

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2020

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

W.P.No.15460 of 2020 and W.M.P.No.19310 of 2020

M/s.Kongu Vellalar Matriculation Higher Secondary
School Rep.by its Corresponent Mr.P.Sakthi Vadivel
19/207, Anna Nagar, Mettupalayam Post
Vellakkovil, Tiruppur District 638 111. ... Petitioner

-Vs-

Deputy Director
Employees State Insurance Corporation
Sub Regional Office No.1897, Trichy Road
Ramanathapuram, Coimbatore 641 045. ... Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the respondent bearing Ref.No.56-00-114963-000-1302/INS.IV/SRO dated 30.12.2019 to quash the same and the matter may be reverted back to the respondent to pass reasoned order according to the records and documents available with the petitioner.

For Petitioner : Mr.P.Thangaraj

For Respondent : Mr.Bharathwaj,
Standing Counsel (ESI)

O R D E R

This writ petition has been filed with a prayer of writ of Certiorarified Mandamus calling for the records of the impugned order passed by the respondent bearing Ref.No.56-00-114963-000-1302/INS.IV/SRO dated 30.12.2019 to quash the same and to revert back the matter to the respondent to pass reasoned order according to the records and documents available with the petitioner.

2. With the consent of the learned counsel for both sides, this writ petition is taken up for final hearing at the admission stage itself and accordingly is being disposed of.

3. The petitioner school has already been brought under the Employees State Insurance (hereinafter referred to as 'ESI') coverage in respect of the teaching and non-teaching employees working in the school and in this regard, in order to recover the contribution payable by the petitioner school it seems that, a show cause notice has been issued on 23.09.2019 by the respondent ESI Corporation under Section 40 of the ESI Act, 1948.

4. In response to the same, the petitioner has given a short reply on 18.12.2019, which reads thus,

" I am P.Sakthivadivel, aged 80 years and taking treatment in Coimbatore for High Blood Pressure and Heart disease. Since I am not able to come to your office on 18.12.2019 and explained our position on that date, we have already started paying ESI for the last 5 months in time. I kindly request you to grant time till 06.01.2020 to come to your office to explain my position."

5. Followed by the said reply given by the petitioner, the respondent ESI Corporation has issued the impugned demand under Section 45A of the Act by its proceedings dated 30.12.2019, whereby the respondent ESI has made a demand from the petitioner school towards ESI contribution for the period from 01.08.2014 to 30.06.2019 for a total sum of Rs.17,13,320/-. Aggrieved over the said order, the present writ petition has been filed with the aforesaid prayer.

6. Heard Mr.P.Thangaraj, learned counsel for the petitioner school, who, by relying upon the reply given by the petitioner dated 18.12.2019, as has been extracted herein above, would submit that, the petitioner school is already paying the ESI contribution for five months prior to the demand period under the impugned order. Insofar as the present demand is concerned, on receipt of the show cause notice dated 23.09.2019, the petitioner had given a reply seeking some time due to health reasons of the head of the institution / correspondent of the Management to come directly to the ESI office and explain the position of the number of teaching and non-teaching staff employed at the school, who are supposed to be covered under the ESI Scheme based on the salary being paid and accordingly the quantum to be fixed for paying the ESI contribution may definitely differ and it will be lower than the one now being demanded through the impugned order.

7. Learned counsel would further submit that, however, without giving such an opportunity as has been sought for by the petitioner through his reply dated 18.12.2019 since in the impugned order of demand, the amount has been calculated

taking into consideration the number of teachers as 45 claimed to have been working in the petitioner school within the salary ceiling under the ESI Act, the said demand made through the impugned order is palpably wrong and therefore the said demand is under challenge, he contended.

8. Learned counsel for the petitioner would also contend that, if one opportunity is given to the petitioner to explain the position, the respondent ESI Corporation would certainly come to the conclusion that the quantum made or prescribed under the impugned demand may vary depending upon the number of eligible teachers, who are entitled to get the benefit of ESI coverage and accordingly revise the quantum of the ESI contribution and on such revision of the quantum, the same would be paid by the petitioner school.

9. Heard Mr. Bharathwaj, learned Standing Counsel for the respondent ESI Corporation, who would submit that, before passing the impugned order, in fact a show cause notice was issued on 23.09.2019 and in this regard if at all the petitioner wanted to give a detailed reply disputing the number of employees who are supposed to be covered under the ESI coverage and accordingly if there has been a dispute regarding the overall quantum to be fixed, definitely the petitioner could have sent his reply giving all those documents and if need arises, the respondent Corporation would have been in a position to give an opportunity of personal hearing to the petitioner. However, the petitioner had not chosen to give any such detailed reply and necessary documents in support of the claim made by the petitioner school, but has given a cryptic reply dated 18.12.2019 citing health reasons of the Correspondent of the Institution. Therefore, the said reply having been considered, the ESI Corporation has come to the right conclusion of course on the basis of the calculation made by the petitioner school and accordingly the impugned demand has been made, which may not require any interference by this Court, as no plausible reasons has been successfully made out by the petitioner, he contended.

10. I have considered the rival submissions made by the learned counsel appearing for the petitioner school as well as the learned Standing Counsel for the respondent ESI Corporation and have perused the materials placed on record.

