

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.10.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.29621 of 2019
W.M.P.Nos.29521, 29522 & 29524 of 2019

Salvation Army,
Havel Matriculation Higher Secondary School,
Rep.by its Correspondent,
Major V.Paul,
No.21, Thiru Narayana Guru Road,
Choolai,
Chennai-600 112.

...Petitioner

vs.

1. The Government of Tamil Nadu,
Rep.by the Principal Secretary,
Labour and Employment Department,
Fort St.George,
Chennai-600 009.
2. The Deputy Director(Ins-VIII)
Employees' State Insurance Corporation
Regional Office,
No.143, Sterling Road,
Chennai-600034.
3. The Recovery Officer,
Employees' State Insurance Corporation
Regional Office,
No.143, Sterling Road,
Chennai-600 034.
4. State Bank of India,
rep.by its Branch Manager,
No.271, Purasawalkam High Road,
Chennai-600 007.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent under reference No.TN/Recy/45 G/51 51001012490001302, including the notice dated 09.05.2019 and the entire records of the 2nd respondent under reference No.TN/Ins.VIII/51001012490001302, including the notice dated 20.08.2019 and quash the same and

further direct the respondents 1 and 2 to abide by the order of the Hon'ble Supreme Court of India to be rendered in Civil Appeal No.897 of 2002 and batch-State of U.P. Versus Jai Bir Singh.

For Petitioner : Mr.V.G.Suresh Kumar

For Respondents : Mr.D.Suriya Narayanan
Additional Government Pleader
for R1.
Mr.C.V.Ramachandramurthy
for RR2 & 3.

O R D E R

The order issued by the third respondent in reference No. TN/Recy/45 G/51 51001012490001302, including the notice dated 09.05.2019 and the entire records of the 2nd respondent under reference No.TN/Ins.VIII/51001012490001302, including the notice dated 20.08.2019, are sought to be quashed in the present writ petition.

2. Now, the Courts have decided that the private schools are also liable to pay their contributions under the provisions of the ESI Act. Apart from the above point, the grievances of the writ petitioner is that the orders were passed under the provisions of the Act, without providing any opportunity to the writ petitioner. Therefore, such orders are in violation of the principles of the natural justice.

3. The notice dated 09.05.2019 was issued under Section 45G of the ESI Act to the Bank Manager, State Bank of India, for attachment of the account of the writ petitioner. The said notice was issued pursuant to the final order passed by the competent authority under Section 45G of the Act. With reference to the second show cause notice dated 20.08.2019, there was only a summon directing the writ petitioner to produce the relevant documents, enabling the authorities to adjudicate the same on merits. Therefore, the notice is not a final order and it is only a show cause notice issued for the purpose of providing an opportunity to the writ petitioner for production of records. Thus, two notices are unconnected and the second show cause notice was issued, with reference to the assessment to be made.

4. This being the facts and circumstances of the case, this Court is of the considered opinion that all these issues, with reference to the show cause notice, are to be adjudicated by the competent authority, after affording an opportunity to

the writ petitioner to submit their documents as well as the explanation, if any. As far as the jurisdiction of the respondent corporation is concerned, that issue has already been settled by this Court in W.P.No.28192 of 2019 dated 22.10.2019, the relevant paragraph is extracted hereunder:

5. The Division Bench of this Court vide order dated 16.06.2015 in Writ Appeal No.918 of 2013 has passed the following orders:

"2. In view of the aforesaid position, the writ appeals and the writ petitions are disposed of by agreement that the interim orders would continue till the disposal of the matter by the Honourable Supreme Court and the parties would naturally remain bound by the legal position enunciated by the Honourable Supreme Court on such decision being rendered. No costs. Consequently, connected miscellaneous petitions are closed."

