

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29/10/ 2021

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.A.Nos.2037, 2048 and 2049 of 2021
&
C.M.P.Nos.12995, 13024, and 13028 of 2021

(Heard through VC)

M/s. St. Thomas Matriculation Higher
Secondary School,
Rep. by its Correspondent,
T.Rajan Mathews No.14,
Sai Nagar, Chinnasekkadu, Manali,
Chennai - 600 068.

.. Appellant in all Writ Appeals/
Petitioners in all WP's

Versus

1. The E.S.I Corporation,
Regional Office (T.N.),
Rep. by its Regional Director,
Panchadeep Bhavan,
No.143, Sterling Road, Chennai - 600 034.

2. The Assistant / Deputy Director,
Regional Office (Tamil Nadu),
Employees State Insurance Corporation,
No.143, Sterling Road,
Chennai - 60 0034.

.. Respondents in all Writ Appeals/
Respondents in all WP's

PRAYER in all Writ Appeals:- Writ Appeals filed under Clause 15 of Letters Patent to set aside the Order dated 23.06.2021 in W.M.P.Nos.1609, 1603, 1600 of 2021 in W.P.Nos.1428, 1421 and 1417 of 2021.

W.P.Prayer:- Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

WMP No.1609 of 2021 in W.P.No.1428 of 2021:-

To stay the operation and all further proceedings pursuant to the order passed by the 2nd Respondent in Ref.No.51001009950001302/CP/393505 dated 27.11.2020 Pending disposal of the above Writ Petition.

WP No.1428 of 2021:-

Issue a writ of certiorari calling for the records relating to the order of the 2nd Respondent passed in Ref.No.51001009950001302/CP/393505 dated 27.11.2020 and quash the same.

WMP No.1603 of 2021 in W.P.No.1421 of 2021:-

To stay the operation and all further proceedings pursuant to the order passed by the 2nd Respondent in No.1 NS VIII / 51001009950001302/ 102120201037, dated 27.10.2020 Pending disposal of the above Writ Petition.

WP No.1421 of 2021:-

Issue a writ of certiorari calling for the records relating to the order of the 2nd Respondent passed in No.1 NS VIII / 51001009950001302/ 102120201037, dated 27.10.2020 and quash the Same.

WMP No.1600 of 2021 in W.P.No.1417 of 2021:-

To stay the operation and all further proceedings pursuant to the order passed by the 2nd Respondent in Ref.No.51001009950001302/CP/393504 dated 27.11.2020 Pending disposal of the above Writ Petition.

WP No.1417 of 2021:-

Issue a writ of certiorari calling for the records relating to the order of the 2nd Respondent passed in Ref. No.51001009950001302/ CP/393504 dated 27.11.2020 and quash the Same.

For Appellant in
all Writ Appeals : Mr.P.Ebeneezer Paul

For Respondents in
all Writ Appeals : Mr.G.Bharadwaj

C O M M O N J U D G M E N T

K.KALYANASUNDARAM, J.,

These appeals have been filed challenging the common order passed by the Writ Court in the interim applications in

W.M.P.Nos.1609, 1603, 1600 of 2021 in W.P.Nos.1428, 1421 and 1417 of 2021, wherein the appellant was directed to pay principal amount in four equal instalments within a period of four months.

2. The Government of Tamil Nadu issued a notification G.O.Ms.No.237, Labour and Employment (K1) Department, dated 26.11.2010 extending purview of the Employees State Insurance Act, 1948 (hereinafter referred to as "ESI Act") to un-aided Private Educational Institutions under caption "Establishments" within the meaning of Section 1(5) of ESI Act. The notification was put to challenge by various educational institutions, including the petitioner in the year 2015. The Hon'ble Full Bench of this Court in All India Private Educational Institutions Association V. State of Tamil Nadu [2020 (5) CTC 93] upheld the G.O.

3. The orders demanding ESI contribution for various periods dated 27.10.2020 and 27.11.2020 were challenged by the appellant in Writ Petition Nos.1417, 1421 and 1428 of 2021. When the Writ Petitions along with the stay applications in W.M.P.No.1600, 1603 and 1609 of 2021 were taken up for hearing, the counsel appearing for the respondent had taken notice and the matters are posted on 10.02.2021. Till such time, the respondent-Corporation was directed not to demand past arrears of contribution. Again when stay petitions came up for hearing on 23.06.2021, the interim order was modified and interim stay was restricted to in respect of interest and damages alone. The appellant was directed to pay the principal amount along with other regular payments in four equal installments within a period of four months. The said order is challenged by the appellant in these appeals.

4. The learned counsel for the appellant Mr.P.Ebenezer Paul would argue that the demand of payment of compensation was challenged by the appellant on the grounds that the demand is barred by limitation as per Second Proviso to Section 45 A (1) of the ESI Act; the Corporation failed to consider the directions issued by the Full Bench of this Court reported in [2020 (5) CTC 93] (supra); the show-cause notice dated 09.01.2020 was issued during time of operation of interim orders of this Court in Writ Appeal No.1233 of 2011 and etc. batch, dated 09.06.2015 and hence the consequential notices impugned in the Writ Petitions are illegal. It is the submission of the learned counsel that when an order is bad in its inception, it does not get sanctified at a later stage. Though the appellant has an alternative remedy, however mere existence of an alternative remedy would not bar the jurisdiction under Article 226 of the Constitution of India. It is also stated that the learned Single Judge has not given any reason for modifying the

earlier order. In this regard, the learned counsel relying upon the following decisions:-

