

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2021

:CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.20080 of 2020 and
WMP No.24782 of 2020

Kongunadu Arts and
Science College (Autonomous),
Represented by its Secretary,
G.N.Mills Post,
Coimbatore - 641 029.

... Petitioner

-vs-

- 1.The Employees State Insurance Corporation,
Represented by its Chairman,
Panchdeep Bhawan,
Comrade Inderjeet Gupta (CIG) Marg,
New Delhi-110 002.
 2. The State of Tamilnadu,
Represented by its Principal Secretary to Government,
Labour & Employment Department,
Fort St. George, Chennai- 600 009.
 3. The Employees State Insurance Corporation
Rep. by its Additional Commissioner &
Regional Director of ESIC, Tamilnadu
No.143, Sterling Road, Nungambakkam,
Chennai-600 034.
 - 4.The Employees State Insurance Corporation
(Sub Regional Office)
Rep. by its Deputy Director,
No.1897, Trichy Road,
Panchdeep Complex, Ramanathapuram,
Coimbatore-641 045.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandams to call for the records culminating the order dated 30.09.2020 in No.56-00-110819-000-1303/Ins. IV/SRO of the fourth respondent, quash the same and direct the fourth respondent to await the decision of the first respondent on the representation dated 11.11.2020, submitted by the petitioner under Section 91-C of the ESI Act, 1948 seeking waiver of the contribution claimed in the impugned order or in the alternative permit the petitioner to pay the ESI contribution payable under the impugned order dated 30.09.2020, within time stipulated by this Court through sufficient equated monthly installments, atleast a

minimum of 84 Equated monthly instalments, without interest, penalty, compensation, damages, etc., under ESI Act, 1948 on the ESI Contribution payable by the petitioner institution.

For Petitioner : Mr.K.Shakespeare

For Respondents: Mr.R.Bharadwaj

O R D E R

The petitioner has come forward with this Writ Petition challenging the order dated 30.09.2020 in No.56-00-110819-000-1303/Ins. IV/SRO passed by the fourth respondent and for a direction to the fourth respondent to await the decision of the first respondent on the representation dated 11.11.2020, submitted by the petitioner under Section 91-C of the ESI Act, 1948 seeking waiver of the contribution claimed in the impugned order or in the alternative permit the petitioner to pay the ESI contribution payable under the impugned order dated 30.09.2020, within time stipulated by this Court through sufficient equated monthly installments, atleast a minimum of 84 Equated monthly instalments, without interest, penalty, compensation, damages, etc., under ESI Act, 1948 on the ESI Contribution payable by the petitioner institution.

2. Heard both sides. Perused the records.

3. This Writ Petition is not maintainable in view of the fact that the Petitioner-College (in short 'the College') without exhausting the appeal remedy available under Section 45 AA and/ or under Section 75 of the Employees State Insurance Act, 1948 (in short 'the Act') has approached this Court. Though the college has agreed to pay the contribution in 84 equated instalments, it was objected to by the learned counsel appearing for the respondents 2 to 4.

4. This Court, taking note of the present pandemic situation, permits the College to pay the contributions amount in 24 equated instalments, as the contribution payable by the college runs to nearly Rs.1.2 crores. The instalments shall be paid in the first working day of every month, commencing August 2021. It is made clear that in case the College fails to pay any one of the instalments, it is open to the Authorities concerned to take coercive steps to recover the amount. It is needless to mention that the application, which is said to be filed under Section 91-C of the Act, for waiver of the contribution shall be decided by the Employees State Insurance Corporation and suitable orders to be passed while demanding interest, damages etc., However, it is pertinent to mention here that the provisions of Rule 53 of the Act has to be construed as illustrative in nature and not exhaustive one, more particularly in the present pandemic situation. If no application is filed or

to be filed within 30 days from today under Section 91-C, it is open to the Employees State Insurance Corporation to proceed in accordance with law, as if no petition under Section 91-C is pending.

5. This Writ Petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
The Employees State Insurance Corporation,
Panchdeep Bhawan,
Comrade Inderjeet Gupta (CIG) Marg,
New Delhi-110 002.
2. The Principal Secretary to Government,
Labour & Employment Department,
Fort St. George, Chennai- 600 009.
3. The Additional Commissioner &
Regional Director of ESIC, Tamilnadu
The Employees State Insurance Corporation
No.143, Sterling Road, Nungambakkam,
Chennai-600 034.
4. The Deputy Director,
The Employees State Insurance Corporation
(Sub Regional Office)
No.1897, Trichy Road,
Panchdeep Complex, Ramanathapuram,
Coimbatore-641 045.

+1cc to Mr.G.Bharadwaj, Advocate, S.R.No. 31529
+1cc to Mr.K.Shakespeare, Advocate, S.R.No. 31561

W.P.No.20080 of 2020

SSI (CO)
GN(08/07/2021)