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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM

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

W.P. No. 33539 of 2019

and

W.M.P. No. 33996 and 34000 of 2019

M/s. Shree Venkateshwara Charities Trust,
Represented by its Secretary,
Mr. G.P.Kettimuthu
Administering Sri Venkateshwara International School,
Sri Vidhya Nagar, Othakuthirai (PO),
Gobichettipalayam - 638 476. ...Petitioner

-vs-

1. The Deputy Director (i/c),
Employees' State Insurance Corporation,
Sub Regional Office,
1897, Trichy Road,
Panchdeep Bhavan,
Ramanathapuram,
Coimbatore - 641 045.
2. The Social Security Officer,
E.S.I. Corporation,
1897, Trichy Road,
Panchdeep Bhavan,
Ramanathapuram,
Coimbatore - 641 045. ...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in No. 56/ID-Kgpalayam/Survey/2019 dated 28.09.2019 passed by the Second Respondent Social Security Officer, Coimbatore and consequently direct the Respondents or anybody through them not to take any action under the Employee State Insurance Act, 1948, pending disposal of the question of law before the Larger Bench of Supreme Court i.e. whether the Employees' State Insurance Act, 1948, would apply to Educational Institutions.



For Petitioner : Mr. D.Prabhu Mukunth Arun Kumar

For Respondents: Mr. S.P.Srinivasan

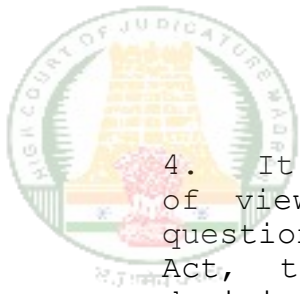
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O R D E R
(through video conference)

Heard Mr. D.Prabhu Mukunth Arun Kumar, Learned Counsel for the Petitioner and Mr. S.P.Srinivasan, Learned Standing Counsel for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Government of Tamil Nadu by Notification in G.O. Ms. No. 237, Labour and Employment (K1) Department (G.O.) dated 26.11.2010 in the exercise of powers conferred by Section 1(5) of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the ESI Act' for short) had extended the provisions of the ESI Act to the educational institutions (excluding Government and Government aided institutions) run by individuals, trustees, societies or other organizations, wherein, twenty or more persons are employed or were employed on any day of preceding twelve months, with effect from the date its publication in the official gazette. The Petitioner, which is an unaided private educational institution, obviously had become an establishment falling within the purview of the ESI Act.

3. When the Social Security Officer of the Employees' State Insurance Corporation visited the establishment of the Petitioner on 28.08.2019 and 21.09.2019 for the purpose of inspection under Section 45 of the ESI Act, the Petitioner failed to produce the records, which necessitated him by order dated 28.09.2019 to recommend for prosecution of the Petitioner. In pursuance thereof, the Assistant Director, Inspection Branch, Employees' State Insurance Corporation on 25.11.2019 issued a show cause notice to the Petitioner, granting an opportunity to show cause why the Petitioner should not be prosecuted for the defaults committed, which were offences under Section 85 read with Sections 85-A and 85-C of the ESI Act. The Petitioner chose to challenge the aforesaid order dated 03.10.2019 passed by the Social Security Officer, Employees State Insurance Corporation in this Writ Petition and sought for a direction to the Respondents or any body through them should not to take any action under the ESI Act pending disposal of the questions of law referred before the Larger Bench of the Hon'ble Supreme Court of India in State of Uttar Pradesh -vs- Jai Bir Singh [(2005) 5 SCC 1].



4. It requires to be stated here that there had been conflict of views by various Division Benches of this Court on the question as to whether the extension of provisions of the ESI Act, to educational institutions would have to await the decision on the reference made to the Larger Bench of the Hon'ble Supreme Court of India in *State of Uttar Pradesh -vs- Jai Bir Singh* [(2005) 5 SCC 1], and the matter had been referred to the Full Bench of this Court, where the following questions came up for determination:-

