

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.23718 of 2014

and

M.P.No.1 of 2014

1.M/s.Kalaimagal English High School,
N.H.Road, Thirubhuvanai,
Pondicherry - 605 107,
Represented by Shri K.Murugaiyan,
Correspondent.

2.Shri K.Murugaiyan,
President Cum Correspondent,
M/s.Kalaimagal English High School. ... Petitioners

Vs.

Employees' State Insurance Corporation,
Represented by
The Insurance Inspector (Legal),
ESIC Complex,
Bouvankare Street, Mudaliarpeta,
Puducherry. ... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash all proceedings in STR No.1157 of 2008 on the file of the Judicial Magistrate-I, Puducherry.

For Petitioner : Mr.D.Prasanna for
M/s.Giridhar and Sai

For Respondent : Mr.K.Prabakar

ORDER

Criminal Original Petition filed to call for the records and quash all proceedings in STR.No.1157 of 2008 on the file of the Judicial Magistrate No.I, Puducherry.

2.The petitioners, who are the accused in a complaint filed by the respondent/complainant, Employees' State Insurance Corporation [ESI] for the offences under Section 85 (a) punishable under Section 85(i)(b) of the Employees' State Insurance Act, 1948 have filed the above quash petitions.

3.The gist of the complaint is that Employees' State Insurance Corporation [ESI] have filed the complaint on the ground that the Educational Institutions and its Correspondent, President/Head master, who are in-charge and responsible for the conduct of the business of the Educational Institutions failed to pay the employees' contribution and employers' contribution. Hence, they are vicariously liable for the offence under Section 86 of the Act. As per Section 40 of the Act, the Principal Employer, should have paid in respect of every employee, the employer's share of contribution and the employee's share of contribution should have been paid within the time limit specified under Regulation 31 of the ESI [General] Regulations, 1950. The petitioner/accused having failed to pay the same in accordance with the provisions of Section 40(1) of the Act r/w Regulation 31 of the ESI [General] Regulations, 1950. The petitioner/accused have committed the offence under Section 85 (a) of the Act punishable under Section 85(i) (b) of the Act.

4.On obtaining the sanction of prosecution from the Regional Director, the complaint has been filed. It may not be necessary to specify the period and failure of payment of contribution amount, since the points raised in this quash petition is on maintainability and jurisdiction of the complaints before the Lower Court questioning the notification dated 24.06.2005.

5.The contention of the learned counsel for the petitioners is that the Government of Pudhucherry issued a notification purportedly under the powers conferred by Section 1(5) of the Employees' State Insurance Act, 1948 Act, whereby the Act was extended to the private educational institutions in Pudhucherry. The Government of Pudhucherry is not competent to issue the notification as Pudhucherry is only a Union Territory. Further, relying upon the decision of the Hon'ble Supreme Court of India in Goa Sampling case has held that the term "State Government" in respect of a Union Territory shall mean the "Central Government" particularly in view of Section 2 (60) of the General Clauses Act questioned the issuance of notice under Section 45A of the Act directing the Schools to remit payments towards ESI contribution ignoring their plea that the notification was invalid.

6.Further, some of the Institutions have filed Writ Petitions challenging the said notification No.6563/Lab./K/2004 dated 24.06.2005. In the meanwhile, the respondent herein had filed criminal cases against them before the Judicial Magistrate Court, Pudhucherry.

7.The learned counsel for the petitioners relying upon the decision of the Hon'ble Supreme Court of India in the case of Mulraj Vs. Murti Raghunathji Maharaj reported in AIR 1967 Supreme Court 1386 (V 54 C 290) and the decision of the

Allahabad High Court reported in 2011 SCC Online All 1250 : (2011) 89 ALR 494 in the case of Surender Deo Agarwal Vs. Union of India thru. Secy. Petroleum and Others.

