



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

W.P(MD)No.9710 of 2019

and

W.M.P(MD)Nos.7623 & 7624 of 2019

Child Jesus Girls Higher Secondary School,
Rep. by its Correspondent,
No.14, St. Mart Salai,
Palayamkottai - 627 002.

... Petitioner

vs.

- 1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Labour and Employment Department,
Fort St. George, Chennai - 600 009.
- 2.The Employees State Insurance Corporation,
Regional Office (Tamil Nadu),
Rep. by its Regional Director,
143, Sterling Road,
Chennai - 600 034.
- 3.The Employees State Insurance Corporation,
Sub-Regional Office (Madurai),
Rep. by its Deputy Director/Assistant Director,
Panchdeep Bhawan,
ESIC Complex, Salai Road,
Vannarpettai,
Tirunelveli - 627 003.
- 4.The Social Security Officer,
Employees' State Insurance Corporation,
Sindpoondurai, Tirunelveli - 627 001.

...

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned G.O(Ms)No.237, Labour and Employment (K1), dated 26.11.2010, passed by the first respondent and the consequential proceedings of the third respondent, dated 01.02.2019 in Nos.66000411930001302 / C-18int / INS-II/ SRO / TLI / 1332 / 18, 66000411930001302 / D-18 / INS-II / SRO / TLI / 1313 / 18, and 66000411930001302/182019255/1299/18 and quash the



same in respect of the petitioner School.

For Petitioner : Mr.Fr.V.John Kennedy
for M/s.Father Xavier Associates
For R - 1 : Mr.P.Subbaraj
Government Advocate
For R - 2 : Mr.K.C.Ramalingam
For R - 3 : Mr.I.Pinaygash

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ORDER

The petitioner has filed the present Writ Petition, pertaining to the impugned G.O(Ms)No.237, Labour and Employment (K1), dated 26.11.2010, passed by the first respondent and to quash the consequential proceedings of the third respondent, dated 14.08.2018, 01.02.2019 in respect of the petitioner School.

2.According to the petitioner School, it is a partly aided Educational Institution and permitted to collect fees from the students, studying in un-aided classes and the substantial amount of the total collection of the fees is disbursed by way of salary to the staff by the petitioner School. The petitioner School is thoroughly non-commercial and non-profitable and is being run by the charitable, educational and religious Society. It is renowned for giving quality education at an affordable cost. Any increase in the fee collected will unduly burden the students.

3.Further, according to the petitioner, the first respondent issued Government Order in G.O(Ms)No.237, Labour and Employment (K1) Department, dated 26.11.2010, wherein the provisions of the ESI Act, 1948, has extended to the Educational Institution without following the procedures of the ESI Act and subsequently, the third respondent issued impugned notice calling upon the petitioner to appear for enquiry. Challenging the said notice, the petitioner School is before this Court.

4.Heard the learned counsels appearing on either side.

5.The issue of validity of G.O extending provisions of the ESI Act to the Education Institutions was referred to in the decision of the Hon'ble Full Bench of this Court in **All India Private Educational Institutions Association Vs. State of Tamil Nadu** reported in **2020 SCC Online Mad 1641 : 2020 (5) CTC 93 (FB) : 2020 (3) LLJ 672** and the Full Bench of this Court held that the Educational Institutions can be termed as 'Establishments' under the provisions of the ESI Act and dismissed the Writ Petition.



6.At this juncture, the learned counsel appearing for the petitioner School submitted that in the decision of the Full Bench of this Court in **All India Private Educational Institution Association (cited supra)**, the Full Bench has observed that if representation is given for reduction or waiver of pending arrears, the same can be considered by the ESI Corporation in line with the object and spirit of Section 91 C, particularly, in the light of the present economic conditions. Hence, the learned counsel appearing for the petitioner sought for a direction to the ESI Corporation to consider the representation of the petitioner and if the representation is given by the petitioner School for reduction or waiver of pending arrears, the same may be considered by the ESI Corporation as directed by the Full Bench of this Court.

7.In view of the decision of the Full Bench of this Court in **All India Private Educational Institution Association (cited supra)**, the petitioner is not entitled to the relief sought for in the Writ Petition. Accordingly, the Writ Petition is dismissed. However, in view of the decision of the Full Bench of this Court, it is open to the petitioner School to give a representation to the ESI Corporation for reduction or waiver of pending arrears and if any such representation is received within a period of two weeks from the date of receipt of a copy of this order, the respondents are directed to consider the same and pass orders on merits, taking into consideration the present pandemic situation. Till such consideration, the respondents are restrained from initiating any coercive steps against the petitioner Institution, for recovery of the arrears of their contribution under the ESI Act. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

- 1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
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- 2.The Employees State Insurance Corporation,
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Panchdeep Bhawan,
ESIC Complex, Salai Road,
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Tirunelveli - 627 003.
- 4.The Social Security Officer,
Employees' State Insurance Corporation,
Sindpoondurai, Tirunelveli - 627 001.

+1 CC to M/s.SPL GP (SR-19903[F] dated 22/06/2021)

+1 CC to M/s.FATHER XAVIER ASSOCIAT, Advocate (SR-19994[F] dated 23/06/2021)

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