IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

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THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. Nos. 18890, 18899, 18904 and 18909 of 2020
and
W.M.P. Nos. 23468, 23470, 23472, 23473, 23475, 23477, 23483
and 23484 of 2020

W.P. No. 18890 of 2020:

Our Lady of Fatima Nursery and Primary School,
Represented by its Correspondent,
1252, Big Bazar Street,
Coimbatore - 641 001. ... Petitioner

-vs-

1. E.S.I. - Regional Corporation (Tamil Nadu),
Represented by its Regional Director,
143, Sterling Road,
Chennai - 600 034.

2. Employees' State Insurance Corporation,
Represented by Deputy Director,
1897 Trichy Road, Panchdeep Complex,
Ramanathapuram,
Coimbatore 641 045.

3. The Recovery Officer,
1897 Trichy Road, Panchdeep Complex,
Ramanathapuram, Coimbatore 641 045. ... Respondents

W.P. No. 18899 of 2020:

C.S.I. Ewart Matriculation Higher Secondary School,
Plot No. 22/1, Soundarya Colony,
Anna Nagar West Extension,
Chennai - 100 101. ... Petitioner

-vs-

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

2. E.S.I. - Regional Corporation (Tamil Nadu),
Represented by its Regional Director,
143, Sterling Road,
Chennai - 600 034.

3. E.S.I. - Regional Corporation (Tamil Nadu),
Represented by its Deputy Director,
143, Sterling Road,
Chennai - 600 034. ... Respondents

W.P. No. 18904 of 2020:

Don Bosco Matriculation Higher Secondary School,
Represented by its Correspondent.
G.N.T. Road, Karanodai,
Chennai - 600 067. ... Petitioner

-vs-

1. The Government of Tamil Nadu,
Represented by its Principal Secretary,
Labour and Employment Department,
Fort St. George, Chennai - 600 009.
2. E.S.I. - Regional Corporation (Tamil Nadu),
Represented by its Regional Director,
143, Sterling Road,
Chennai - 600 034.

3. E.S.I. - Regional Corporation (Tamil Nadu),
Represented by its Deputy Director,
143, Sterling Road,
Chennai - 600 034. ... Respondents

W.P. No. 18909 of 2020:

St. Joseph Matriculation Higher Secondary School,
Represented by its Correspondent.
Rev. Bro. K. Sagayaraj,
Vedhachala Nagar,
Chengalpattu - 603 001. ... Petitioner

-vs-

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

2. E.S.I. - Regional Corporation (Tamil Nadu),
Represented by its Regional Director,
143, Sterling Road,
Chennai - 600 034.

3. Regional Office,
Employees State Insurance Corporation,
Represented by its Deputy Director,
Panchdeep Bhawan,
143, Sterling Road,
Chennai - 600 034.

4. The Manager,
The Branch Office,
Employees State Insurance Corporation,
Plot No. 263, M.I.G.,
No.13, Bharathiyar Street, NH-1,
Maraimalai Nagar, Chennai. ... Respondents

PRAYER in W.P. No. 18890 of 2020: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings dated 03.08.2020 in No. 56001110990001301/Ins.IV/Cbe, on the file of the second respondent and the consequential proceedings dated 22.10.2020 in Ref. No. 56001110990001301/CP/390026, on the file of the third respondent and quash the same, directing the respondents to consider the waiver of the arrears of contribution, Interest and Damages, as directed by the Hon'ble Full Bench of the High Court by order dated 29.07.2020 and made in the batch of W.P. No. 34246 of 2019.

PRAYER in W.P. No. 18899 of 2020: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned show cause notice dated 22.10.2020, in No. TN/INS.8/51-00-100719-000-1302/703-20, on the file of the third respondent in respect of the petitioner school and quash the same, directing the respondents to consider the waiver of the arrears of contribution, Interest and Damages, under Section 91C of ESI Act, 1948, in terms of the order dated 29.07.2020 of the Full Bench of this Hon'ble High Court in the batch of Writ Petitions in W.P. No. 34246 of 2019.

