

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 6249 of 2020

and

W.M.P. Nos. 7363 and 7364 of 2020

Sri Selva Vignesh Matriculation School
Rep by its Correspondent Mr. V.Kailasam
No.10/72, Periyamman Koil Street
Pozhichalur, Chennai-600 074. ... Petitioner

-vs-

1. The Government of Tamil Nadu
Rep. By its Principal Secretary to Government
Labour and Employment Department
Fort St. George, Chennai - 600 009.
2. The Employees State Insurance Corporation
Regional Office (Tamil Nadu)
Rep. By its Regional Director, Panchdeep Bhavan
143, Sterling Road, Chennai - 600 034.
3. The Employees State Insurance Corporation
Regional Office (Tamil Nadu)
Rep. By its Deputy Director, Panchdeep Bhavan
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 Certiorari, calling for the records relating to G.O.Ms. No. 237, Labour and Employment (K1) Department dated 26.10.2010 as published in Tamil Nadu Government Gazette No.51, Part II, Section 2 on 29.12.2010 issued by the First Respondent and the consequential demand notices issued by the Second Respondent bearing No. TN/INS VIII/ 51-001 102420001302 for the period from 02.01.2013 to 31.12.2013 and No.Ins.VIII/51001102420001302 /12020201002 from January 2014 to December 2019 dated 30.01.2020 and quash the same.

For Petitioner : Mr. P.Ebenezer Paul

For Respondents: Mr. D.Sathyaraj
Special Government Pleader (For R1)
Mr. G.Bharadwaj (For R2 & R3)

O R D E R
(through video conference)

Heard Mr. P. Ebenezer Paul, Learned Counsel for the Petitioner, Mr. D. Sathyaraj, Learned Special Government Pleader for the First Respondent and Mr. G.Bharadwaj, Learned Counsel for the Second and Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner has challenged the notification in G.O.Ms. 237 (Labour and Employment Department) dated 26.11.2010 issued by the Government of Tamil Nadu in the exercise of powers conferred by Section 1(5) of the Employees State Insurance Act, 1948 (hereinafter referred to as the 'Act' for short), extending the provisions of that Act to educational institutions (excluding the Government and Government aided institution) run by the individuals, trustees, societies or other organization, wherein 20 or more persons are employed or were employed are any day proceeding 12 months with effect from the date of publication of that notification, and the consequential demand notices No.Ins.VIII/510011024200 01302 /12020201002 dated 30.01.2020 issued by the Second Respondent for assessment of contribution payable in terms of the Act.

3. Learned Standing Counsel appearing for the Second and Third Respondents submits that the validity of the said G.O.Ms. 237 (Labour and Employment Department) dated 26.11.2010 issued by the Government of Tamil Nadu has been upheld by the Full Bench of this Court by order dated 29.07.2020 in W.P. No. 34236 of 2019 etc. batch and that in the consequential demand notices, the Petitioners have been required to show cause why assessment of contributions due from the Petitioners should not be made as proposed in those orders for which the Petitioner could submit its explanation.

4. Learned Counsel for the Petitioner contends that the demands raised by the Second Respondent in the show cause notices relate to earlier periods in respect of which either the Petitioner did not have any liability or the Respondents could not make any demand for payment of contribution.

5. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in Special Director -vs- Mohammed Ghulum Ghouse [(2004) 3 SCC 440], Secretary, Ministry of Defence -vs- Prabhash Chandra Mirdha [(2012) 11 SCC 565] and Life Insurance Corporation of India -vs- A. Masilamani [(2013) 6 SCC 530] that show cause notice cannot be challenged before completion of enquiry and the proceedings cannot be interfered till it reaches its logical conclusion.

There is nothing shown which precludes the Petitioner from agitating the contentions raised in this Writ Petition before the Second Respondent by way of explanation to the show cause notice that has been issued.

6. When the aforesaid legal position was pointed out, Learned Counsel for the Petitioner seeks permission of this Court to withdraw the Writ Petition with liberty to submit explanation with supporting documents and comply with the requirements sought in the show cause notices by 31.08.2020. He has also sent a confirmatory e-mail dated 03.08.2020 to that effect, which is placed on record. On receipt of the explanation from the Petitioner within that date, the Second Respondent shall afford full opportunity of hearing to the Petitioner and shall duly consider the each of the contention raised by the Petitioner in his explanation and pass reasoned orders on merits and in accordance with law and communicate the decision taken under written acknowledgment. It is made clear that no view has been expressed by this Court on the correctness or otherwise on the merits of the contentions raised by the Petitioner.

7. This Writ Petition is dismissed as withdrawn granting such liberty with the aforesaid observations. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Principal Secretary to Government
Labour and Employment Department
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Rep. By its Deputy Director, Panchdeep Bhavan
143, Sterling Road, Chennai - 600 034.
- +1 CC to Mr.P. Ebenezer Paul, Advocate sr 25952.
+1 CC to Mr.G. Bharadwaj, Advocate sr 26074.

W.P. No. 6249 of 2020

CP(CO)
SP(12/08/2020)