



WEB COPY

W.P.No.25543 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

**W.P.No.25543 of 2022 &
W.M.P.No.24535 of 2022**

Ms.Himayam Matriculation Higher Secondary School,
Rep by its Principal T.Saraboji,
No.1/515, S.Kulathur Main Road,
Periyakvilamakkam Chennai-600 117.

... Petitioner

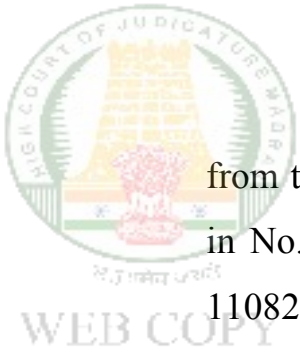
VS.

1.The Employees State Insurance Commissioner
Rep by its Deputy Director,
Regional Office in Tamil Nadu at Panchadeep Bhavan
No.143 Sterling Road Chennai-600 034.

2 Canara Bank
Velacherry Branch,
No.2, 100 ft Tharamani Road,
Tansi Nagar, Velacherry, Chenna 600 042.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorarified calling for the records of the Respondents especially the 1st Respondent made in Ref No. 510011118 20001302 / CP / 496444 / CCR-110820 dated 26.07.2022 demanding Rs. 30 38 213/- and the subsequent Un-communicated proceedings for Attachment of Salary



from the 2nd Respondent stands in the name of the Petitioner School made in No. TN / RECY / 45G / 51 51001111820001302 / CCR-110819-CCR-110820 dated 12.08.2022 without even communicating a copy to the petitioner School and quash the same as null and void illegal and invalid.

For Petitioner : Mr.A.Amalraj
For Respondent 1 : Mrs.G.Narmadha,
for Mr.G.Bhardwaj
Standing Counsel
For Respondent 2 : No appearance

ORDER

This writ petition has been filed challenging the order of attachment dated 12.08.2022 issued by the first respondent.

2. Heard Mr.A.Amalraj, learned counsel for the petitioner and Mrs.G.Narmadha, learned counsel representing Mr.G.Bhardwaj, learned Standing Counsel appearing for the first respondent.

3. The grievance of the petitioner is that the first respondent has erroneously passed an order of attachment dated 12.08.2022 attaching the money lying to the bank account of the petitioner school for non payment of



the alleged interest amount payable as per the provisions of section 39(5)(a) of the Employees' State Insurance Act, 1948. The petitioner School claims that they have given several representations to the respondents intimating them that the interest amount calculated by them on account of the belated payment of Employees' State Insurance contributions by the petitioner is erroneous and had requested the respondent Corporation to recalculate the same. According to the petitioner, the said representations have not been considered till date, but instead the impugned attachment order has been passed by the first respondent attaching the funds lying in the petitioner's bank account.

4. The law is now well settled as laid down by the Full Bench of this Court in W.P.No.34236 of 2019 on 29.07.2020 that an Educational Institution is also covered under the provisions of the Employees' State Insurance Act, 1948.

5. Learned counsel for the petitioner would admit to the same, but however would submit that since an interim stay was granted by the Division Bench of this Court in the petitioner's favour on 09.06.2015 i.e.,



till final orders are passed by the Larger Bench of the Hon'ble Supreme Court with regard to the issue as to whether an Educational Institution will be covered under the provisions of Employees' State Insurance Act, 1948 or not, the question of enforcing the impugned attachment order will not arise at this stage.

6. In the interim order dated 09.06.2015 passed in a batch of Writ Appeals and Petitions in W.A.No.1233 of 2011, in which the petitioner's writ petition was W.P.No.29673 of 2014, the following direction was issued by the Division Bench of this court:

"Learned counsel for the parties state that as recorded in the order dated 05.05.2005 reported in 2005 (5) SCC 1 (State of U.P. vs. Jai Bir Singh), the question of law has been referred to the Larger Bench of the Hon'ble Supreme Court, i.e., whether the Employee's State Insurance Act, 1948, would apply to educational institutions. Interim orders have been operating in the present matter.

2. In view of the aforesaid position, the writ appeals and writ petitions are disposed of by agreement that the interim orders would continue till the disposal of the matter by the Hon'ble Supreme Court and the parties



would naturally remain bound by the legal position enunciated by the Hon'ble Supreme Court on such decision being rendered. No costs. Consequently, connected miscellaneous petitions are closed."

7. The constitution of Larger Bench by the Hon'ble Supreme Court which was referred to in the order dated 09.06.2015 passed by the Division Bench of this Court in W.P.No.1233 of 2011 batch referred to supra did not deal with the issue as to whether an Educational Institution will come under the purview of Employees' State Insurance Act or not. It related to the definition of Industry under the ID Act, which is also not disputed by the learned counsel appearing for the petitioner. Therefore, relying upon the interim order dated 09.06.2015 passed by the Division Bench of this Court referred to supra, in which the petitioner herein was a party, has to be summarily rejected by this Court.

8. When the law is well settled by the Full Bench of this Court referred to supra that an Educational Institution will also fall under the purview of the Employees' State Insurance Act, 1948, the petitioner's contention that this Court will have to wait for the outcome of the Larger



Bench to be constituted by the Hon'ble Supreme Court which is referred to in the order dated 09.06.2015 passed by the Division Bench will not arise.

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9. Insofar as the alleged erroneous calculation of interest for the belated payment of Employees' State Insurance contributions is concerned, the law is now well settled as laid down by the decisions of the Hon'ble Supreme Court dated 07.07.2008 passed in the case of M/s.Goetz (India) Ltd vs. ESI Corporation (SC) in C.A.No.8432 of 2001 that neither the Employees' State Insurance Corporation nor the Courts have got the power to waive the interest.

10. In the instant case, admittedly, the petitioner has paid the Employees' State Insurance contributions as determined under the Employees' State Insurance Act, though the petitioner would contend that the same was paid under protest. The petitioner has also not challenged the determination order passed under section 45A of the Employees' State Insurance Act and the findings of the same has attained finality. The petitioner has questioned only the payment of interest in this writ petition. When the petitioner has not challenged the determination order determining



the Employees' State Insurance contributions payable by them, that too, when they have already paid the same, the question of challenging the interest at this stage will not arise.

11. The only limited relief that can be granted to the petitioner being an Educational Institution on the ground of equity, is to direct the respondents to keep the impugned attachment order issued to the petitioner, in abeyance, till the petitioner's representations which were earlier not considered, are considered on merits and in accordance with law within a short time. This Court is of the considered view that a period of four weeks will suffice for the respondents to consider the petitioner's representations seeking for recalculation of the interest amount payable by the petitioner and also for reduction of the interest amount on account of left out staffs.

12. Learned standing counsel appearing for the first respondent vehemently opposes such a direction being issued by this Court.

13. However, this Court is of the considered view that no prejudice would be caused to the respondents, if the representations of the petitioner are considered on merits and in accordance with law.



14. For the foregoing reasons, this writ petition is **disposed of** by directing the respondents to consider the petitioner's representations seeking for recalculation of interest on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order. Till final orders are passed on the petitioner's representations, the impugned attachment order shall be kept in abeyance by the first respondent. However, it is made clear that if the petitioner's representations are rejected by the first respondent, they are at liberty to execute the impugned attachment order as against the petitioner thereafter in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

02.01.2023

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Index: Yes/No

Internet: Yes/No

Speaking/Non-speaking orders

Neutral citation: Yes/No



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Regional Office in Tamil Nadu at Panchadeep Bhavan
No.143 Sterling Road Chennai-600 034.



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ABDUL QUDDHOSE, J.
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