PRAYER in W.P. No. 18904 of 2020: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to dated 04.09.2020, in TN/INS.VIII/51-00-108807-000-1302, on the file of the third respondent in respect of the petitioner school and quash the same, directing the respondents to consider the waiver of arrears of contribution, Interest and Damages, under Section 91C of ESI Act, 1948, in terms of the order dated 29.07.2020 of the Full Bench of this Hon'ble High Court in the batch of Writ Petitions in W.P. No. 34246 of 2019.

PRAYER in W.P. No. 18909 of 2020: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned notice dated 28.10.2020, in No. TN/INS.VIII/51-00-109965-000-1302/C-18 Adhoc, on the file of the third respondent in respect of the petitioner school and quash the same, directing the respondents to consider the waiver of arrears of contribution, Interest and Damages, under Section 91C of ESI Act, 1948, in terms of the order dated 29.07.2020 of the Full Bench of this Hon'ble High Court in the batch of Writ Petitions in W.P. No. 34246 of 2019.

For Petitioners
in all W.Ps : Mr. Father Xavier Arulraj
Senior counsel
for M/s. Father Xavier Associates

For Respondents
in all W.Ps : Mr. Ramachandramurthy
Standing counsel for ESI

COMMON ORDER

Since the issue raised in all these Writ Petitions are one and the same, with the consent of the learned counsel appearing for both sides all the Writ Petitions have been heard together and disposed of by this common order.

2. All the petitioners are Recognized unaided Private Matriculation Schools managed by Christian Religious Minority Management. The Educational Institutions like the petitioners had never been under the net of Employees State Insurance Corporation, prior to 2010. However, on 26.11.2010, the State Government i.e., State of Tamil Nadu has issued a notification, under which, the unaided Private Educational Institutions functioning in the State were brought under the purview of ESI Act. In other words, the provisions of the ESI Act had been extended to Self- financing Private Educational Institutions functioning in the State, by virtue of the said notification issued by the State Government dated 26.11.2010.

3. Aggrieved over the said notification issued by the State Government, number of Educational Institutions had approached

this Court and filed Writ Petitions. Though the Writ Court had upheld the validity of such notification, the intra court appeals were filed, where, ultimately through two orders of a Division Bench dated 09.06.2015 and 16.06.2015, many number of Writ Appeals and Writ Petitions were disposed of. In order to appreciate the said orders, passed by the Division Bench, the order dated 09.06.2015 is extracted hereunder:

> " Learned counsel for the parties state that as recorded in the order dated 05.05.2005 reported in 2005(5) SCC 1 (State of U.P. vs. Jai Bir Singh), the question of law has been referred to the Larger Bench of the Honourable Supreme Court, i.e., whether the Employees' State Insurance Act, 1948, would apply to educational institutions. Interim orders have been operating in the present matter.
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> 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."

4. Similar order was passed in other batch of Writ Appeals and Writ Petitions on 16.06.2015. Therefore, the position was that, till a decision is made by the Hon'ble Supreme Court in "State of U.P. vs. Jai Bir Singh" reported in "(2005) 5 SCC 1", insofar as the impugned notification therein dated 26.11.2010, it shall not be acted upon and ultimately whatever be the decision to be made by the Hon'ble Supreme Court in the above referred judgment, parties are bound to such a decision of the Apex Court. Therefore, virtually, the notification issued by the State Government dated 26.11.2010 had been kept in abeyance under stay, with the result, the ESI Corporation could not seek for any recovery of contributions from the employer / Educational Institutions like the petitioners.

5. The said position was continued till the year 2020, where, in view of some conflicting decisions of the Division Benches, a Full Bench was constituted, before whom, all the matters, which were subsequently filed and pending, were referred for giving an Authoritative Pronouncement, on the issue, as to whether, the notification dated 26.11.2010 will be valid and in that case, what shall be the outcome of such notification.

6. The Full Bench of this Court in "All India Private Educational Institutions Association represented by its State General Secretary -vs- State of Tamil Nadu represented by Principal Secretary to Government, Labour and Employment Department, Chennai - 9 and other" reported in "(2020) 5 CTC 93" has decided the issue, where the Full Bench has concluded that, the notification dated 26.11.2010 would be valid, by thus, the Private unaided Educational Institutions functioning in the State can be brought under the net of ESI Corporation. Therefore, the provisions under the said Act would be applicable to those institutions also.