- (i) All India Private Educational Institutions Association V. State of Tamil Nadu [2020 (5) CTC 93 (FB)]
- (ii) State of Orissa and another v. Mamata Mohanty [(2011) 4 MLJ 692]
- (iii) M.S. Munivenkatappa Vs. State Bank of India [2007 (2) CTC 135]
- (iv) Maharashtra Chess Association Vs. Union of India and Ors. [2019 (10) Scale 67]
- (v) Commissioner of Income Tax Vs. Chhabil Dass Agarwal [(2014) 1 SCC 603]
- (vi) Union of India, Ministry of Petroleum Vs. Government of Tamil Nadu [(2013) 4 MLJ 721 (DB)]

5. Per contra, Mr.G.Bharadwaj the learned counsel for the respondents would urge that a show cause notice dated 07.08.2012 was issued proposing to determine the contribution covering the period from 29.12.2010 to 31.12.2010, and 03.01.2011 to 30.04.2012. The appellant was given opportunities to attend personal hearing with relevant records. But the appellant had challenged the G.O.Ms.No.237, dated 26.11.2010, after lapse of 5 years in W.P.No.4312 of 2015 and obtained interim stay. In the meanwhile, the Writ Petitions filed by some other institutions challenging the said G.O. were dismissed vide order dated 14.03.2011. Aggrieved over the same, Writ Appeals were filed. The First Bench had disposed all the Writ Appeals and the Writ Petitions on 09.06.2015 and continued interim stay till the disposal of the case in State of U.P. Vs. Jai Bir Singh, which was pending before the Larger Bench of Apex Court. According to the learned counsel, the matter referred to the Larger Bench has nothing to do with the coverage of the act to the educational institutions. It is further stated that the Special Leave Petition filed by the School in Kerala against the similar order of the High Court of Kerala upholding the similar notification was dismissed by the Apex Court on 15.03.2016. Eventually, the Full Bench in 2020 upheld the G.O.

6. He further added that Second Provisio to Section 45 A (1) of the ESI Act has no application to the case on hand and the limitation period has to be excluded during the pendency of the stay; the Hon'ble Full Bench directed all the educational institutions to apply to ESI for waiver / reduction under Section 91-C of the ESI Act, but no application was filed by the appellant; Proceedings dated 09.01.2020 is not a show cause notice and it was the proceedings demanding contribution, which was determined based on the records produced by the appellant.

Without challenging the proceedings dated 09.01.2020, the appellant is not entitled to challenge the consequential recovery proceedings dated 27.10.2020 and 27.11.2020. It is also contended that the appellant is having alternative effective remedy and without exhausting the statutory remedy, these Writ Petitions are not maintainable. In support of the said contentions, the learned counsel has cited the decision of the Apex Court in ESIC Vs. C.C.Santhakumar [(2007) 1 SCC 584]; CIT v. Chhabil Dass Agarwal, [(2014) 1 SCC 603] and Assistant Commissioner (CT) LTU, Kakinada Vs. Glaxo Smith Kline Consumer Health Care Limited, [2020 SCC Online SC 440].

7. We have considered the rival submissions and perused the relevant materials.

8. In the instant case, it is evident from the records that G.O.Ms.No.237, Labour and Employment (K1) Department, dated 26.11.2010 was issued to cover the unaided educational institutions under ESI Act. Perusal of the Judgment of the Full Bench shows that so many Writ Petitions were filed challenging the notification and the Division Benches had taken different view and hence, the matter was referred to a Larger Bench. Eventually, G.O.Ms.No.237, Labour and Employment (K1) Department, was upheld. Taking note of the COVID-19 Pandemic, it was also observed in paragraph Nos.130 to 133, that the educational institutions should apply to ESI Corporation for waiver and reduction of dues under Section 91-C of ESI Act. It is the contention of the learned counsel appearing for the respondents that the appellant has not filed any application till date under Section 91-C of ESI Act.

9. Indisputably, the Writ Petitions are still pending and it is represented that they were directed to be listed for final hearing. So, we refrain ourselves from expressing any opinion on the issue of limitation and maintainability of the Writ Petition. Any observation made in the Writ Appeal will have an impact on the Writ Proceedings.

10. It is true on 27.01.2021, the learned Single Judge directed the respondent Corporation not to demand past arrears of contribution. However, subsequently, on 23.06.2021, the learned Single Judge modified the order and granted stay in respect of interest and damages and further directed the appellant to pay the principal amount along with other regular payments in four equal installments.

11. Taking note of the fact that the Hon'ble Full Bench has upheld the G.O., and the learned Single Judge has exercised discretionary jurisdiction to modify the earlier order, we are of the considered view that the order impugned in these Writ

Appeals does not warrant interference of this Court. In such view of the matter, we find no merit in the Writ Appeals and they are dismissed. However, there shall be order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Regional Director,
The E.S.I Corporation,
Regional Office (T.N.),
Panchadeep Bhavan,
No.143, Sterling Road, Chennai - 600 034.
2. The Assistant / Deputy Director,
Regional Office (Tamil Nadu),
Employees State Insurance Corporation,
No.143, Sterling Road,
Chennai - 60 0034.

+3ccs to Mr.Ebenezer Paul, Advocate, S.R.Nos.56276 to 56278

+1cc to Mr.G.Bharadwaj, Advocate, S.R.No.55995

W.A.Nos.2037, 2048 and 2049 of 2021 &
C.M.P.Nos.12995, 13024, and 13028 of 2021

AK-II (CO)
SU(15/11/2021)