.S.I.Regional Corporation
143, Sterling Road
Chennai 600 034
3. The Deputy Director Ins IV
Sub Regional Office (Coimbatore)
Employees State Insurance Corporation
1897, Trichy Road, Panchdeep Complex
Ramadhapuram
Coimbatore 641 045
4. The Deputy Director
E.S.I.Sub Regional Office
39/57, Theerthamalai Vaniga Valagam
Three Roads
Salem 636 009

+1cc to Mr.D.Shivakumaran, Advocate, S.R.No.72365
+2cc's to Mr.S.Gunalan, Advocate, S.R.No.72456,72449
+3cc's to Mr.C.V.Ramachandra Murthy, Advocate SR.No.72558
+1cc to the Government Pleader, S.R.No.72632,72630,72631

W.P.Nos.26031, 25744 & 25752 of 2017

PVS (CO)
GN(08/11/2017)