7. Therefore, a quietus has been given by the said pronouncement of the Full Bench of this Court. However, in the said judgment cited supra, the Full Bench from para Nos.129 to 133 has held as follows:

> "129. Needless to state that by virtue of exercise of powers under Section 1(5) of the ESI Act, more and more Educational Institutions have been brought within the umbrella of the ESI Corporation to cater the needs of the subscribers. Therefore, it can no longer be stated that ESI Dispensaries can be established only on the Industrial belt catering the Medical needs and allied services to the Workers. As the nation itself is looking at 100% literacy, every town and village having sufficient number of Schools and Colleges, as per the norms fixed by the ESI Corporation, should, definitely, have ESI dispensaries or Hospitals with all the facilities. It is mandatory on the part of the ESI Corporation to achieve the said milestone without any delay.
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> 130. This matter was heard and reserved for orders just before the preparations for lock down of the Country on account of COVID-19 Pandemic were announced. Thus, in addition to whatever we have stated above on the merits of the issue referred to us, we are also of the view that the present economic conditions necessitate some leeway and negotiations in the matter of settlement of arrears due by the Educational Institutions.
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> 131. Section 91-C of the ESI Act comes to aid. Section 91-C provides for the writing off of loss and states as follows:
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> "91-C. Writing off of losses Subject to the conditions as may be prescribed by the Central Government, where the Corporation is of

opinion that the amount of contribution, interest and damages due to the Corporation is irrecoverable, the Corporation may sanction the writing off finally of the said amount."

132. A provision is, thus, made for the Corporation to sanction the writing off of the contribution, interest and damages due to it if the Corporation is of the opinion that such amounts are irrecoverable from the Educational Institutions concerned. The pandemic has resulted in a situation where several Educational Institutions are reportedly unable to even pay regular salaries to their Employees. The financial crunch faced by them, at this juncture, is a matter of public knowledge. The impugned Notification no doubt mandates certain contributions to be made and we have upheld the validity of the same. The contributions to be made under the Notification enure to the coffers of the Corporation and it is not the Corporation's case that there are claims that have been made by the Employees of the Educational Institutions that remain unfulfilled on account of the failure of the Institutions to make the contributions in the first place. No prejudice has thus been caused to the Employees per se for the periods till date on account of such failure by the Educational Institutions.

133. We, thus, strongly recommend that the provisions of Section 91-C be applied in letter and spirit by the Corporation in considering the case for reduction / waiver of pending arrears, if and when made by the Educational Institutions. Such requests, if and when made, shall be considered by the Corporation in line with the object and spirit of Section 91-C, particularly in the light of the present economic conditions."

8. The Full Bench has given a direction to the ESI Corporation to look into the matter from the view point that, these institutions since had not collected any contributions for the purpose of ESI and since the Fee Determination Committee constituted in this regard under an Act of legislation, since has fixed tuition fee to be collected from each of the students of the particular school, beyond which, no collection can be made under any head including towards ESI and very many thousands of students who have pursued the education had

completed the school education and left and more over, in view of the unprecedented pandemic situation due to COVID-19, totally the economic position, not only in this Country but globally has been affected, that the school like the petitioners were not permitted to collect the full tuition fee for the academic year 2020-2021, by the orders of this Court, the Full Bench has given a strong recommendation to the ESI Authorities to invoke Section 91C of the Act for giving waiver to these institutions in so far as the arrears of ESI Contribution is concerned.

9. In fact at paragraph No.133 of the aforecited Full Bench decision, the Full Bench has stated the following words "We, thus, strongly recommend that the provisions of Section 91C be applied in letter and spirit by the Corporation in considering the case for reduction / waiver of pending arrears, if and when made by the Educational Institutions", which has made it clear that, the provisions of Section 91C of the ESI Act shall be applied in letter and spirit and that was intended in the said decision of the Full Bench, where they have used the word "strongly recommended" to the ESI Corporation.

