BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.06.2021
CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI
W.P(MD)No.21270 of 2018
and
W.M.P(MD)Nos.19104 & 19105 of 2018

Chevalier Matriculation School,
Rep. by its Correspondent,
Kovilur Junction,
Siluvathur Road,
Dindigul. ... 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,
2nd West Street, K.K.Nagar,
Madurai - 625 020.

4.The Social Security Officer,
Employees' State Insurance Corporation,
Dindigul. ... 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 proceeding of the third respondent,dated 14.08.2018 in No.57000744380001301/81420181113/INS.3/470/18 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.K.S.Selva Ganesan
Government Advocate

For R - 3 : Mr.I.Pinaygash

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, in respect of the petitioner School.

2.According to the petitioner School, it is an un-aided Educational Institution and permitted to collect fees from the students and the substantial amount of the total collection of tuition fee 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)

// 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

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4.The Social Security Officer,
Employees' State Insurance Corporation,
Dindigul.

+1 CC to M/s.FATHER XAVIER ASSOCIAT, Advocate (SR-19993[F] dated 23/06/2021)

W.P(MD)No.21270 of 2018

21.06.2021

CN (29.06.2021) 4P 6C