8.The learned counsel for the petitioners submitted that the legality of the principal notification covering schools in Pudhucherry was under a cloud and there was a bona fide dispute about its validity. Further he submitted that the proceedings of the Hon'ble Supreme Court of India in SLP.No.28287 of 2009 batch pertains to the State of Kerala which has been dismissed. As far as the petitioners are concerned, it pertains to Union Territory. Hence, the said citation may not be applicable. Assailing these points, the petitioners prayed to quash the proceedings of the Lower Court.

9.On the contrary, the learned counsel for the respondent/Employees' State Insurance Corporation submitted that as per Section 1(5) of the Employees' State Insurance Act, the appropriate Government may in consultation with the Corporation and after giving one month notice of its intention so doing by notification in the Official Gazette extend the provisions of this Act or any of them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. Under Section 1(5) of the Act, the Educational Institutions situated in the Union Territory of Pondicherry were covered under ESI Act by a notification dated 24.06.2005 and the said notification was challenged by the Educational Institutions only in the year 2007. The said notification was challenged by some of the Educational Institutions and they have filed W.P.No.2471, 3234, 30509 and 16273 of 2007. Challenging the impugned notification issued by the Union Territory of Pudhucherry on the following grounds:

(a) The Union Territory of Puducherry is not the "appropriate Government" for making the notification under Section 1(5) of the ESI Act. The Union Territory of Puducherry cannot be called as a State Government as found under Section 2(1) of the ESI Act. If it is not a State Government within the meaning of the said provision, then the appropriate Government in respect of any institution in the Union Territory of Puducherry is only the Central Government. Therefore, the impugned notification is invalid.

(b) The petitioners are running educational institutions and it cannot be called as an establishment within the meaning of provisio to Section 1(5) of the ESI Act.

The said Writ Petitions came to be dismissed on 04.01.2011.

10. Against the said order dated 04.01.2011 Writ Appeals were filed. In the meanwhile, similar situation aroused for the notification issued by the Government of Tamil Nadu. The Hon'ble First Bench of this Court by a common order dated 09.06.2015 had disposed of all the Writ Appeals on the ground that in the case of State of Uttarpradesh Vs. Jai Bir Singh reported in 2005(5) SCC 1, the question of law has been referred to the Larger Bench of the Hon'ble Supreme Court of India, i.e. whether the Employees' State Insurance Act, 1948, would apply to educational institutions. Citing the same, the Writ Appeals and the Writ Petitions are disposed of by agreement that the interim order would continue till the disposal of the matter by the Hon'ble Supreme Court of India.

11. Subsequently, Civil Appeal No.897 of 2002 in the case of State of Uttar Pradesh Vs. Jai Bir Singh came up before the Hon'ble Supreme Court of India by order dated 02.01.2017 had referred it to a Larger Bench and the case is yet to be taken for consideration. On a close perusal of the decision referred in State of Uttar Pradesh Vs. Jai Bir Singh, it pertains only with regard to the Industrial Disputes Act. In view of the case of Bangalore Water Supply and Sewerage Board Vs. Rajappa reported in AIR 1878 SC 548, nowhere the ESI Act has been referred to.

12. Be it as it may. In similar situation the Government of Kerala had passed notification in G.O.(P) No.135 of 2007 extending the ESI Act to the educational institutions. The said Government Order was challenged by various educational institutions at Kerala and all the W.P.Nos.5986/2008(K), 20279/2008 came to be dismissed by the High Court of Kerala on 03.07.2009. Against which S.L.P. was filed before the Apex Court of India in S.L.P.No.28285 of 2009 and the same was dismissed by the Hon'ble Supreme Court on 15.03.2016 and observed that "We do not find any legal and valid ground for interference. Special Leave Petitions are dismissed."

13. The Division Bench of this Court in the case of GRG Matric Secondary School, Coimbatore in W.P.No.22948 of 2017 had dismissed the similar prayer challenging the validity of Employees' State Insurance Corporation, issuing the notice to the private educational institutions, whereby they are bound to pay the ESI contribution under the ESI Act, relying upon the decision of the Hon'ble Apex Court of India in S.L.P.No.28285 of 2009.