10. In the aforesaid context, the notices issued by the ESI Corporation to various Educational Institutions and its Managements like the petitioners since have been persuaded and with the result, in some of the cases, the determination orders have been passed under Section 45A of the Act, either after hearing the employer / institutions or without hearing the employer / institutions or the employer / institutions in those cases might not have appeared, despite the notice by the ESI Corporation, pending all the litigations during that time, as the aforesaid Full Bench verdict came only on 29.07.2020.

11. In some of the cases, the Section 45A determination order has been passed and in some of the cases as against the determination order, appeal under Section 45AA was made and in some of the cases, appeal was decided and the matter has reached the stage of recovery of the dues, for which, even in some cases, attachment order has been passed.

12. In one of the similar case, where, when determination orders were issued under Section 45A, the school concerned has made a request to the ESI Authorities to invoke the provisions of Section 91C of the Act for waiver, in view of the grounds referred to above and despite the said request having been made by the school concerned, still the ESI Corporation stuck to the stand and they passed an order, demanding the dues payable by the institutions and therefore, in that context, where the request made by the institutions to invoke Section 91C having not been considered, the school concerned approached this Court by filing Writ Petition in W.P. No. 15405 of 2020 in the matter

of "Joshua Matriculation School vs. The ESI Corporation, Regional Office (T.N.) and other respondent" and I had an occasion to consider the said case and passed an order on 29.10.2020, which has also been relied upon by the present petitioners in this batch of cases.

13. By relying upon all these aforesaid developments, Mr. Father Xavier Arulraj, learned Senior counsel appearing for the petitioners would content that, first of all, in favour of all these schools, there had been a stay order by virtue of disposal of either Writ Petitions or Writ Appeals, by the Division Bench in the year 2015. When that order passed by the Division Bench was in force for five long years i.e., up to 2020 i.e., till the Full Bench order was passed by this Court dated 29.07.2020, during the said period, if at all any ESI contribution had to be made by these institutions, there could be no fine or penalty or damages recovered from the institutions for not paying the contributions during the said five years period.

14. The learned Senior counsel would further submit that, apart from the said grounds, as has been discussed by this Court in the order dated 29.10.2020 in W.P. No. 15405 of 2020, due to COVID-19 situations, the Full Bench has strongly recommended to invoke Section 91C of the Act and that has also not been considered in these cases. He would also urge that, in view of the fixed tuition fee, fixed by the Fee Determination Committee, beyond which, no tuition fee can be collected from the students and most of the students who studied in the classes in the school had already left the institutions, thus, there could be no collections from the students for the Management to make any contributions towards the ESI Corporation for yesteryears i.e., up to 2020. Therefore, in fact, whether the said arrears are also to be waived, in view of the peculiar facts and circumstances, which is prevailing in this case, can also be one of the ground, which can be urged before the ESI Authorities.

15. The learned Senior counsel would also content that, apart from the reasons which are quoted in Rule 53, since these reasons are peculiar or additional reasons, whether based on or after considering these reasons, the determination orders are passed or not, is also a question to be gone into. Therefore, in so far as these cases are concerned, at least in one Writ Petition, i.e., W.P. No. 18890 of 2020, even though Section 45A order was passed, as against which, an appeal was filed, which ended unsuccessful to the petitioner, subsequently, now the order of attachment has been issued, which are the impugned orders in this Writ Petition and in respect of other Writ Petitions, they are in the stage of considering the determination order under Section 45A, where notices have been issued. Therefore, the learned Senior counsel would submit that,

at the time of considering the determination order by the ESI Authorities under Section45A, all these aspects can be gone into. Therefore, suitable direction in the light of the judgment already given in W.P. No. 15405 of 2020 can be issued in these cases also, for consideration of ESI and till such consideration is made, no coercive action can be permitted to be taken on the side of the ESI Corporation.

16. By making all these submissions, the learned Senior counsel would submit that, suitable orders in this batch of Writ Petitions could be passed with aforesaid factual matrix and legal developments.

