



W.P(MD)No.19412 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.19412 of 2021

Sri Vari Educational Trust
Represented by its Managing Trustee
S.Manjula
Sri Venkadeswara Vidyalaya Nursery & Primary School
Door No.283-B, Gandhi Nagar,
Kanjayanayakanpatti,
Aruppukottai Taluk,
Virudhunagar District.

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Represented by its Principal Secretary to Government,
Labour and Employment Department,
Fort St.George,
Chennai-600 009.
- 2.Employee's State Insurance Corporation,
Represented by its Additional Commissioner and
Regional Director,
143, Sterling Road,
Nungambakkam,
Chennai-600 034.
- 3.The Recovery Officer,
Employee State Insurance Corporation,
Sub Regional Office,



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2nd West Street, K.K.Nagar,
Madurai-625 020.

... Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the third respondent to consider the waiver of arrears of contribution, interest and damages based on the petitioner's representation dated 18.09.2021 in the light of the full bench Judgment reported in All India Private Educational Institutions Association-VS-State of Tamil Nadu (2020 (5) CTC 93(FB)) within a stipulated time that may be fixed by this Court.

For Petitioner : Mr.R.Karunanidhi

For Respondents : Mr.K.Balasubramani
Special Government Pleader for R1

: Mr.I.Pinaygash for R2 & R3

ORDER

Heard the learned counsel appearing for the petitioner, learned Special Government Pleader appearing for R1 and the learned Standing Counsel appearing for the respondent Corporation.

2. The question whether the private educational institutions would be covered by ESI Act was settled authoritatively by the Hon'ble Full Bench in the decision reported in **2020 (5) CTC 93 FB (All India Private Educational Institutions Association Vs. State of Tamil Nadu)**. The petitioner wants the corporation to waive the arrears of contribution, interest and damages. They have given a representation dated 18.09.2021.



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3. I am clearly of the view that the corporation can consider waiver of damages in the special facts and circumstances of this case. The Hon'ble Full Bench in Paragraph Nos.130 to 133 has observed as follows:-

130. This matter was heard and reserved for orders just before the preparations for lock down of the Country on account of COVID-19 pandemic were announced. Thus, in addition to whatever we have stated above on the merits of the issue referred to us, we are also of the view that the present economic conditions necessitate some leeway and negotiations in the matter of settlement of arrears due by the Educational Institutions.

131. Section 91-C of the ESI Act comes to aid. Section 91-C provides for the writing off of loss and states as follows:

“91-C. Writing off of losses subject to the conditions as may be prescribed by the Central Government where the Corporation is of opinion that the amount of contribution, interest and damages due to the Corporation is irrecoverable, the Corporation may sanction the writing off finally of the said amount.

132. A provision is, thus, made for the Corporation to sanction the writing off of the contribution, interest and damages due to it if the Corporation is of the opinion that such amounts are irrecoverable from the Educational Institutions concerned. The pandemic has resulted in a situation where several Educational Institutions are reportedly unable to even pay regular salaries to their employees. The financial crunch faced by them, at this juncture, is a matter of public knowledge. The impugned notification no doubt mandates certain contributions to be made and we have upheld the validity of the same. The contributions to be made under the Notification enure to the coffers of the Corporation and it is not the Corporation's case that there are claims that have been made by the employees of the Educational Institutions that remain unfulfilled on account of the failure of the Institutions to make the contributions in the first place. No



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prejudice has thus been caused to the employees per so for the periods till the date on account of such failure by the Educational Institutions.

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133. We, thus, strongly recommend that the provisions of Section 91-C be applied in letter and spirit by the Corporation in considering the case for reduction/waiver of pending arrears, if and when made by the Educational Institutions. Such requests, if and when made, shall be considered by the Corporation in line with the object and spirit of Section 91-C, particularly in the light of the present economic conditions.”

4. The second respondent is directed to consider and pass final order on the petition mentioned representation within a period of five weeks from the date of receipt of a copy of this order.

5. The Writ Petition is disposed of accordingly. No costs.

28.03.2023

Index : Yes / No
Internet : Yes/ No
rmi

To

The Principal Secretary to Government,
Labour and Employment Department,
Fort St.George,
Chennai-600 009.



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G.R.SWAMINATHAN, J.

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