



W.P.No.33274 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.33274 of 2022 and WMP.No.32708/2022

M/s.Jaya Matriculation School
(under the Management of Jaya
Educational Trust) rep. by its
Managing Trustee, No.1, 3rd Cross Street,
Krishnapuram, Thiruninravur,
Thiruvallur District.

... Petitioner

Versus

1. The State of Tamil Nadu
rep. by its Principal Secretary to Government,
Labour and Employment Department,
Fort St. George, Chennai-600 009.
2. Employees' State Insurance Corporation
rep. by its Regional Director,
143, Sterling Road, Panchdeep Bhavan,
Chennai-600 034.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 15.12.2021 bearing No.TN/Ins VIII/No.51-00-101943-000-1302/C18 Adhoc-326/21 passed by the Employees' State Insurance Corporation, the 2nd respondent herein and to quash the same and further



W.P.No.33274 of 2022

direct the 2nd respondent to waive/write off the amount of past contributions under Section 91-C of the ESI Act, 1948.

For Petitioner : Mr.P.Muthusamy

For Respondents : Ms.E.Indhumathi, G.A. for R1

Mr.C.V.Ramachandra Murthi for R2

ORDER

The petitioner school has challenged the impugned order dated 15.12.2021 passed under the Employees' State Insurance Act, 1948, directing them to pay a sum of Rs.15,03,579/-, being the Employees' State Insurance contributions payable by them for the period from 01/2017 to 05/2021 (except 04/2021) and for failure to pay the said amount, the 2nd respondent has cautioned the petitioner school that they shall recover the same from them as per the provisions of Sections 45-C to 45-I of the ESI Act.

2. The learned Counsel appearing for the petitioner after drawing attention of this Court to the affidavit filed in support of the writ petition would submit that the petitioner school is facing financial difficulty and being an Educational Institution, it must be granted time to pay the demanded amount.



W.P.No.33274 of 2022

He would further submit that even though, the petitioner school has challenged the impugned order, the petitioner is now satisfied due to their financial condition to pay the sum of Rs.15,03,579/- in ten monthly instalments. Therefore, he also drew the attention of this Court to the demand made by the 2nd respondent Corporation dated 13.09.2022 and would submit that as per the said demand, the 2nd respondent has also claimed interest under Section 39(5) of the ESI Act as well as damages under Section 85(b) of the ESI Act. Insofar as the interest is concerned, the learned Counsel for the petitioner would submit that the petitioner school will give a representation to the 2nd respondent Corporation seeking for waiver of the said interest or for any reduction.

3. The learned Counsel for the petitioner also drew the attention of this Court to an order dated 04.03.2022 passed by this Court in W.P.No.4804/2022 filed by the very same petitioner in respect of the other years wherein this Court had issued the following directions:

"7. Accordingly, it is ordered as follows:

i) In so far as the Contribution amount is concerned, the petitioner is directed to pay the contribution amount of Rs.15,58,874/- (Rupees fifteen lakhs fifty eight thousand eight



W.P.No.33274 of 2022

hundred and seventy four only) in ten equal monthly instalments commencing from April 2022.

ii) The first instalment shall commence from 10.04.2022 and the petitioner is directed to pay the remaining nine installments, on or before 10th day of every succeeding calender months.

iii) If the petitioner has failed to pay even one installment, the second respondent is at liberty to proceed further, in accordance with law.

iv) In so far as the demand of interest and other charges are concerned, the petitioner is directed to make representation, or objection before the second respondent corporation, within two weeks from the date of receipt of copy of this order.

v) On such representation being made by the petitioner, the second respondent is directed to consider the same and pass appropriate orders, in accordance with law, within a period of three months from the date of receipt of the representation.



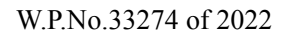
W.P.No.33274 of 2022

vi) Till such time, the operation of the impugned orders dated 27.05.2013 and 07.01.2022 issued by the second respondent shall be kept in abeyance."

The learned Counsel for the petitioner seeks for similar reliefs in this writ petition.

4. Learned Standing Counsel for the 2nd respondent Corporation does not dispute the same.

5. This Court is of the considered view that the number of instalments sought for by the learned Counsel for the petitioner is on the higher side. This Court, after giving due consideration to the fact that the petitioner is an educational institution and has expressed financial difficulty, is of the considered view that the petitioner school will have to pay the demanded ESI contributions in six (6) monthly instalments instead of ten (10) monthly instalments sought for by the learned Counsel for the petitioner-school. Insofar as the payment of interest and other damages if any, payable by the petitioner school is concerned, for the delayed payment, the petitioner school will have to give a representation to the 2nd respondent Corporation within a



6. For the foregoing reasons, this writ petition is disposed of by issuing the following directions:

(b) if the petitioner school defaults in payment of even one monthly instalment, the 2nd respondent Corporation is at liberty to proceed against the petitioner school to recover the outstanding amount in accordance with law;



W.P.No.33274 of 2022

(c) Insofar as the payment of interest, damages and other charges are concerned, the petitioner is directed to give a representation to the 2nd respondent ESI Corporation for waiver/reduction of the said sum within a period of two weeks from the date of receipt of a copy of this Order;

(d) On receipt of the aforementioned representation from the petitioner school, the 2nd respondent Corporation is directed to pass final orders on merits and in accordance with law on the said representation within a period of three months thereafter and till final orders are passed on the representation of the petitioner-school, the 2nd respondent Corporation shall not take any coercive steps against the petitioner-school with regard to the interest/damages or any other claim. However, it is made clear that in case, the 2nd respondent rejects the petitioner's representation, they are at liberty to recover the outstanding amount which includes interest and damages in accordance with law.

No costs. Consequently, connected Miscellaneous Petition is closed.

12.12.2022

tsi
Index: Yes/No
Speaking Order/Non-Speaking Order



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W.P.No.33274 of 2022

ABDUL QUDDHOSE, J

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To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Labour and Employment Department,
Fort St. George, Chennai-600 009.
2. Regional Director,
Employees' State Insurance Corporation
143, Sterling Road, Panchdeep Bhavan,
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W.P.No.33274 of 2022

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