17. Per contra, Mr. Ramachandramurthy, learned Standing counsel appearing for the respondents / ESI Corporation, on instructions, would submit that, out of all these four Writ Petitions, in W.P. No. 18890 of 2020, Section 45A determination order was passed, aggrieved over the same, appeal was filed by the institution under Section 45AA, where also the order has been confirmed. Accordingly, the institution started paying the amount of more than Rs.2,50,000/- in this regard under the ESI contribution and admittedly as of now Rs.68,477/- with interest alone is due, at this stage, the petitioner has approached this Court as against the order of recovery issued by the ESI.

18. The learned Standing counsel would further submit that, in so far as other three Writ Petitions are concerned, 45A determination is yet to be made and in order to make such determinations, notices have been issued to hear the respective petitioner / institution. Out of these three Writ Petitions, in W.P. No. 18899 of 2020, hearing date is fixed today i.e., 21.12.2020 at 4.30 p.m, in respect of W.P. No. 18904 of 2020, the hearing date is fixed on 08.01.2021 and in so far as W.P. No. 18909 of 2020 is concerned, the hearing date is fixed on 28.01.2021. By giving all these details, the learned Standing counsel would submit, if at all the petitioners want to urge all these points now has been raised before this Court for consideration, they can very well urge those points also before the concerned authority of the respondents / ESI Corporation at the time of hearing and supporting documents to that effect can also be submitted and based on such supporting documents, the grounds to be urged by the institutions side would be considered by the ESI Corporation. Accordingly, suitable orders on merits and in accordance with law would be passed under Section 45A of the Act, to determine the contributions / dues payable by each of the institutions.

19. In so far as W.P. No. 18890 of 2020, the learned Standing counsel would submit that, since the verdict almost has been accepted by the petitioners, as they have started paying the amount and only minimum amount is pending and in that case, no review of determination is required to be made and that aspect can be taken note of by this Court. Insofar as that Writ Petition is concerned, the learned Standing counsel would contend and seeks indulgence of this Court to pass appropriate orders based on the aforesaid facts.

20. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

21. In so far as the liability of paying or contributing towards ESI Corporation on behalf of the employer, it has been now concluded by the Authoritative Pronouncement of this Court by the Full Bench decision dated 29.07.2020 cited supra. However, the Full Bench, in its order, as has been extracted herein above from paragraph Nos. 129 to 133, has explained the position as to the peculiarity of the situation, where all these institutions were placed, especially in the context of COVID-19 situation. Therefore, the Full Bench has made a strong recommendation to the ESI Corporation to invoke Section 91C in letter and spirit for the purpose of waiver of the pending arrears.

22. In all these cases, certainly the grounds urged by the learned Senior counsel appearing for the petitioners are available. There has been a stay granted by this Court, between 2015 to 2020, where the order passed by the First Division Bench of this Court on 09.06.2015 will have an effect that the institutions could not be persuaded to make the contribution between 2015 to 2020. Now the gate is open, because of the Full Bench Judgment dated 29.07.2020. Therefore, what shall be the best judgment to be made, as to whether, these institutions are to be demanded to pay the arrears from 2015 to 2020, whether they would be liable to pay the damages as well as the penalties, that is the question. Normally, if a litigant approached the Court of law, where it had a benefit of stay and even ultimately on the disposal of the main case against the party, where the stay gets vacated, certainly, during the said stay period, if any default is taken place, that can only be construed not as default, because of the stay enjoyed by the party. Therefore, during the said period, where they enjoyed the stay, no penalty or damages can normally be charged. Based on the point of limitation also, it is a settled proposition that, the lis pending before a legal forum, when the party had a benefit of stay, and ultimately, the stay is vacated and the

matter is disposed, then the limitation, during which period, the lis was pending before the legal forum, also would run? the answer would be in negative, as this issue has been settled, and those period, where, the party enjoyed the stay, would be exempted even for the purpose of computing the limitation.

23. The said principle can very well be applied to the present case also, where, if these institutions enjoyed the order passed by the Division Benches in the year 2015, for the past five years, up to 2020 i.e., till the Full Bench order is passed, certainly, this Court feels that, they would be eligible to claim the benefit of stay or final order passed by the Division Benches referred to above in the year 2015, where they cannot be pressed for any damages and penalties.

