

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

WP NO.7994 OF 2021
AND WMP NO.8552 OF 2021

Shrimathi Devkunvar Nanalal Bhatt
Vaishnav College for Women
(Autonomous)
Represented by its Secretary
Chrompet, Chennai - 600 044. ... Petitioner

Versus

1. Employees State Insurance Corporation
Represented by its Chairman
Panchdeep Bhawan, CIG Marg,
New Delhi - 110 002.
2. The Employees State Insurance Corporation
Rep. by its Deputy Director (Revenue)
Panchdeep Bhawan, CIG Marg,
New Delhi - 110 002.
3. The Employees State Insurance Corporation
Rep. by its Additional Commissioner &
Regional Director of ESIC
No.143, Sterling Road, Nungambakkam,
Chennai - 600 034.
4. The Employees State Insurance Corporation
Deputy Director of ESIC, Chennai
No.143, Sterling Road, Nungambakkam,
Chennai - 600 034. ..

Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of
Certiorarified Mandamus, to call for the records

culminating in the order in No.5100-101100-000-1303/Ins-8 dated 02.02.2021 of the fourth respondent and also order in No.P-11/12 / Misc./2 /2020(M)-Rev.II/35 dated 10.02.2021 of the second respondent and quash the same and direct the respondents to reconsider the representation of the petitioner dated 19.11.2020 made under Section 91(C) of the ESI Act, 1948, on merits in accordance with law in the light of the decisions of this Court dated 29.07.2020 in WP No.34236 of 2019 and order dated 29.10.2020 in WP No.15405 of 2020 of this Court and quash the order dated 02.02.2021 of the fourth respondent in No.5100-101100-000-1303/Ins-8 dated 02.02.2021 passed without hearing the petitioner and direct the fourth respondent to afford reasonable opportunity of hearing the petitioner on C-18 Adhoc Notices.

For Petitioner : Mr.K.Shakespeare

For Respondents : Mr.G.Bharadwaj

O R D E R

The petitioner is a College. Recently, the Hon'ble Full Bench of this Court in ALL INDIA PRIVATE EDUCATIONAL INSTITUTIONS ASSOCIATION VS. STATE OF TAMIL NADU REP. BY PRINCIPAL SECRETARY TO GOVERNMENT, LABOUR AND EMPLOYMENT DEPARTMENT [2020 (5) CTC 93] has held that even the Educational Institutions fall within the purview of the Employees' State Insurance Act, 1948. Thereafter, a question has arisen as to whether the recovery of contribution will be prospective or retrospective. However, the Court has considered view and given a direction to the ESI Corporation to decide it under Section 91(C) of the Employees' State Insurance Act, 1948 and liberty was granted to the petitioner therein to approach this Court.

2.In a similar circumstance, Hon'ble Mr.Justice R.Suresh Kumar, in W.P.No.15405 of 2020, dated 29.10.2020, has passed a detailed order, in respect of disposing of the Appeal filed by the Educational Institution and the relevant portion of the said order

reads as under:

"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."

3. Thereafter, the petitioner has made a representation on 19.11.2020 to the respondents setting out all the details. However, a cryptic order came to be passed on 10.02.2021 by the second respondent stating that the petitioner is an actively functioning unit and not a closed unit and therefore, Rule 53 of the ESI (General) Rules 1950 does not fit to the request made by the petitioner and therefore, it cannot be acceded to.

4. From the perusal of the materials placed before this Court, it is seen that the petitioner has made a request on specific circumstances where the fixation of fee by the Fee Fixation Committee, COVID - 19 conditions and also the circumstances which disables them from making the payment. Without considering any of these grounds, the impugned order came to be passed on 10.02.2021. Since I do not find any reasons for rejection of the request made by the petitioner, I am inclined to set aside the impugned order.

5. Accordingly, the impugned order dated 10.02.2021 passed by the second respondent is set aside and the matter is remitted back to the respondents with

a direction to consider the representation dated 19.11.2020 made by the petitioner in the light of the Full Bench judgment of this Court in ALL INDIA PRIVATE EDUCATIONAL INSTITUTIONS ASSOCIATION VS. STATE OF TAMIL NADU REP. BY PRINCIPAL SECRETARY TO GOVERNMENT, LABOUR AND EMPLOYMENT DEPARTMENT [2020 (5) CTC 93] as well as the judgment of the learned Single Judge of this Court in W.P.No.15405 of 2020 dated 29.10.2020 and pass a well reasoned order, after giving an opportunity to the petitioner to produce all the records. The said exercise shall be completed by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

6.The Writ Petition is disposed of with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

TK

To

1.The Chairman

Employees State Insurance Corporation
Panchdeep Bhawan, CIG Marg,
New Delhi - 110 002.

2.The Deputy Director (Revenue)

Employees State Insurance Corporation
Panchdeep Bhawan, CIG Marg,
New Delhi - 110 002.

3.The Additional Commissioner &
Regional Director of ESIC
Employees State Insurance Corporation
No.143, Sterling Road, Nungambakkam,
Chennai - 600 034.

4.The Employees State Insurance Corporation
Deputy Director of ESIC, Chennai
No.143, Sterling Road, Nungambakkam,
Chennai - 600 034.

- 1 cc to M/s. K. Shakespeare, Advocate SR.20679
- 1 cc to M/s. G. Bharadwaj, Advocate SR.20132

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SSN(CO)
EU 6.5.2021



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