6. The order passed by the Kerala High Court as affirmed by the Hon'ble Supreme Court, a Division Bench of this Court in W.P.No.22948 of 2017, dismissed similar challenge by a Private School vide its order dated 06.09.2017. The Division Bench of this Court has followed the orders of Hon'ble Supreme Court of India and dismissed the similar claim. The relevant portion of the order of the Division Bench, as found in para 3 and 4 are extracted hereunder:

"3. When the matter is taken up for hearing, the Learned Counsel appearing for Respondents 2 and 3 / E.S.I. Corporation brings it to the notice of this Court that the present issue has been dealt with by the Hon'ble Supreme Court in a Batch of cases in S.L.P.No.28285 of 2009 etc., by virtue of the Order dated 15.03.2016 in and by which, it was held that Private Educational Institutions were also bound to pay the Employees' State Insurance Contribution, under the Employees' State Insurance Act, 1948.

4. In such view of the matter, the Writ Petition stands dismissed. However, taking into consideration the difficulties expressed by the Petitioner / School, the arrears of E.S.I Contribution as on 31.08.2017 are ordered to be paid in 12 Equal Monthly Instalments. Also, this

Court makes it abundantly clear that the order would encompass the past arrears till the Month of August, 2017 and from the Month of September, 2017, the Petitioner is directed to pay ESI Contribution on regular basis without fail. Consequently connected Miscellaneous Petitions are closed. No costs."

7. Following the same, yet another Hon'ble Division Bench of this Court vide order dated 26.10.2017 in W.A.No.1308 of 2017 has dismissed an appeal filed by a College, holding that the Private College has to pay the ESI Contribution to the authority concerned. Para-7 of the order of the Division Bench is extracted hereunder for better clarity:

"7. Having regard to the admitted fact that the petitioner College is a private educational institution, we do not find any reason to interfere with the order so passed by the learned Single Judge, as the issue involved herein is covered by the decision of the Hon'ble Supreme Court in a batch of cases in SLP(C) No.28285 of 2009 etc. dated 15.03.2016, wherein, it has been held that the private educational institutions are also bound to pay the Employee State Insurance contribution. Therefore, the petitioner College has to pay the ESI contribution to the authority concerned, in accordance with law."

8. The writ appeal orders were taken on further appeal by way of SLP Nos.1626/18 and 3474/18 before the Hon'ble Supreme Court of India and the Apex Court dismissed those Special Leave Petitions vide order dated 09.02.2018.

9. Another Hon'ble Division Bench of this Court has passed similar orders in W.A.No.420 of 2018 and reference was made to referral order to the Larger Bench by the Hon'ble Supreme Court of India and the Hon'ble Division Bench held that the issue was no more res integra and the relevant portion of the order passed by the Hon'ble Division Bench, as found in paragraphs 9 and 10 are extracted below for easy reference:-

"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."

10. This Court also passed an order on 29.08.2017 in W.P.No.23109 of 2017 and paragraph 2 of the order is extracted hereunder:

"2. The Hon'ble Supreme Court of India dismissed a batch of cases filed in SLP(C) No.28285 of 2009 etc., dated 15th March, 2016. By following the orders of the Hon'ble Supreme Court of India, this Court passed final orders on 20th March, 2017 in Writ petition No.42247 of 2016 as hereunder:

"The only challenge sought to be made in this writ petition is to the coverage of employee state insurance qua the private educational institution.

2. When the matter is taken up for hearing, learned counsel appearing for respondents 2 and 3 submits that the issue has been dealt with finally by the Apex Court in a batch of cases in SLP No.28285 of 2009 etc., and by order dated 15.03.2016, it has been held that private educational institutions are also bound to pay the employee state insurance contribution.

3. In such view of the matter, the writ petition stands dismissed. However, taking into consideration the pendency of the writ petition and the difficulties expressed by the petitioner, the arrears of ESI contribution as on today is ordered to be paid by the petitioner in 12 equal monthly instalments. It is made clear that the order would cover the past arrears till the month of March, 2017 and thus from the month of April, 2017, the petitioner is bound to pay the ESI contribution on regular basis. No costs. Consequently, connected miscellaneous petitions are closed."