14. The learned counsel for the respondent further submits that the impugned notification No.6563/Lab./K/2004 dated 24.06.2005, Labour Department, Government of Pudhucherry was challenged in W.P.No.10986 of 2017 on the ground that "The only challenge sought to be made in this Writ Petition is to the coverage of the Employee State Insurance qua the private educational institution."

15.This Court by its order dated 28.08.2017 in W.P.No.10986 of 2017 following the Apex Court order dated 15.03.2016 in S.L.P.No.28285 of 2009 and had held as follows:

"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."

16.In view of the above and categorical finding of this Court in W.P.No.10986 of 2017, this Court finds that the impugned notification No.6563/Lab./K/2004 dated 24.06.2005 and ESI [General] Regulations, 1950 and the Act are applicable to the said educational institutions. Hence, non-payment of the contribution had invited the above Criminal case which cannot be said to be without jurisdiction. Hence, the quash petition does not merit consideration.

17.In the result, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(J)

//True copy//

Sub Assistant Registrar

vv2

To

1.The Judicial Magistrate No.I,
<https://hcservices.ecourts.gov.in/hcservices/>
Puducherry.

2.Employees' State Insurance Corporation,
The Insurance Inspector (Legal),
ESIC Complex,
Bouvankare Street,
Mudaliarpeta,
Puducherry.

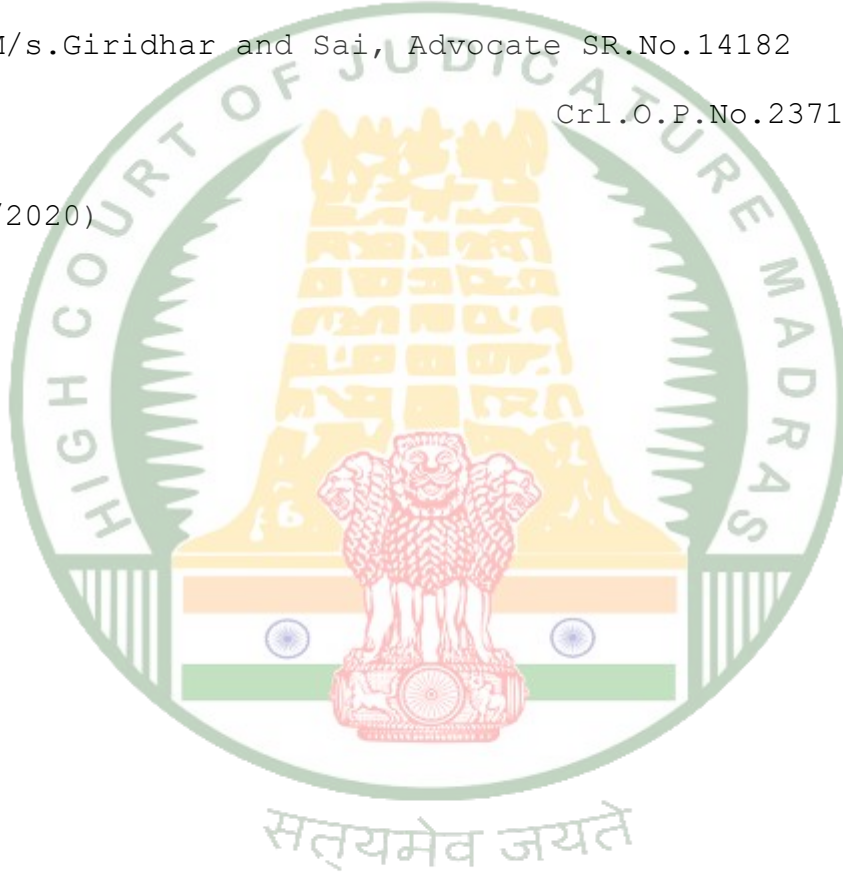
3.The Public Prosecutor,
Puducherry.

+1cc to Mr.K.Prabakar, Advocate SR.No.14407

+1cc to M/s.Giridhar and Sai, Advocate SR.No.14182

Cr1.O.P.No.23718 of 2014

GMV (18/03/2020)



WEB COPY