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Order dated 14.10.2022 in
W.P.No.27210 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.10.2022

Coram:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.27210 of 2022

and

W.M.P.Nos.26410 and 26411 of 2022

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Dr.B.M.S.Matriculation Higher Secondary School,
No.40, 1st Main Road, Shenoy Nagar,
Chennai-600 030,
Rep. by its Secretary,
Dr.B.S.Tiruvadanan

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Labour and Employment Department,
Secretariat, Fort St.George,
Chennai-600 009.

2. The Regional Director,
Regional Office (Chennai),
Employees State Insurance Corporation,
Panchdeep Bhawan,
No.143, Sterling Road,
Chennai-600 034.

3. The Deputy Director,

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Regional Office (Chennai),
Employees State Insurance Corporation,
Panchdeep Bhawan,
No.143, Sterling Road,
Chennai-600 034.

4. The Recovery Officer,
Regional Office (Chennai),
Employees State Insurance Corporation,
Panchdeep Bhawan,
No.143, Sterling Road,
Chennai-600 034.

5. The Branch Manager,
Tamil Nadu State Co-operative Bank,
15/16, Ayyavu Street,
Shenoy Nagar,
Chennai-600 030.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the impugned order issued by the third respondent in No.TN/Ins.VIII/51-00-100315-000-1302/C-18(Adh)/441, dated 20.05.2013 and the subsequent impugned proceedings issued by the fourth respondent in Ref.No.51001003150001302/CP/454886/CCR-105574, dated 29.10.2021 and to quash the same.

For petitioner : Mr.G.Sankaran

For respondents: Mr.G.Nanmaran, Spl.G.P. for R-1

Mr.S.P.Srinivasan, Standing Counsel for RR-2 to 4



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ORDER

The petitioner has challenged the order dated 20.05.2013 passed under Section 45-A of the Employees' State Insurance Act as well as the consequential order dated 29.10.2021 seeking for recovery of the determined amount on the following grounds:

Despite the order of interim stay granted by a Division Bench of this Court in Writ Appeal No.222 of 2013, granting stay of the Notification with regard to the ESI contribution payable by the educational institution, the respondents had proceeded with the determination of the amount and passed the impugned order dated 20.05.2013 determining the contribution payable by the petitioner-School under the ESI Act. According to the petitioner, without affording any opportunity of hearing and by giving a go-bye to the Division Bench judgment, the impugned order dated 20.05.2013 has been passed under Section 45-A of the ESI Act. Thereafter, the fourth respondent has also issued recovery proceedings against the petitioner for recovery of the determined amount by proceedings dated 29.10.2021 which is also



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illegal.
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2. Admittedly, the determination of the ESI contribution payable by the petitioner-educational institution was done while interim order of stay was granted in the said Writ Appeal, and therefore, the contention of the petitioner in this Writ Petition will have to be accepted, as they have not been given sufficient opportunity of hearing to place their submissions before determination of the ESI amount under Section 45-A of the ESI Act.

3. Admittedly, as against the impugned order dated 20.05.2013 passed under Section 45-A of the ESI Act, a statutory appeal is provided, which will have to be availed of by the petitioner under Section 75 of the ESI Act. Instead of filing the appeal, the petitioner has filed the present Writ Petition.

4. After giving due consideration to the contentions of the learned counsel for the petitioner and the petitioner being an educational institution, this Court is of the considered view that the recovery proceedings initiated against the petitioner by the proceedings of the fourth respondent, dated

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29.10.2021, can be kept in abeyance, till the petitioner files the statutory appeal under Section 75 of the ESI Act as against the impugned order dated 20.05.2013, within a time frame to be stipulated by this Court.

5. For the reasons stated above, this Writ Petition is disposed of, with a direction to the petitioner to file the statutory appeal under Section 75 of the ESI Act, as against the impugned order dated 20.05.2013 passed by the third respondent, before the appropriate ESI Court, within a period of 15 days from the date of receipt of a copy of this order. The ESI Court shall entertain the appeal, if the same is filed within a period of 15 days from the date of receipt of a copy of this order, without insisting for any condone delay application. However, insofar as the waiver of the pre-deposit amount is concerned, if at all it is sought for by the petitioner, the ESI Court shall consider the same on merits and in accordance with law, exercising its own discretion.

6. There shall be an order of interim stay of the impugned recovery proceedings dated 29.10.2021 issued by the fourth respondent for a period

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of 15 days from the date of receipt of a copy of this order to enable the petitioner to file the statutory appeal under Section 75 of the ESI Act.

7. There shall be no order as to costs. Consequently, the miscellaneous petitions are closed.

14.10.2022

Speaking Order: Yes/no

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To

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Labour and Employment Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Regional Director,
Regional Office (Chennai),
Employees State Insurance Corporation,
Panchdeep Bhawan,
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3. The Deputy Director,
Regional Office (Chennai),
Employees State Insurance Corporation,
Panchdeep Bhawan,
No.143, Sterling Road,
Chennai-600 034.
4. The Recovery Officer,
Regional Office (Chennai),
Employees State Insurance Corporation,
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ABDUL QUDDHOSE, J

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