



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.2241 of 2023
and WMP Nos.2315 & 2317 of 2023

C.S.I.Bain School
Rep.by the Correspondent
42 to 48 Ormes Road
Kilpauk,Chennai 600 010.

.. Petitioner

.Vs.

1. E.S.I. Regional Corporation
(TamilNadu)
Rep.by its Regional Director
Panchdeep Bhawan
143, Sterling Road
Chennai 600 034.
2. Deputy Director
E.S.I. Regional Corporation
(TamilNadu)
Panchdeep Bhawan
143, Sterling Road
Chennai 600 034.
3. Recovery Officer
E.S.I. Regional Corporation
(TamilNadu)
Panchdeep Bhawan
143, Sterling Road
Chennai 600 034.



4. The Bank Manager
Canara Bank
Kilpauk, Chennai-600 010.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 17.08.2022 in No. Ins. VIII/ 51001015680001302/ 822022350/C19 and No. Ins/VIII/51001015680001302/822022357/C19 in respect of the periods from Dec.2010 to Oct.2019 on the file of the 2nd respondent and the consequential order of Attachment dated 12.01.2023 in No.TN/RECY/51/51001015680001302/CCR-111216-111217 on the file of the 3rd respondent in respect of the petitioner school and quash the same , directing the respondents to rework the calculation based on the actual coverable employees of the petitioner school, for the period from Dec.2010 to Oct.2019.

For Petitioner : Fr.Xavier Arul Raj
Senior Counsel
for Father Xavier Associates

For Respondents : Mrs.S.Jayakumari
Standing Counsel

ORDER

This writ petition has been filed challenging the proceedings of the 2nd respondent dated 17.08.2022 and the consequential order of attachment dated

12.01.2023, passed by the 3rd respondent.



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2. The brief facts of the case are hereunder:

2.1. The petitioner is a Christian minority School. The Government of Tamil Nadu issued G.O.(Ms).No.237, Labour and Employment, (K1) Department dated 26.11.2010, extending ESI coverage to unaided/self-financing educational institutions. Pursuant to the same, the ESI Corporation issued notice to the petitioner for payment of contribution. The said G.O., became a subject matter of challenge and ultimately, it was referred to the Full Bench of this Court. The Full Bench of this Court by an order dated 29.07.2020, upheld the validity of the G.O., and also issued certain directions. The order passed by the Full Bench has been challenged before the Apex Court and the Apex Court has entertained the Special Leave Petition on certain limited issues.

2.2. Pursuant to the order passed by the Full Bench, the 2nd respondent issued a show cause notice dated 24.09.2020 and directed the petitioner School to submit the relevant records. The petitioner School also gave a detailed representation and provided all the particulars. The petitioner also attended the enquiry conducted by the 2nd respondent.



2.3. Ultimately, the 2nd respondent through order dated 17.08.2022, directed the petitioner to pay a sum of Rs.1,74,84,907/- with interest. This amount was collected towards dues pertaining to the period from August 2013 to October 2019.

2.4. The 3rd respondent issued two separate notices and directed the petitioner to remit a total sum of Rs.2,31,90,276/-. The grievance of the petitioner was that the ESI Corporation had proceeded to include non-salary expenditure, which was beyond the scope of G.O.(Ms).No.237 dated 26.11.2010.

2.5. According to the petitioner, the total amount that is due and payable is only Rs.46,92,466/- and where as the ESI Corporation was directing the petitioner School to pay an excess amount of Rs.1,28,78,239/-.

2.6. The 3rd respondent ultimately issued a notice dated 06.01.2022 and summoned the petitioner to appear for personal hearing on 30.01.2023. This notice was issued calling for certain details from the petitioner and the petitioner was informed that the date of enquiry was fixed as 30.01.2023.



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2.7. The grievance of the petitioner is that even before the enquiry was conducted, the 3rd respondent proceeded to issued an order of attachment on 12.01.2023 and the bank account of the petitioner that is maintained before the 4th respondent was completely freezed. Aggrieved by the same, the present writ petition has been filed before this Court.

3.Heard Mr.Fr.Xavier Arul Raj, learned Senior Counsel for the petitioner and Mrs.S.Jayakumari, learned Standing Counsel for the respondents.

4.This Court was inclined to take up the writ petition for final hearing since the 3rd respondent after issuing a notice on 06.01.2023 and after fixing the date of hearing on 30.01.2023, proceeded to pass an attachment order of 12.01.2023, which was well before the enquiry date. This Court found that such a procedure adopted by the 3rd respondent was illegal and it virtually prevented the petitioner School from operating its bank account. The petitioner School has a student strength of 1855 and there are 154 teaching staff and non-teaching staff. If the entire bank account is freezed in such a hasty manner, the operation of the School will come to a grinding halt.



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5. This Court also felt that no useful purpose will be served by directing the 3rd respondent to conduct an enquiry since the action taken by the 3rd respondent was a consequence of the order passed by the 2nd respondent on 17.08.2022. This order passed by the 2nd respondent, is an appealable order and this Court cannot directly entertain a writ petition against this order. To strike a balance and to ensure that the rights of both parties are secured, this writ petition is disposed of with the following directions:

(a) The petitioner is directed to deposit a sum of Rs.50,00,000/- [Rupees Fifty Lakhs Only] before the 3rd respondent, **within a period of two weeks from today.**

(b) The petitioner is given liberty to file an appeal against the order passed by the 2nd respondent dated 17.08.2022 in No.Ins. VIII/ 51001015680001302/ 822022350/C19 and No. Ins/ VIII/ 51001015680001302/ 822022357/C19. The said appeal shall be entertained by the appellate authority provided that the petitioner deposits the sum of Rs.50,00,000/- [Rupees Fifty Lakhs Only] as directed in Clause (a).

(c) The appeal shall be filed before the appellate authority, within a period of **two weeks from today** and if the same is not filed within the time fixed by this Court, the appeal shall not be entertained.



(d) The proceedings of the 3rd respondent dated 12.01.2023 made in No.TN/RECY/51/51001015680001302/CCR-111216-111217, is hereby set aside and consequently, the order of attachment shall stand cancelled.

(e) If the petitioner does not comply with the conditions stipulated in Clause (a) and Clause (b), the order passed by the 3rd respondent dated 12.01.2023, shall stand revived and the total amount payable from the petitioner shall be recovered. and ;

(f) This order is passed by this Court considering the peculiar circumstances of this case and taking into account the interest of the students and teaching and non-teaching staff working in the petitioner School. Hence, the order cannot be taken as a precedent in any other case.

No Costs. Consequently, connected miscellaneous petitions are closed.

27.01.2023

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Note: Issue order copy on **30.01.2023**

Index : Yes/No

Internet : Yes

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes/No



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N. ANAND VENKATESH, J.

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To

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