

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2020

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

W.P.No.16003 of 2020 and
W.M.P.No.19914 of 2020

M/s.Sri Ramakrishna Vidyalayam
Neelambur, Coimbatore-641 062.

... Petitioner

-Vs-

1.The State of Tamil Nadu
rep.by its Principal Secretary to Government
Labour and Employment Department
Secretariat, Fort St.George, Chennai 600 009.

2.The Regional Director, Regional Officer (Tamil Nadu)
Employees State Insurance Corporation
Panchdeep Bhavan, No.143, Sterling Road
Chennai 600 034.

3.The Deputy Director, Sub-Regional Office
Employees State Insurance Corporation
Panchdeep Complex, 1897, Trichy Road
Ramanathapuram, Coimbatore – 641 045.

4.The Recovery Officer,
Employees State Insurance Corporation
Panchdeep Complex, 1897, Trichy Road
Ramanathapuram, Coimbatore-641 045.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari calling for the entire records relating to the proceedings of the 3rd respondent in No.56-00-1141112-000-1399/INS.IV/SRO dated 07.10.2020 to quash the same.

For Petitioner : Mr.C.Veera Raghavan
For Respondents : Ms.Radhika, Government Advocate – for R1
Mr.K.Prabakar, Standing Counsel – for R2 to R4

ORDER

The prayer sought for in this writ petition is to call for the entire records relating to the proceedings of the 3rd respondent in No.56-00-1141112-000-1399/INS.IV/SRO dated 07.10.2020 to quash the same.

2. The petitioner is an unaided private recognized educational institution and in view of the notification issued in this regard by the State Government, bringing the educational institutions especially the unaided private educational institutions also under the Employees State Insurance Act net, the petitioner institution was supposed to submit or make contribution towards Employees State Insurance (hereinafter referred to as 'ESI') for the employees employed at the petitioner institution ie., both teaching and non-teaching staff.

3. Since the petitioner institution have not made any contribution to that effect it seems that, the respondent ESI had sent a notice fixing a hearing on 25.03.2020. On receipt of the said notice, the petitioner on 21.03.2020 has given a reply stating that, in view of the COVID-19 situation,

the petitioner Management was not in a position to appear on 25.03.2020 before the respondents in response to the notice issued in this regard and therefore, in this context the petitioner wanted a deferment of the hearing for some time after the normalcy is restored.

4. Thereafter, it seems that nothing has come from the respondent ESI with reference to the deferment of the hearing and all of a sudden, by an order dated 07.10.2020, a determination order has been issued by the respondent ESI under Section 45A of the ESI Act, 1948. Challenging the same, the present writ petition has been filed.

5. Mr.C.Veera Raghavan, learned counsel for the petitioner would submit that, all that the petitioner wanted by its representation dated 21.03.2020 is that, if a deferment is given after the normalcy is restored for hearing fixed in this regard by the ESI, certainly the petitioner would have been in a position to appear before the respondent ESI. However, on receipt of such request having been made by the petitioner on 21.03.2020, the respondent without giving any such opportunity by postponing or deferring the hearing, straight away since has passed the impugned order dated 07.10.2020, whereby determination order has been passed on adhoc basis without hearing the petitioner thereby the petitioner has been placed to make

the payment of ESI contribution as has been quantified by the ESI on adhoc basis and therefore, the said order can be interfered with and if the matter is remitted back to the respondents, by giving a direction to give an opportunity to the petitioner herein, certainly the petitioner would be in a position to produce all the relevant records and appear before the respondent ESI for personal hearing and an order can be passed based on the input to be supplied by the petitioner herein by way of production of records.

6. Heard Mr.K.Prabhakar, learned Standing Counsel appearing for the respondent ESI who would submit that, since notice has been given for appearance, and the petitioner had not chosen to appear before the ESI authority, the ESI has proceeded to pass the determination order under Section 45A of the Act on adhoc basis and therefore, the said order cannot be questioned before this Court. Even if there is any grievance to that effect, the petitioner has got an appellate remedy under the provisions of the Act and therefore, the learned Standing Counsel for the ESI would submit that, the impugned order can very well be sustained.

7. I have also heard Ms.Radhika, learned Government Advocate for the first respondent, who is not a contesting respondent.

8. It is a fact that, a hearing was fixed by the ESI on 25.03.2020 by issuing a notice in this regard dated 14.02.2020. However, since COVID-19 situation started by then and in fact from 25.03.2020 a complete nation-wide lockdown has been announced, it cannot be expected that the petitioner to appear before the ESI authorities on 25.03.2020.

9. This factor has been clearly mentioned in the reply dated 25.03.2020 of the petitioner and in this regard, the petitioner only wanted an opportunity subsequently to be given after the normalcy is restored.

