IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.Nos.1875, 1948, 1951/2022 & 2550 of 2023
& CMP.Nos.13685, 14543, 14576/2022 & 23587/2023

Paramasivam Palanisamy
Charitable Trust,
M/s.Maharaja Arts and Science College,
Coimbatore – 641 407,
Rep. by its Managing Trustee,
Mr.K.Paramasivam. ... Appellant in CMA/1875/2022

Paramasivam Palanisamy
Charitable Trust, Owning
Maharaja Engineering College
Coimbatore – 641 407,
Rep. by its Managing Trustee/
Chairman Mr.K.Paramasivam. ... Appellant in CMA/1948/2022

Paramasivam Palanisamy
Charitable Trust,
Owning Maharaja Prithvi Engineering College,
Avinashi,
Tirupur – 641 654,
Rep. by its Managing Trustee/Chairman.
Mr.K.Paramasivam ... Appellant in CMA/1951/2022

Paramasivam Palanisamy
Charitable Trust,
M/s. Maharaja Institute of Technology,
Coimbatore – 641 407,
Rep. by its Managing Trustee/
Chairman Mr.K.Paramasivam ... Appellant in CMA/2550/2023

-Vs-

The Employees State Insurance Corporation,
Rep. by its Deputy Director,
Coimbatore. ...Respondent in all CMAs

Prayer in CMA/1875/2022: Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act 1948, against the order and decree of Employees State Insurance Court, Coimbatore in I.A.No.1 of 2022 in ESICFR.No.49 of 2022 dated 06.07.2022.

Prayer in CMA/1948/2022: Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act 1948, against the order and decree of Employees State Insurance Court, Coimbatore in I.A.No.1 of 2022 in ESICFR.No.1310 of 2022 dated 01.08.2022.

Prayer in CMA/1951/2022: Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act 1948, against the order and decree of Employees State Insurance Court, Coimbatore in I.A.No.1 of 2022 in ESICFR.No.197 of 2022 dated 28.07.2022.

Prayer in CMA/2550/2023: Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act 1948, against the order and decree of Employees State Insurance Court, Coimbatore in I.A.No.1 of 2022 in ESIOP.CFR.No.2283 of 2022 dated 31.08.2023.

For Appellant	: Mr.S.Haroon AL Rasheed for M/s.T.S.Gopalan and Co. in all CMAs
For Respondent	: Mr.M.Rohit for Mr.TNC.Kaushik in CMA/1875, 1948 & 1951/2022 Mr.S.P.Srinivasan in CMA/2550/2023

COMMON JUDGMENT

These batch of appeals has a common feature and it is explained as below;

a) Certain Paramasivam Palanisamy Charitable Trust was running four Educational Institutions – Maharaja Arts and Science College, Maharaja Engineering College, Maharaja Prithvi Engineering College and Maharaja Institute of Technology.

b) Originally, Educational Institutions were kept outside the purview of the ESI Act, 1948. However, Vide Government Order dated 29.12.2010, Educational Institutions were brought under the net of ESI Act. This came to be challenged Vide a batch of writ petitions by many Educational Institutions and also by the association of these Educational Institutions. So far as the four colleges now before the Court are concerned, they were represented by their association.

c) These Writ Petitions as was originally filed came to be dismissed by a learned single Judge of this Court. These orders however, became subject matter of appeal subsequently. So far as the appellant institutions are concerned, as earlier stated they were represented by their association and the appeal preferred by the association are W.A.Nos.1233 and 1234 of 2011. These two appeals came to be dismissed and these orders of dismissal were unsuccessfully challenged before the Hon'ble Supreme Court Vide order dated 09.02.2018.

d) For completion of facts, it may be stated that since another Division Bench intended to take a different view, the entire matter landed before the full Bench. On 27.07.2020, the full Bench upheld the validity of the Government Order dated 29.12.2010. The Full Bench also directed the ESI Corporation to consider the waiver of past contribution.

e) Be that as it may, the ESI Corporation came out with two separate orders, one dated 14.05.2019 and another dated 05.03.2020, both of which are proceedings under Section 45A of the ESI Act. The proceedings dated 14.05.2019 relate to a period from 01.04.2011 to

30.03.2012 and the second proceedings dated 05.03.2020 relates to another period from 01.12.2011 to 30.12.2019. These contributions appear to have been made based on certain ad hoc or provisional assessment and not on actuals.

f) It may be stated that as on the date of these proceedings, the four colleges herein above have already been closed. The appellant challenged the proceedings of the ESI Corporation before the Labour Court. The next aspect that was under challenge was in terms of proviso of Section 45A.

