

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1010 of 2018 and
CMP Nos.8528 and 8529 of 2018

1.M/s.Saran Matriculation Higher
Secondary School, Sitra Road,
Kalappatti Post,
Coimbatore - 641 048.
Rep. by its correspondent
Dr.K.C.Ramaswami

2.Dr.K.C.Ramaswami

..... Appellants

vs

1.Employees' State Insurance Corporation,
Regional Office, Panchdeep Bhavan
No.143, Sterling Road, Chennai - 600 034
Rep. by its Additional Commissioner.

2.Employees' State Insurance Corporation,
Sub-Regional Office - Coimbatore,
Panchdeep Complex,
1897, Trichy Road,
Ramanathapuram, Coimbatore,
Rep. by its Deputy Director.

..... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent
against the order passed in W.P No.6706 of 2018 dated 23.03.2018.

W.P No.6706 of 2018

Writ Petition is filed under Article 226 of the constitution
of India praying to issue a writ of certiorarified Mandamus,
Calling for the records of the Notice dated 3.11.2017 bearing
No.56001109730001302/ 1132017337 issued by the 2nd respondent
and quash the same and directing the second respondent to
refrain from taking any action against the petitioners under the
Employees State Insurance Act 1948.

For Appellants : Mr.K.R.Arun Shabari

For Respondents : Mr.K.Prabhakar

J U D G M E N T

[Judgment of the Court was delivered by
K.K. SASIDHARAN, J.]

The challenge in this intra court appeal is to the order dated 23 March 2018 dismissing the writ petition challenging the notice dated 3 November 2017 issued by the Employees' State Insurance Corporation, directing the appellant to pay a sum of Rs.1,81,997/- towards ESI contribution.

The Facts

2. The appellant is an Educational Institution. The Government of Tamilnadu issued an order in G.O.Ms.No.237 Labour and Employment Department, dated 26 November 2010 extending the provisions of Employees State Insurance Act (hereinafter referred to as "ESI Act") to the educational institutions. The Government institutions and aided institutions were exempted from the purview of the ESI Act.

3. The Employees State Insurance Corporation pursuant to the order in G.O.Ms.No.237 dated 26 November 2010, which was published in the Government Gazette on 29 December 2010, initiated action for collecting contribution from the appellant under the ESI Act. The Corporation issued a notice dated 3 November 2017, calling upon the appellant to pay a sum of Rs.1,81,997/- towards ESI contribution. The appellant filed a writ petition challenging the notice primarily on the ground that the question as to whether educational institutions would come within the definition of "industry" is pending before the larger Bench and as such, it was not open to the Government to issue an order extending the provisions of the ESI Act to private educational institutions.

4. The learned single Judge while negating the contention raised by the appellants permitted them to pay the contribution in instalments. Feeling aggrieved by the said order, the appellant has come up with this intra court appeal.

5. We have heard the learned counsel for the appellants and the learned Standing Counsel for the Employees State Insurance Corporation.

Discussion

6. The appellant is an educational institution employing more than 20 employees. The institution was not covered earlier under the ESI Act. The Government for the first time issued an order in G.O.Ms.No.237 Labour and Employment Department, dated 26 November 2010 extending the provisions of ESI Act to the educational institutions, excluding Government and Government aided institutions. The act covers all the educational institutions run by the individuals, trustees, societies or other organizations, wherein twenty or more persons are employed or were employed on any day of the preceding twelve months. The notification was published in the Government Gazette on 29 December 2010. The appellant challenged the notice on the ground that educational institution is not an industry and as such, it is not open to the Government to extend the provisions of the ESI Act to such institutions.

7. The Government of Kerala issued a similar Government Order dated 8 October 2017 extending the provisions of ESI Act to the educational institutions run by the individuals, trustees, societies or other organizations, wherein twenty or more persons are employed or were employed on any day of the preceding twelve months. The said Government Order which is pari materia was challenged before the Kerala High Court in W.P.(C) Nos.5986 of 2008. The Division Bench of the High Court of Kerala considered the legality of the Government Order in the light of the provisions of the ESI Act and concluded that the benefits conferred by the ESI Act cover a large area of employees than what the Factories Act and the akin legislations intended. The Division Bench by judgment dated 3 July 2009 dismissed the writ petitions and upheld the validity of the Government Order.

8. The judgment dated 3 July 2009 in W.P.(C) Nos.5986 of 2008 of the Kerala High Court was taken up before the Hon'ble Supreme Court in SLP (C) Nos. 28285 of 2009. The Hon'ble Supreme Court dismissed the Special Leave Petitions by order dated 15 March 2016.

9. The issue raised by the appellant is therefore no longer res integra in view of the decision of the Kerala High Court, which was subsequently upheld by the Hon'ble Supreme Court. We are therefore of the view that there is absolutely no merit in the contention taken by the appellant.

10. In the upshot, we dismiss the intra court appeal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

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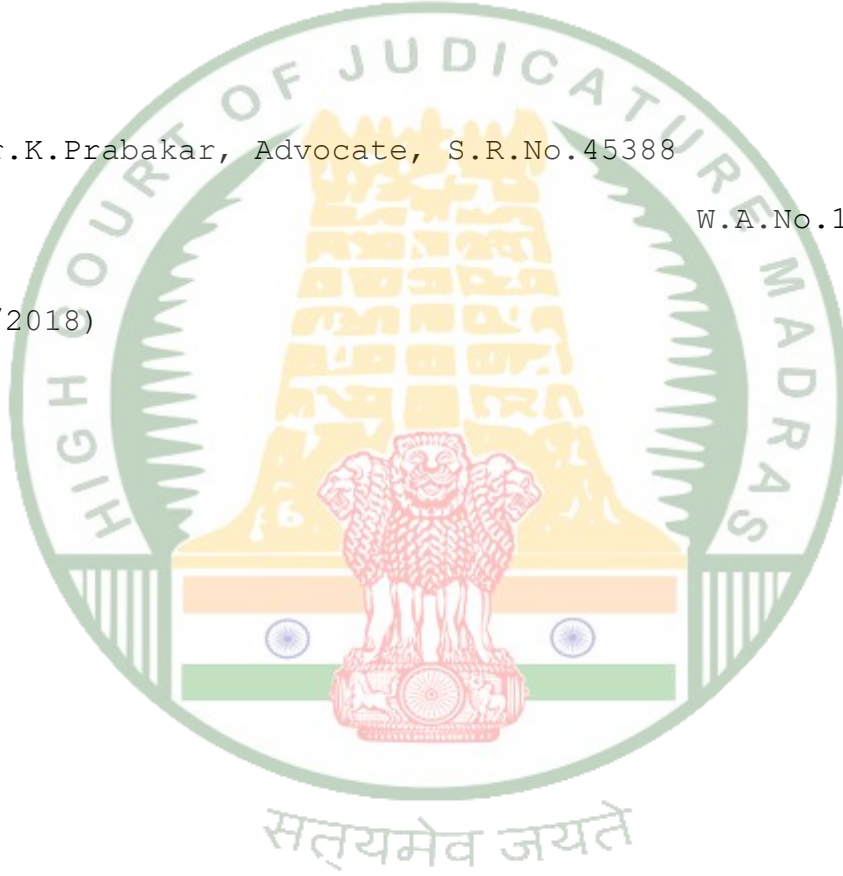
Sub Assistant Registrar

To

+1cc to Mr.K.Prabakar, Advocate, S.R.No.45388

W.A.No.1010 of 2018

KJI (CO)
GSP(06/08/2018)



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