

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2018

CORAM:

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

W.A.No.420 of 2018 and
CMP No.3659 of 2018

M/s.Panimalar Polytechnic College,
Rep. by its Principal Thamarai
No.356/7, Iswarya Flat, 18th Main Road,
Anna Nagar, Chennai - 40. Appellant

-vs-

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Labour and Employment (K1) Department,
Fort St.George, Chennai - 600 009.

2.Employees' State Insurance Corporation,
Rep. by its Regional Director,
No.143, Sterling Road, Nungambakkam,
Chennai - 600 034.

3.The Deputy Director,
Employees' State Insurance Corporation,
No.143, Sterling Road, Nungambakkam,
Chennai - 600 034.

.... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent
against the order passed in W.P No.9069 of 2017 dated 28.08.2017.

W.P No.9069 of 2017:-

Praying to issue a Writ of Certiorari to call for the records relating to the Government Order in G.O.Ms. No.237 Labour and Employment (K1) Department dated 26.11.2010 issued by the 1st respondent as published in the Tamil Nadu Government Gazette (Part II Section 2) dated 29.12.2010 as well as the consequential order dated 21.12.2016 passed by the 3rd respondent in No.51001114300001304/ 112820161223 and quash the same

For Appellant : Mr.L.Chandrakumar

For Respondents: Ms.Narmadha Sampath
Addl.Advocate General
Assisted by Mr.K.S.Suresh,
Govt.Advocate for R1
Mr.C.V.Ramachandramurthy
for R2 and R3

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 28 August 2017 dismissing the writ petition challenging the Government Order in G.O.Ms.No.237 Labour and Employment Department, dated 26 November 2010 and the consequential notice dated 21 December 2016 issued by the Employees' State Insurance Corporation, calling upon the appellant to show cause as to why provisional assessment of contribution should not be made.

The Facts

2. The appellant is a Polytechnic college established by the Jaisakthi Educational Trust. 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 provisional notice dated 21 November 2016, calling upon the appellant to state as to why assessment should not be completed and an order for collection of ESI Contribution should not be issued. The appellant filed a writ petition challenging the Government Order and the consequential proceedings 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 found that in an identical situation, a writ petition in W.P.No.42247 of 2016 was dismissed

by a learned single Judge by following the order of the Hon'ble Supreme Court in SLP (C) Nos.28285 of 2009, dated 15 March 2016 . Feeling aggrieved by the said order, the appellant has come up with this intra court appeal.

Submissions

5. The learned counsel for the appellant contended that there was no law declared by the Supreme Court in SLP (C) 28285 of 2009 and as such, the learned single Judge was not correct in dismissing the writ petition on the ground that the issue is covered. The learned counsel contended that the core question as to whether educational institution is an "industry" is now pending before the larger Bench. According to the learned counsel, the issue raised by the appellant requires to be decided after the disposal of the matter by the larger Bench of the Supreme Court.

6. We have also heard the learned Additional Advocate General on behalf of the first respondent and the learned Standing Counsel for the Employees State Insurance Corporation.

Discussion

7. 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 notification 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.

8. 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.

9. 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.

10. 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.

11. In the upshot, we dismiss the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary to Government,
The State of Tamil Nadu,
Labour and Employment (K1) Department,
Fort St.George, Chennai - 600 009.

2.The Regional Director,
Employees' State Insurance Corporation,
No.143, Sterling Road, Nungambakkam,
Chennai - 600 034.

3.The Deputy Director,
Employees' State Insurance Corporation,
No.143, Sterling Road, Nungambakkam,
Chennai - 600 034.

+lcc to Mr.L.Chandrakumar, Advocate, S.R.No.39349
+lcc to the Government Pleader, S.R.No.39110

W.A.No.420 of 2018

NRI (CO)
CS/19/07/18