



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.20572 of 2018

and

W.M.P(MD)Nos.18317 & 22373 of 2018

WEB COPY

M/s.Adhitya Nursery and Primary School,
Pandikovil Street,
Uthangudi,
Madurai,
Rep. by its Correspondent,
Premalatha Muthuvel

... Petitioner

vs.

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Labour and Employment Department,
Fort Saint 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 Director,
2nd West Street, K.K.Nagar,
Madurai - 625 020.
- 4.The Branch Manager,
Bank of India, Mattuthavani Branch,
TWAD Board Complex,
No.7, Ganesh Nagar,
Opposite to Mattuthavani Bus Stand,
Madurai - 625 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned show cause notice passed by the third respondent in No.57/00/074152/000/1301/Ins.II/SRO/MDU/153/18, dated 31.08.2018 and to quash the same and to direct the third respondent to refund the petitioner Rs.2,56,341/- his money recovered by him directly from the third respondent his garnishee bank towards the



petitioner's alleged contribution due in
Ref.No.57/RRC/00/074152/000/1301/SRO/MDU/18, dated 09.08.2018.

For Petitioner : Mr.V.Santha Kumaresan

For R - 1 : Mr.P.Subbaraj
Government Advocate

For R - 2 : Mr.K.C.Ramalingam

For R - 3 : Mr.I.Pinaygash

For R - 4 : Mr.Pala.Ramasamy

ORDER

The petitioner has filed the present Writ Petition, to quash the impugned show cause notice issued by the third respondent, dated 31.08.2018 and to direct the third respondent to refund the money recovered by him directly from the fourth respondent, his garnishee bank towards the petitioner's alleged contribution due in Ref.No.57/RRC/00/074152/000/1301/SRO/MDU/18, dated 09.08.2018.

2.According to the petitioner School, it is being run in rural areas by collecting fees from the students and substantial amount of the total fees has been disbursed by way of salary to the staff members by the petitioner School. It is non-commercial and non-profitable School. It is renowned for providing quality primary education at an affordable cost and if the School increases the fee, it will unduly burden the poor 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 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 Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

ps



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 Principal Secretary,
Labour and Employment Department,
Fort Saint George, Chennai - 600 009.
- 2.The Regional Director,
Employees State Insurance Corporation,
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Opposite to Mattuthavani Bus Stand,
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+1 CC to SPL GP (SR-19895[F] dated 22/06/2021)

+1 CC to MR.V.SANTHAKUMARESAN, Advocate (SR-19990[F] dated 23/06/2021)

**W.P (MD) No.20572 of 2018
21.06.2021**

KM(29.06.2021) 4P 7C