10. However it seems that, the respondent ESI having waited for some months, without giving any notice to the petitioner and without answering the request for a deferred date of hearing after restoration of normalcy, since has passed a determination order dated 07.10.2020 under Section 45A of the Act, which is impugned herein, the said order, in the considered opinion of this Court, cannot be construed as an order passed by giving an opportunity to the petitioner.

11. This factor is evidenced as it has been recorded by the third respondent himself in the impugned order stating that, the determination of

contribution is fixed on the adhoc basis on assuming the notional wages in respect of 23 employees for the period from 01.05.2015 to 31.10.2019.

12. In view of the said factor, where the determination itself has been made only on adhoc basis without verifying any records to that effect, as the opportunity as sought for by the petitioner since could not be given by the ESI authorities, despite the fact that there has been a complete lockdown during end of March, April and May, 2020, this Court feels that, the impugned order cannot be said to be an order passed after having considered the relevant merits of the case by giving an opportunity to the petitioner.

13. Therefore, for the violation of the principles of natural justice due to the aforesaid circumstances, the impugned order can very well be construed as an order passed without an opportunity being given to the petitioner for hearing. Therefore, the question of invoking appellate remedy as has been contended by the learned counsel for the ESI does not arise.

14. In that view of the matter, this Court feels that the impugned order is liable to be set aside and the matter can be remitted back to the respondent ESI for reconsideration. In result, the following orders are passed in this writ petition.

15. The impugned order is quashed and the matter is remitted back to the ESI for reconsideration. While making such reconsideration, the respondent ESI shall give a notice to the petitioner fixing the date of hearing and on receipt of the same, the petitioner shall appear before the respondent ESI with all relevant documents and put forth his case. After hearing the petitioner and verifying the records to be submitted by the petitioner in this regard, a final determination order under Section 45A of the Act can very well be passed by the respondent ESI as early as possible.

16. It is made clear that the petitioner, if fails to appear before the respondents and produce the records as required, despite the notice being given to the petitioner pursuant to this order, it is open to the respondent ESI to proceed with the matter in accordance with law and pass suitable orders in accordance with law and on merits.

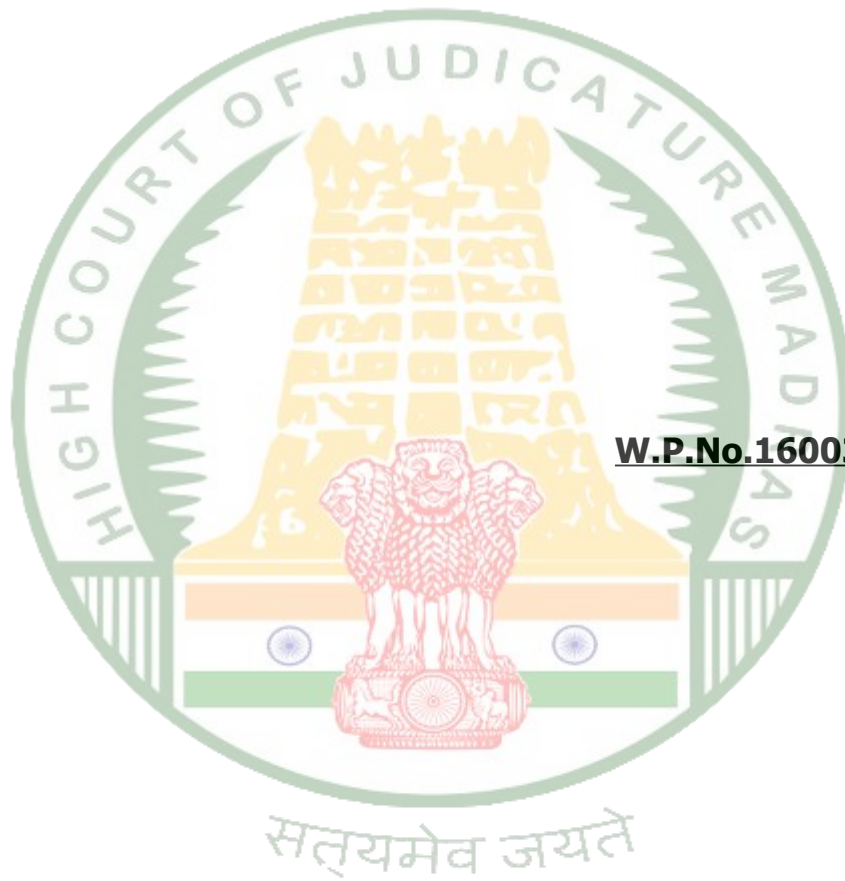
17. With these directions, this writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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R. SURESH KUMAR, J.

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