

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.27004 of 2017 and WMP.No.28816/2017

The Erode College of Pharmacy and
Research Institute
rep. by its Secretary & Correspondent,
Perundurai Main Road,
Vallipurathanpalayam P.O.,
Veppampalayam,
Erode-638 112.

.. Petitioner

-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 Employees State Insurance Corporation
rep. by its Deputy Director of ESIC (INS-IV),
1897, Trichy Road, Pradeep Bhavan,
Ramanathapuram, Coimbatore-641 045.

.. Respondents

The Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Declaration, declaring that the coverage of ESI to the petitioners pursuant to the Notification extending Employees' State Insurance Scheme to Private Educational Institutions in all the implemented area under Employees State Insurance Act by G.O.Ms.No.237, Labour and Employment (K1) Department dated 26.11.2010 published vide Tamil Nadu

Government Gazette in Part-II-Section 2 dated 29.12.2010 and Government vide Labour and Employment Department Notification No.II (2) LE/265/2008 published at Page 206 of Part-II Section 2 of the Tamil Nadu Government Gazette, dated 4th June 2008 as "Null and Void" and hold the consequent/attendant letters of the 2nd respondent vide No.56001107550001305/3112013425, dated 24.05.2013 and No.56001107550001305/12112013952 dated 12.12.2013 and No.56001107550001305/ Ins IV dated 11.8.2016 and other under Section 45A of the ESI Act, 1948 Vide No.56001107570001302/Ins IV/6202017956 dated 20.06.2017 for period 01.06.2012 to 30.11.2012 and Notice No.5600110755001305/Ins-III/C-18 (ADHOC) dated 03.07.2017 for period 12/2012 to 12/2016, informing the petitioner that it is covered under Employees State Insurance Act, 1948, as non-est in law, in so far as they relate to the petitioner institution.

For Petitioners :: Mr.K.Shakespeare

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

ORDER

The present writ petition is 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 third

respondent directing the petitioner 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. 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, an impugned order dated 20.06.2017 followed by a show cause notice dated 03.07.2017 was also issued to the petitioner 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 2nd respondent has issued the aforementioned show cause notice dated 03.07.2017 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 petition.

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

T.RAJA, J.

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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 petitioner herein is 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 petition is disposed of accordingly. Consequently, connected Miscellaneous Petitions are closed. No costs.

Speaking/Non speaking order

20.10.2017

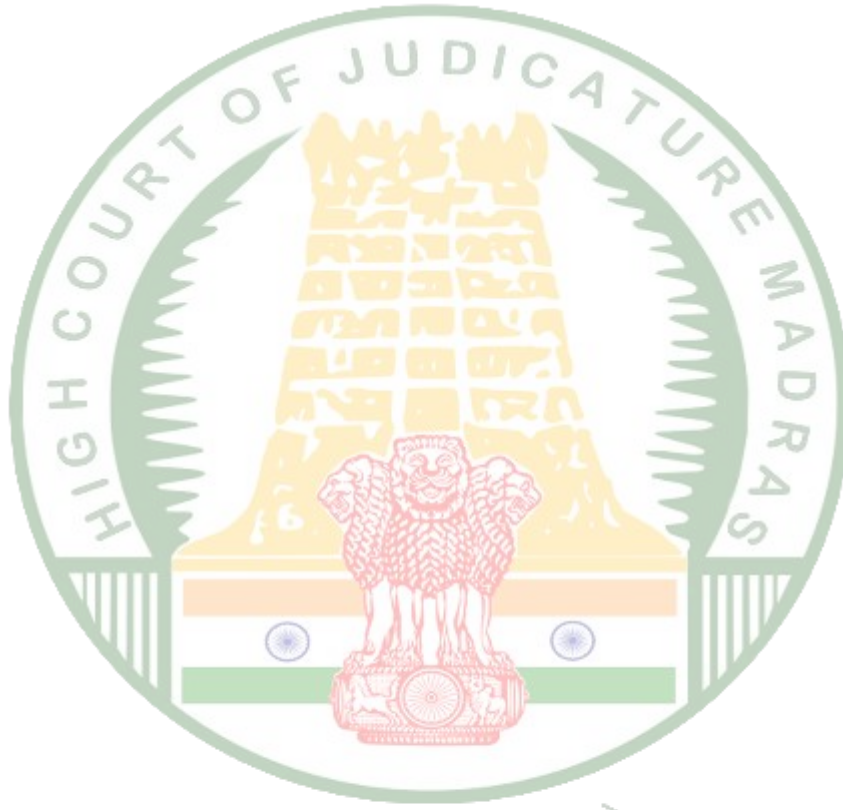
Index : yes/no

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To

1. The Principal Secretary to Government
Labour and Employment Department
Secretariat, Fort St.George
Chennai 600 009
2. The Deputy Director of ESIC (INS-IV),
Employees State Insurance Corporation,
1897, Trichy Road, Pradeep Bhavan,
Ramanathapuram, Coimbatore-641 045.

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