11. The learned counsel for the respondents submitted that against the above order passed in W.P.No.23109 of 2017, the petitioner College preferred the writ appeal in W.A.No.1308 of 2017 which was dismissed and the Special Leave Petition in SLP.(C). No.3474 of 2018 preferred by the petitioner College was also dismissed by the Hon'ble Supreme Court of India.

12. This being the facts and circumstances, this Court is of the considered opinion that the petitioner cannot seek any exemption from the provisions of the ESI Act and they are liable to pay the contributions as per the provisions of the Act.

5. This being the factum, with reference to the show cause notice dated 20.08.2019, the writ petitioner is at liberty to submit their explanation along with relevant documents, enabling the authorities to adjudicate the same on merits. As far as the other notice dated 09.05.2019 is concerned, if at all the petitioner is having any grievance, the same shall be addressed to the authorities competent. The authorities competent are bound to look into the nature of the grievances and initiate further actions, if required, by following the procedures contemplated.

6. With these directions, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(Insp cell)

True Copy

Sub-Assistant Registrar

ssb

To

1. The Government of Tamil Nadu,
Rep.by the Principal Secretary,
Labour and Employment Department,
Government of Tamil Nadu
Fort St.George,
Chennai-600 009.

2. The Deputy Director (Ins-VIII)
Employees' State Insurance Corporation
Regional Office,
No.143, Sterling Road,
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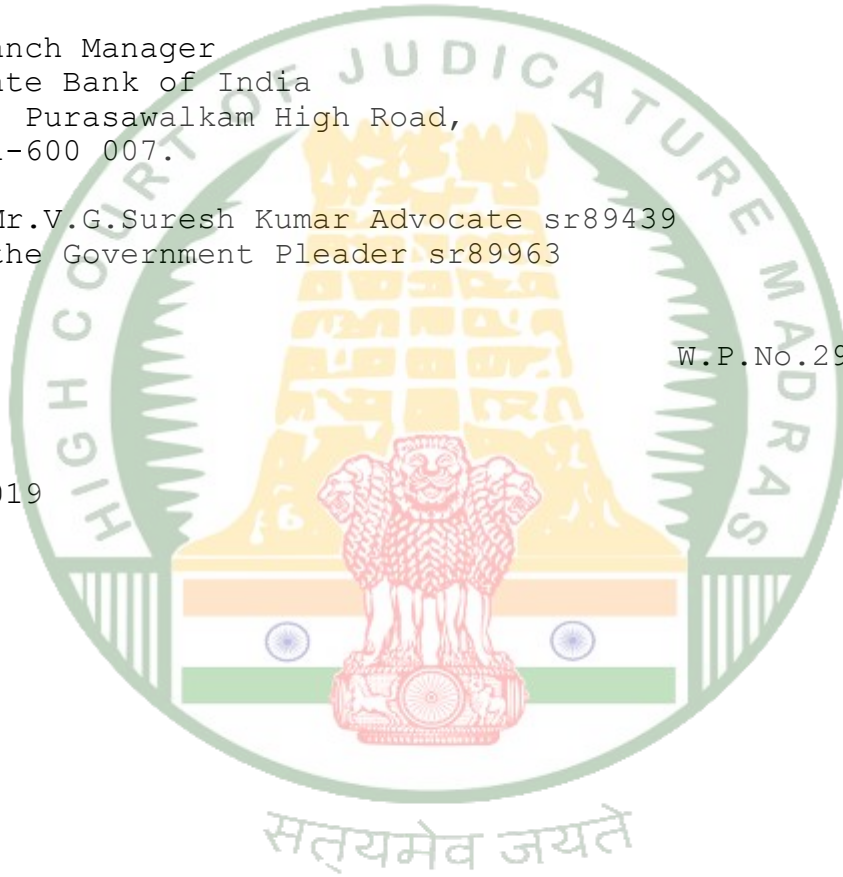
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4. The Branch Manager
The State Bank of India
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Chennai-600 007.

+1 cc to Mr.V.G.Suresh Kumar Advocate sr89439
+1 cc to the Government Pleader sr89963

W.P.No.29621 of 2019

pvs (co)
aa04/12/2019



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