24. Secondly, in Tamil Nadu, there is a legislation called, "The Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009, under which, a committee namely 'School Fee Determination Committee' is constituted and before such committee, every private unaided institution / school has to make application to fix a fee. Once the School Fee Determination Committee fixed the fee, taking into consideration of all the aspects, then, for three academic years, no change can be made by the institutions to get higher / enhanced fee under any head.

25. Therefore, during these years i.e., upto 2020, the Fee Determination Committee certainly would have fixed the fee for the petitioners, and in view of that fee determination, certainly there could not have been any provision for contributing for the purpose of due payable to the ESI Corporation. When that being the position, all of a sudden, now contributions cannot be generated for the whole period up to 2020, without having recovered any amount by way of tuition fee from the students by taking into account the over head expenses towards ESI Corporation also. Therefore, that aspect has also to be gone into by the ESI Corporation.

26. Thirdly, the pandemic situation due to COVID-19, which has been clearly spelt out by the Full Bench itself in the aforesaid order, the relevant portion of which had been quoted, where, the Full Bench has strongly recommended that the provisions of Section 91C be applied in letter and spirit and accordingly, the reduction / waiver of pending arrears can be made. Since that is a mandate given by the Full Bench, that should be scrupulously followed by the ESI Corporation, in each case while passing determination order under Section 45A of the Act.

27. Fourthly, while invoking Section 91C, the ESI Corporation, apart from the circumstances mentioned in Rule 53, these circumstances which have been enumerated herein above in

this order and also the COVID-19 situation as has been mentioned by the Full Bench in the aforecited judgment, shall also be taken into account.

28. If these points are to be taken into account, for which, if every institutions like the petitioners are ready and willing to raise these grounds and file supporting documents, certainly those aspects shall be considered by the ESI Corporation at the time of making the determination under Section 45A of the Act and ultimately, they can pass the determination order.

29. These aspects having been considered by this Court and order has been passed in the aforesaid Writ Petition in Joshua Matriculation School case, by order dated 29.10.2020, where, I have passed the following order:

> "11. I have considered the rival submissions made by the learned counsel for both parties and also perused the materials placed before this Court.
> 12. As has been rightly pointed out by the learned counsel appearing for the Petitioner, Section 91-C of the Employees' State Insurance Act has provided that, the Employees' State Insurance Corporation can decide whether the losses can be write-off or it can be waived and in this context, an opinion has to be formed by the Employees' State Insurance Corporation to give or not to give such waiver or write-off to a particular employer or establishment. In this context, it is further to be noted that, insofar as, the past events are concerned, in the State of Tamil Nadu, right from the year 2010, when the notification was issued by the State Government, bringing private unaided educational institutions also under the Provisions of the Act, there had been series of litigations. With the result, most of the private unaided educational institutions have not provided any contributions towards Employees' State Insurance Corporation and ultimately, now the issue has been concluded by the authoritative pronouncement of the Full Bench of this Court under the Judgment cited supra reported in "2020 (5) CTC 93".
> 13. Therefore, in all these years, there could not have been any provision for collecting the Employees' State Insurance contribution. That apart, as has been pointed out by the learned counsel appearing for the Petitioner / School,

by virtue of the school Fee Determination Committee of the State, before whom the private unaided educational institutions have to make their request with detail documents justifying the demand of a particular rate of tuition fee to be collected from the students of every classes and based on which, the Fee Determination Committee would decide the tuition fee to be collected from each of the students of various classes of the School and once such fee is determined by the Fee Determination Committee, that would prevail for three academic years. Accordingly, insofar as the Petitioner / School is concerned, Fee Determination Committee also seems to have fixed the fee to be collected from the students and while fixing the fee, the Fee Determination Committee has not taken note of the provisions under Employees' State Insurance Act, for making contribution on behalf of the teaching and non-teaching staff.