11. With regard to the liability on the part of the petitioner to pay the contribution for its employees under the provisions of the ESI Act is concerned, absolutely there is no dispute from the point of view of the petitioner. The only grievance of the petitioner seems to be that, the calculation now made by the respondent is based on the entire teaching and non-teaching staff working in the petitioner school and in this regard, the petitioner's contention is that, the number

of staff who are liable to be brought under the purview of the ESI provisions are not 45 and it is only lesser number based on the salary being paid to the teaching and non-teaching staff of the school. Therefore, only in order to establish these facts, the petitioner school seems to have sought for time while they made a simple reply dated 18.12.2019. However it seems that, the respondent has proceeded to pass the impugned order without giving an opportunity to establish the claim made by the petitioner school for lesser number of employees to be covered.

12. Be that as it may. Now, the learned counsel for the petitioner wants to produce those documents and substantiate the grounds raised in this regard about the number of employees as well as quantum of amount to be paid. In this regard, the learned Standing Counsel appearing for the ESI has fairly submitted that one more opportunity if at all given to the petitioner, they should come forward to give all those documents in support of their claim within the time frame that may be stipulated and based on such consideration, the ESI may come forward to decide the number of employees as well as the corresponding quantum of contribution for the relevant period covered under the impugned demand.

13. In view of the stand taken by both sides and having regard to the factual matrix, this Court is inclined to dispose of this Writ Petition by the following order.

14. The petitioner shall provide all necessary documents pertaining to the number of employees and the liability of such employees to be covered under the provisions of the ESI Act to the respondent ESI Corporation within a period of four weeks from the date of receipt of a copy of this order.

15. On receipt of such documents from the petitioner, it is open to the respondent ESI to decide as to the number of employees to be covered as well as the corresponding quantum of contribution to be demanded from the petitioner institution. In this regard, an opportunity of personal hearing can also be given to the petitioner management, for which a notice can be given by the ESI Corporation and in that case, the present impugned order, can be kept under suspension till such time and thereafter it may be revoked, depending upon the outcome of the decision. The respondent ESI Corporation shall decide the issue as indicated above as expeditiously as possible. In view of the time frame given to produce the documents on the side of the petitioner, the petitioner shall strictly adhere to the time frame, failing which it is open to the ESI to pass necessary orders, confirming the present demand, which is impugned herein.

16. With the aforesaid directions and observations, this writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

KST

To

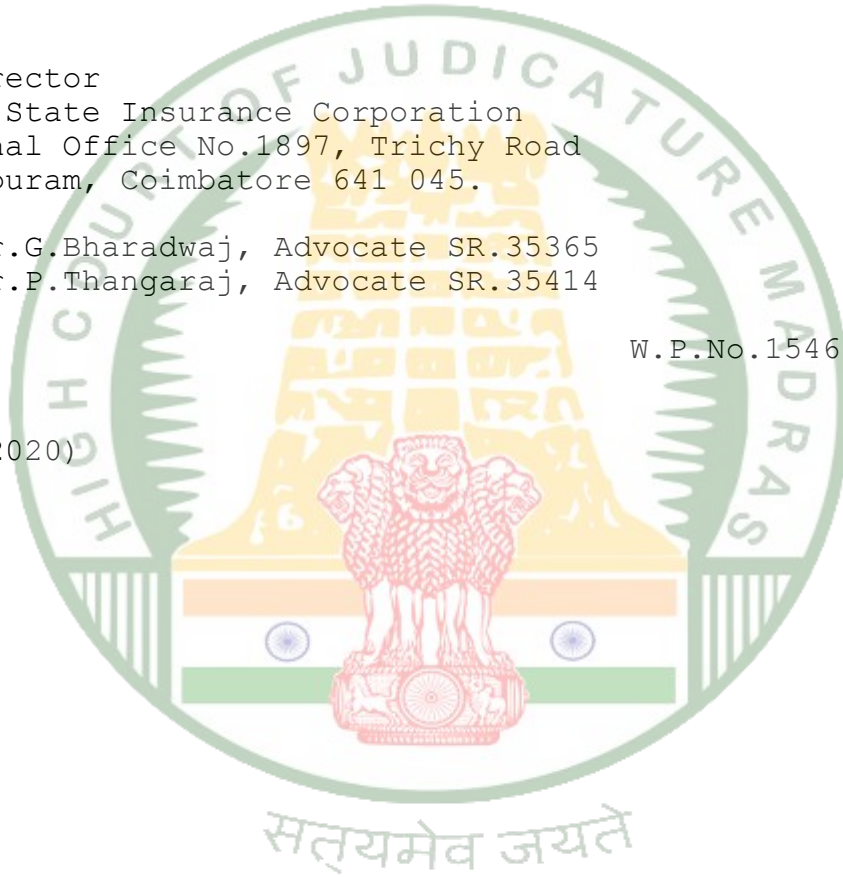
Deputy Director
Employees State Insurance Corporation
Sub Regional Office No.1897, Trichy Road
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+1cc to Mr.G.Bharadwaj, Advocate SR.35365

+1cc to Mr.P.Thangaraj, Advocate SR.35414

W.P.No.15460 of 2020

SAI (CO)
CB(07/12/2020)



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