- "(i) Whether the final disposal of the two writ appeals vide orders dated 09.06.2015 and 16.06.2015 are based on a correct construction and reading of the ratio of the referring order in the case of *State of U.P. -vs- Jai Bir Singh*, [(2005) 5 SCC 1], paragraphs 38, 41, 42 and 44 in particular?
- (ii) If the answer to the first question is in the positive, then too does propriety demand awaiting a decision in the reference keeping in view the fact that the orders dated 09.06.2015 and 16.06.2015 are only interim orders that do not attach a finality by an adjudication on the issue?
- (iii) Whether unaided private educational institutions can be treated to be an establishment within the meaning of Section 1(5) of the Employees State Insurance Act, 1948 and be capable of being governed by notifications issued under the 1948 Act as being an establishment being covered within the word "otherwise" ?
- (iv) Whether the State has discriminated between private unaided educational institutions on the one hand and the public and government aided private educational institutions on the other by issuing a notification applying the same only to the former, which may amount to an act of invidious discrimination under Article 14 of the Constitution of India so as to enable the petitioners to resist the impugned notification dated 26.11.2010?
- (v) Whether the State or Central Government can notify the applicability of the 1948 Act only after an amendment either under the 1948 Act or the State Acts, keeping in view that the word 'insurance' occurring in Section 19 of the 1973 Act and a pari materia provision under the 1976 Act already covers insurance coverage of the teachers and other employees of schools and colleges?



- (vi) Whether the notification dated 26.11.2010 can be enforced even without an amendment in the provisions as referred to in question No. (v) ?"

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The said questions were answered by the Full Bench of this Court in the order dated 29.07.2020 in All India Private Educational Institutions Association -vs- the State of Tamil Nadu, which reads as follows:-

- "(i) The decision regarding the validity of the impugned notification issued under Section 1(5) of the ESI Act could well have been taken by the Division Bench and the postponement of the same pending decision of the reference in Jai Bir Singh (paragraphs 38, 41, 42 and 44 in particular) by the Larger Bench was not warranted ;
- (ii) The answer to question no.(i) is in the negative and hence, question no.(ii) does not require resolution. However, we are of the view that the orders of the Division Bench dated 09.06.2015 and 16.06.2015 are only in the nature of interim orders ;
- (iii) The ESI Act can very well treat the private unaided educational institutions as 'establishments' within the meaning of the said Act and the term 'otherwise' has clearly been placed to specify that genus of establishments is not restricted to those organisations, which are industrial, commercial or agricultural only, but also includes organisations like educational institutions;
- (iv) There is no discrimination between the private unaided educational institutions and the public and government aided private educational institutions, pursuant to the issuance of the notification No.II 2/LE/52/2013, dated 02.01.2013 ; and
- (v) As far as question Nos.(v) and (vi) are concerned, no amendment is required to be made by the State or Central Government to implement the impugned notification."

5. In view of the aforesaid authoritative pronouncement made by the Full Bench of this Court, the relief sought by the Petitioner cannot be granted. Having regard to the aforesaid developments that have been taken place subsequent to the filing of the Writ Petition, Learned Counsel for the Petitioner seeks permission of



this Court to withdraw the Writ Petition with liberty to submit reply to the show cause notice no. 56/P/11/13/1/ShreeVenkateshwara/Inspn/2019 dated 25.11.2019 issued by the Third Respondent. He has filed a memo dated 01.09.2020 to that effect through e-mail dated 01.09.2020, which is placed on record.

Accordingly, the Writ Petition is dismissed as withdrawn granting liberty to the Petitioner to submit a reply to the show cause notice no.56/P/11/13/1/ShreeVenkateshwara/Inspn/2019 dated 25.11.2019 on or before 30.09.2020. Though obvious, it is made clear that the concerned authority shall consider such reply, if submitted, following the prescribed procedure and take a reasoned decision on merits in accordance with law and communicate the same to the Petitioner under written acknowledgment. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

vjt

To

1. The Deputy Director (i/c),
Employees' State Insurance Corporation,
Sub Regional Office,
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Copy to

The Secretary,
M/s. Shree Venkateshwara Charities Trust,
Mr. G.P.Kettimuthu
Administering Sri Venkateshwara International School,
Sri Vidhya Nagar, Othakuthirai (PO),
Gobichettipalayam - 638 476.

+1cc to Mr.S.P.Srinivasan, Advocate SR.No.28533

W.P. No. 33539 of 2019

SS(CO)
GMY(16/09/2020)