

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2019

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.28913 of 2019

and

W.M.P.Nos.28656 & 28658 of 2019

Sri Guru Vidhyalaya Nursery and Primary School,
Represented by its Correspondent,
Mr.K.Kumaraguru,
No.14, New Fire Work Bank Street,
Triplicane,
Chennai - 600 005

..Petitioner

Vs.

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

2.Deputy Director(Ins-VIII)
Regional Office,
Employees' State Insurance Corporation,
No.143, Sterling Road,
Chennai - 600 034

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records of the 1st respondent in G.O.Ms.No.237 - Labour and Employment(K1) dated 26.11.2010 published in Tamil Nadu Government Gazette No.51 on 29.12.2010 and the entire records of the 2nd respondent under reference No.TN/Ins.VIII/51-00-107155-000-1301, including the notice dated 31.07.2019 and quash the same and further, direct the respondents to abide by the judgment of the Hon'ble Supreme Court of India to be rendered in C.A.Nos.897 of 2002 and batch - State of UP vs Jai Bir Singh and others.

For Petitioner : Mr.V.G.Suresh Kumar

For Respondents : Mr.D.Surya Narayanan
Additional Government Pleader
for R1
Mr.C.V.Ramachandramurthy for R2

O R D E R

The relief sought for in the present writ petition is to call for the entire records of the 1st respondent in G.O.Ms.No.237 - Labour and Employment(K1) dated 26.11.2010 published in Tamil Nadu Government Gazette No.51 on 29.12.2010 and the entire records of the 2nd respondent under reference No.TN/Ins.VIII/51-00-107155-000-1301, including the notice dated 31.07.2019 and quash the same and further, to direct the respondents to abide by the judgment of the Hon'ble Supreme Court of India to be rendered in C.A.Nos.897 of 2002 and batch - State of UP vs Jai Bir Singh.

2. The very contention of the writ petitioner is that the issues are now sub judice before the Hon'ble Supreme Court of India and therefore, the respondents cannot initiate action against the writ petitioner.

3. The learned counsel for the petitioner further contended that the issues regarding the applicability of the Act itself is in question and therefore, the respondents have to wait till the final orders to be passed by the Hon'ble Supreme Court of India.

4. The learned counsel appearing on behalf of the respondents disputed the said submission by stating that the Hon'ble Division Bench of this Court passed orders, holding that the Management of the Private Schools are also coming under the purview of the Act itself and further, the judgment of the Kerala High Court was upheld by the Hon'ble Supreme Court and under these circumstances, the respondent authorities cannot be prevented from invoking the provisions of the Act, so as to pass orders by following the procedures as

contemplated under the Act against the Management of the writ petitioner.

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."

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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.

13. Under these circumstances, the respondents are empowered to initiate all further actions by following the procedures as contemplated under the Act and Rules and by affording opportunity to the petitioner as expeditiously as possible.

14. With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary,
Labour and Employment Department,
Fort St.George,
Chennai - 600 009

2.Deputy Director(Ins-VIII)
Regional Office,
Employees' State Insurance Corporation,
No.143, Sterling Road,
Chennai - 600 034

+1 cc to Government Pleader Sr.No. 89962
+1cc to Mr.C.V.Ramachandramurthy , Advocate SR.No. 88542
+1cc to Mr.V.G.Suresh Kumar,Advocate SR.No. 88789
(05/12/2019)

W.P.No.28913 of 2019

A.SK(22/11/2019)

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