2.The learned counsel for the appellant made two pointed submissions;

a) on the date when the Corporation passed the impugned order, it can relate back only to five years next before the date of the order. In others words, while the award is anywhere between 2011 and 2014, it can *inter alia*, if at all it can commence, it can commence only from 2014-2015. In all these cases, since the notification bringing the educational institutions within the net of ESI regime itself was stayed, there was no occasion for the employer to make the contribution, for there is no statutory obligation as long as the stay of operation of the notification continues;

b) All the four educational institutions now has been closed, three were closed in 2019 and another was closed in 2020. Today, there is no employee from who the employer can levy contribution nor it is going to benefit anyone. The alleged failure to contribute has occurred during the period when there was a stay, as a result, it was not even a situation where a certain statutory benefit which ought to be extended to the employees was deliberately denied by the employer.

3.The learned counsel for the appellant further submitted that for whose benefit now these proceedings are initiated by the ESI Corporation cannot still be justified. It is in this backdrop, the appellants sought for full waiver from payment of the 50% amount as was required to be deposited under Section 75(2)B of the ESI Act.

4.Heard, the learned counsel for the respondent.

5.As required by this Court, the learned counsel for the appellant circulated a calculation memo which also included a column indicating the approximate amount which the appellant might have to pay in the eventuality of the Court upholding the order of the Corporation passed under Section 45A of the ESI Act. The learned counsel underscored that this column is only for the benefit of the Court and that the appellant does not admit the same. This Court therefore chose to extract the following details from the statement provided by the learned counsel for the appellant;

S.No.	Name of Institution	CMA No of 2022	Period Involved	Date of Section 45 A Order	Amount Claimed in Section 45 A Order	Amount directed to be deposited by the ESI Court
1	Maharaja Engineering College	1948	01.05.2013 to 30.09.2019	29.09.2020	38,47,784/-	9,61,946/- (25%)
2	Maharaja Arts and Science College	1875	1)04/2011 to 11/2012	1)14.05.2019	1)7,72,200/-	1)1,93,050/- (25%)
			2)12/2012 to 31.10.2019	2)05.03.2020	2)36,46,566/-	2)9,11,641/- (25%)
3	Maharaja Institute of Technology	2550	1)01.04.2011 to 30.11.2012	1)14.05.2019	1)12,87,000/-	18,41,153 (25%)
			2)01.12.2012 to 31.10.2019	2)05.03.2020	2)60,77,610/-	
			Prohibitory order with interest	3)01.07.2021	3)1,23,26,058/-	30,81,515/- (25%)
4	Maharaja Prithvi Engineering College	1951	1) 01.05.2013 to 31.07.2019	26.12.2019	13,97,385/-	3,49,346/- (25%)
Total					Rs.2,93,54,603/-	Rs.54,97,498/-

6.Both the learned counsel who appeared for the Corporation in this batch of cases submitted in unison that ultimately the order of stay was vacated when the Educational Institutions lost their contention before the Court. This cannot be taken advantage of by the appellants.

7.There is more law to this case, than facts. a) one pertains to limitation and the other is b)when the act actually had come into force. In other words, when the notification was upheld, according to the appellant, it takes effect from the date on which the notification became operational or functional. The educational institutions of the appellant had ran barely for an year or two at the time. The most pertinent question was when the notification bringing the educational institutions in question under the net of ESI Act, whose benefit the Act is intended to serve. In other words, where are those employees who the ESI Act now requires the appellant to care.

8.Given the fascinating circumstance involved in this case, this Court considers it appropriate to reduce the amount which the appellant are required to deposit under Sectinon75(2)B of the ESI act to 10%. The appellant is now required to deposit the said sum within a period of one month from the date of receipt of a copy of this order before the Tribunal. This Court directs the trial Court to act on the web-copy of this order for the said purpose. Since the essential questions of law as indicated above appear to be involved in this case, the Court merely requires the labour Court concerned to dispose of this case within a period of six (6) months from the date of receipt of a copy of this order.

9.The Civil Miscellaneous Appeals are partly allowed on the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

24.11.2023

Tsg

N.SESHASAYEE, J.,

Tsg

To

1.The Employees State Insurance Court,
Coimbatore.
2.The Section Officer,
V.R.Section, High Court, Madras.

CMA.Nos.1875, 1948, 1951/2022

& 2550 of 2023

24.11.2023