14. Since there was no determination to collect additional fee for the purpose of making contribution under the Employees' State Insurance Act, none of the teaching and non-teaching staff of the Petitioner / School would have contributed any amount towards Employee's State Insurance Corporation. The students who studied in those years, i.e., academic years prior to 2020-2021 would have completed their course and after completing their course or after passing out of their particular class, now the Petitioner / School or its Management cannot seek any further fee from the students under the Head of Employee's State Insurance Contribution. The same would become impossible, because, no students or parents will come forward to pay additional fee for the completed classes towards tuition fee or under any other head. Consequently, such recovery is not possible from the passed out students, in view of the determination already made by the Fee Determination Committee.

15. That apart, due to COVID-19 situation, World economy has come to too low and India is not an exception to that. That is the reason why, even though the School like petitioner are conducting online classes, for which every teaching and non-teaching staff are paid monthly salary without any reduction, as they

have to make out expenses, they wanted to collect the tuition fee. However, this Court by Order dated 17.07.2020 in W.P.No.8951 of 2020 etc., batch had only permitted the School Management to collect 40% of the tuition fee payable by each of the students. Therefore, only with that money contribution made by the students, now the Managements of the School are running these institutions, by conducting online classes.

16. In order to meet these situations, the Full Bench in the Judgment cited supra, in Paragraph Nos.129 to 133, has made out strong case on behalf of the educational institutions and made a mandate, especially in Paragraph No.133, with the strong words that, Section 91-C be applied in letter and spirit by the Corporation in considering the case for reduction/waiver of pending arrears, if and when such a request is made by the Educational Institutions.

17. Though such mandate has been given by the Full Bench of this Court, based on which, when a plea was raised by the Petitioner Management in its detailed representation dated 06.10.2020, in response to the notice, initially issued by the Employees' State Insurance Corporation, such plea has not at all been considered by the respondents / Employees' State Insurance Corporation as the same is not reflected in the impugned demand notice.

18. The said position was fairly accepted by the learned Standing Counsel appearing for the Employees' State Insurance Corporation. However, he would only submit that, the waiver / write-off has to be made under Section 91-C of the Act, however, for such waiver or write-off of arrears of due, the Employees' State Insurance Corporation shall form an opinion within the meaning of Rule 53 of the Employees' State Insurance Rules and accordingly, on case to case basis, the decision would be made by Employees' State Insurance Corporation.

19. The said stand taken by the learned Standing Counsel appearing for the Employees' State Insurance Corporation is taken note of by this Court.

20. No doubt under Section 91-C of the Act, opinion should be formed by Employees' State Insurance Corporation about the recoverability

of the dues from any employer or establishment and in forming such opinion, what shall be the criteria should be taken into account, which, according to the learned Standing Counsel appearing for the Employees' State Insurance Corporation, is only under Rule 53 of the said Rule. However, this Court feels that, in addition to the situation mentioned under Rule 53 of the said Rule, the peculiar situation faced by the Schools, due to COVID-19, also should be taken into account, as that has been the mandate given by the Full Bench of this Court in the Judgment referred to above. Therefore, for making such reconsideration under Section 91-C of the Act on the plea raised by the Petitioner / institution to give write-off or waiver, the matter can very well be remitted back to the respondents as rightly pointed out by the learned Standing Counsel appearing for the respondents / Employees' State Insurance Corporation.

21. In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following orders:

"(i)That the impugned order is set aside.

(ii)The matter is remitted back to the respondents / Employees' State Insurance Corporation for reconsideration.

(iii)While making such reconsideration, the mandate given by the Full Bench of this Court (2020 (5) CTC 93) in Paragraph Nos.129 to 133 shall be taken into account by the Employees' State Insurance Corporation.

(iv)Also, apart from the reasons stated in Rule 53 of the Employees' State Insurance Rules, the present economic situation, due to COVID-19, Pandemic and also the non-contribution towards Employees' State Insurance funds or Employees' State Insurance Contribution in the yester years either from the Management of the Institutions or from the teaching and non-teaching staff by virtue of the Fee Determination Committee's decision, to collect the fixed tuition fee from the students, shall also be taken into account.

