



WEB COPY



W.P.No.17941 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.17941 of 2021
and
W.M.P. No.19149 of 2021

St.Paul's Higher Secondary School,
Represented by its Correspondent,
Vepery,
Chennai – 600 007.

...Petitioner

Vs.

1. ESI Regional Corporation (Tamil Nadu),
Represented by its Regional Director,
143, Sterling Road,
Chennai – 600 034.
2. Employees' State Insurance Corporation,
Represented by Deputy Director,
143, Sterling Road,
Chennai – 600 034.
3. The Recovery Officer,
Office of the Recovery Officer,
ESI Corporation,
Panchdeep Bhawan,
143, Sterling Road,
Chennai – 600 034.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India



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praying to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned notice of demand dated 08.07.2021 in Ref. No.Ins51001069480001302/CP/433134, on the file of the third respondent and the consequential order dated 13.07.2021 in No.TN/Ins51-00106948-000-1302, on the file of the second respondent and quash the same, directing the respondents not to erroneously apply the ESI scheme to the teaching and non-teaching staff of the petitioner school, as they are above the ceiling limit and are covered by an alternative Government Medical Insurance Scheme.

For petitioner : Mr.Father Xavier Associates
For respondents : Mr.T.N.C.Koushik
Standing Counsel for respondents

ORDER

This writ petition has been filed seeking for a direction to issue writ of certiorarified mandamus to quash the notice of demand dated 08.07.2021 in Ref. No.Ins51001069480001302/CP/433134 and consequential direct the respondents not to erroneously apply ESI scheme too the teaching and non-teaching staff of the petitioner school.



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2. The petitioner's school is a aided Christian Minority Educational Institution school established in the year 1716. The Government has issued a G.O.(MS.) No.237, Labour and Employment, (K1), Department, for extension of provision of Employees State Insurance Act, 1948 to the educational institutions. The ESI authorities made an inspection to the petitioner's school on 01.08.2013 and the head master of the school has submitted all the records including the details of 48 teaching and 17 non teaching staff who were covered under grand in aid scheme and are receiving Government scale of pay.

3. The second respondent issued a show cause notice dated 25.06.2014 (wrongly mentioned as 25.07.2014 in the affidavit) to the petitioner and instructed the petitioner to pay a sum of Rs.5,56,576/- as arrears of contributions under the ESI Act for the period from January 2013 to April 2014. The second respondent has issued a show cause notice in form C 19 and default notice in form No.ESI CP2 on 17.05.2019. Finally, the third respondent has issued notice under Section 45 (G) of the ESI Act, 1948 for payment of arrears with interest. The third respondent has issued an attachment notice under Section 45 (G), *ibid*. A garnishee order dated



30.07.2019 was issued to the petitioner's bank alleging that the petitioner school has committed default of ESI contribution alone. The petitioner's school has explained to the ESI authorities stating that it cannot be brought under the ESIC scheme as all the staff are being covered by another scheme.

4. The second respondent has issued a show cause notice dated 05.10.2020 stating that the petitioner's school has not paid the contribution for the period from September 2015 to March 2020 and determined the arrears as Rs.22,91,933/-. The petitioner's school explained that none of the staff of his school would be coming under the ESIC scheme but there was no response for the same. The second respondent has issued another notice on 17.06.2021 stating that the school is covered under the ESI Act and the petitioner's school has to pay the arrears from February 2016- March 2020, a total amount of Rs.29,09,110/- with interest at 12% per annum. The petitioner's school by way of letter dated 30.06.2021 has replied that all the staff (teaching and non teaching) are receiving equivalent to the Government salary and they are not liable to pay ESI contribution under Section 40 of ESI Act and requested the authorities to rectify the same. The third respondent issued a notice of demand dated 08.07.2021 directing the petitioner's school to pay an amount of



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Rs.29,09,175/- within a period of 15 days on receipt of the notice.

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5. The petitioner's school therefore, has filed this writ petition challenging the impugned orders dated 08.07.2021 issued by the third respondent and consequential order dated 13.07.2021 by the second respondent.

6. It is submitted by the learned counsel for the petitioner that the employees of the petitioner's school have been drawing the salary equivalent to that of the government employees thereby, their salaries are more than Rs.21,000/- per month hence, provisions of ESI Act are not applicable. The petitioner's school has filed the salary slips of the employees which go to show that the employee's of the petitioner's school are being covered by NHIS scheme of the Government for which every staff has pay an amount of Rs.295/-. It is submitted that since NHIS scheme is applied to all the employees of the petitioner's school, the provisions of ESI Act are not applicable and hence, sought for quashment of the impugned notice and consequential notice.



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7. The learned counsel for the respondents has filed counter affidavit and submitted that though, the petitioner's school has mentioned various facts in the writ petition, when enquiry under Section 45 (A) of the Act was taken up, the representatives of petitioner's school have failed to appear for the enquiry on 07.02.2019 and not replied to the show cause notice and that if the petitioner's school is aggrieved by the orders passed under Section 45 (A) of the Act, the petitioner's school is expected to prefer appeal instead of filing this writ petition and hence, sought for dismissal of this writ petition.

8. Considering the submissions made by both sides and on perusal of the records it is clear that the issues which are raised by the petitioner's school cannot be decided in this writ petition. The concerned authorities under the ESI Act are expected to consider all the pleas raised by the petitioner's school including the applicability of the provisions of ESI to the petitioner's school. Since the representatives of the petitioner's school have failed to appear for the enquiry on 07.02.2019, the ESI authorities are not aware of any of the grounds raised by the petitioner's school and thereby,



could not properly appreciate them.

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9. Thereby, this Court is of the opinion that in order to meet the ends of justice, the matter requires to be remanded back to the ESI authorities to examine all the grounds raised by the petitioner's school pass appropriate orders.

10. Accordingly, this writ petition is disposed of and the impugned orders dated 08.07.2021 and consequential orders dated 13.07.2021 are hereby quashed and the matter is remanded to the second respondent for fresh consideration. The second respondent is permitted to issue fresh notice to the petitioner's school on which the petitioner school is directed to appear before the authorities with all relevant documents in support of the contentions raised by him in this writ petition and on submission of such report, the second respondent authority is directed to consider the same and dispose of on merits by following the due process as quickly as possible.

11. Accordingly, this writ petition is disposed of with the above directions. Connected W.M.P. is closed. No costs.



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Index : Yes/No

Internet : Yes/No

Citation : Yes/No

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2. The Deputy Director,
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3.

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Dr.D.NAGARJUN.J.

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