(v)By taking into account of all the aforesaid aspects and points indicated above in the discussion, the final order shall be passed by the respondents / Employees' State Insurance Corporation with regard to waiver or write-off under Section 91-C of the Act.

(vi)While considering the same, opportunity of being heard shall also be given to the petitioner / Management by giving separate notice to that effect.

(vii)On receipt of such notice, it is open to the petitioner / Management to give any additional particulars or documents in support of the claim of the petitioner to seek write-off or waiver under Section 91-C of the Act and accordingly, final order shall be passed by the Employees' State Insurance Corporation as early as possible."

22. With all these directions, this Writ Petition is ordered accordingly. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs."

30. Therefore in these cases also, which are similar, consideration shall be made by the ESI Corporation, while determining the dues or arrears towards contributions to ESI. In the said case, in Joshua Matriculation School, one of the ground, prior to the order impugned therein, raised by the institution concerned is that, under the provisions of the ESI Act, beyond five years, no arrears can be demanded. Having accepted the plea, in fact in the impugned demand order made by the ESI Corporation in the said Joshua Matriculation case, it has given up, the past arrears beyond five years.

31. Here in the case in hand, it is brought to the notice, by the learned Senior counsel appearing for the petitioners that, the ESI Corporation has claimed arrears from 2011 onwards, that is not possible to claim the arrears beyond limitation and the past arrears beyond five years also cannot be recovered and therefore beyond 2015, no recovery can be made and therefore that point also shall be taken into account by the ESI Corporation, while passing orders of determination as indicated above.

32. For all these reasons discussed above, this Court is inclined to pass the following orders in this batch of Writ Petitions:

"(i) That the matters are remanded back at the stage where it stands, for reconsideration to the respondents / ESI Corporation.

(ii) In each of the cases, a fresh hearing date shall be given, except in W.P. No. 18904 of 2020, where according to the learned Standing counsel appearing for the respondents / ESI, hearing date has already been fixed as

08.02.2021. Therefore in all other cases, fresh date shall be fixed, including in W.P. No. 18899 of 2020, where needful shall be made by the ESI to have a fresh look on the determination already been made, in view of the subsequent developments taken place as indicated above.

(iii) Therefore, in all these cases, fresh determination shall be made, for which, a personal hearing shall be given to the Management of each of the petitioners. On receipt of notice of hearing, they shall appear before the respondents / ESI Authorities without fail with all supporting documents and raise whatever grounds urged or raised before this Court as indicated above and put forward their case.

(iv) Once such grounds are urged and supporting documents are filed during the hearing by the respective petitioners, the same shall be taken into account as per the observations made by the Full Bench of this Court referred above, as well as the observations made in this order and accordingly pass orders of determination under Section 45A of the Act, where, if the orders are passed for the purpose of reduction / waiver after applying Section 91C, and still dues or contribution has to be made by these institutions, determination order to that effect alone shall be passed by the ESI Authorities."

33. With these directions and observations, these Writ Petitions are disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vji

To

1. The Regional Director,
   E.S.I. - Regional Corporation (Tamil Nadu),
   143, Sterling Road,
   Chennai - 600 034.

2. The Deputy Director,
   Employees' State Insurance Corporation,
   1897 Trichy Road, Panchdeep Complex,
   Ramanathapuram,
   Coimbatore 641 045.

3. The Recovery Officer,
   1897 Trichy Road, Panchdeep Complex,
   Ramanathapuram, Coimbatore 641 045.

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

5. The Deputy Director,
   E.S.I. - Regional Corporation (Tamil Nadu),
   143, Sterling Road, Chennai - 600 034.

6. The Manager,
   The Branch Office,
   Employees State Insurance Corporation,
   Plot No. 263, M.I.G.,
   No.13, Bharathiyar Street, NH-1,
   Maraimalai Nagar, Chennai.

+1 cc to Mr.CV.Ramachandramurthy Advocate sr42319
+4 ccs to M/s.father Xavier Associates sr42124

W.P. Nos. 18890, 18899, 18904
and 18909 of 2020
and
W.M.P. Nos. 23468, 23470, 23472, 23473,
23475, 23477, 23483 and 23484 of 2020

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