



W.A.No.145 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C. KUMARAPPAN

W.A.No.145 of 2019
and C.M.P.No.1298 of 2019

1. Employees State Insurance Corporation,
Rep. by its Regional Director,
No.178, 100 feet Road, Ansari Duraisami Nagar,
Puducherry – 605 004.

2. The Branch Manager,
ESI Corporation,
Kamarajar Road, Karaikal – 609 608.

... Appellants

Vs.

1. Rathinavel Subramaniam Educational
Trust (Pondicherry),
Rep. by its Administrative Officer,
Kallikuppam, Thiruvettakudi, Kottucherry Commune,
Karaikal – 609 605.

2. The Government of Puducherry,
Rep. by its Additional Secretary,
Labour Department,
General Secretariat, Puducherry.

... Respondents



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PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order passed by the learned Judge in Writ Petition No.13182 of 2017 dated 24.05.2017.

For Appellant : Mr.S.P.Srinivasan

For R1 : No appearance

For R2 : Dr.B.Ramaswamy,
Additional Government Pleader (Puducherry)

JUDGMENT

(Judgment of the Court was made by *M.S.RAMESH, J.*)

Challenging the applicability of the provisions of the Employees' State Insurance Act *vis-a-viz* the Private Educational Institutions, a Writ Petition in WP.No.13182 of 2017 came to be preferred by the appellants/respondents and through an order dated 24.05.2017, the learned Single Judge had placed a reliance on an earlier decision of the Hon'ble Division Bench of this Court in W.A.No.1233 of 2011 dated 09.06.2015 and granted a restraining order to the ESI Corporation from enforcing any demand till the disposal of the similar issue in the case of '*State of U.P. Vs. Jai Bir Singh*' reported in '*2005 (5) SCC 1*', which was at that time pending before the Hon'ble Supreme Court, pending reference



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to a Larger Bench. Thereafter, the applicability of the decision of the Hon'ble Supreme Court to the issue in hand, came up for consideration before the Hon'ble Full Bench of this Court in the case of '**All India Private Educational Institutions Association Vs. State of Tamil Nadu**' reported in '**2020 SCC OnLine Mad 1641**'. Ultimately, the Hon'ble Full Bench had rendered a finding that the decision pending before the Hon'ble Supreme Court in **Jai Bir Singh's case (supra)** was not under ESI Act and therefore, an enforcement of any demand till the disposal of **Jai Bir Singh's case (supra)**, was not warranted. The relevant portion of the order in **All India Private Educational Institutions Association's case (supra)** reads as follows:-

..... “65. A plain reading of Sections 1(4) or 1(5) only go to show that all kinds of establishments can be covered through a notification by giving prior notice of six months. It is also relevant to note that all the cases decided by various High Courts challenging the Section 1(5) notifications covering educational institutions are after *Jai Bir Singh (supra)*. The SLP against the Judgment of the Kerala High Court in *CBSE School Management's Association v. State of Kerala*, [\(2010\) 2 LLJ 240](#), was dismissed by the



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Hon'ble Supreme Court. Though orders dated 09.06.2015 and 16.06.2015 dispose the writ appeals finally, they are clearly of an interim nature. We are thus of the view that the challenge to the Notification may well be decided based on settled law. In this regard, reference is made to paragraphs 3 and 4 of the judgment of the Hon'ble Apex Court in State of Orissa v. Dandasi Sahu, [\(1988\) 4 SCC 12](#), as follows:

“3. Being aggrieved thereby the State of Orissa has preferred this appeal. In support of this appeal, it was submitted that the award in question was a lump sum of money and it was without any reason, in favour of the respondent. It was also submitted that the validity of the non-reasoned award is awaiting determination by a larger Bench of this Court. Hence, it was urged that this question should await decision of the larger Bench. In the facts and circumstances of the case, we are of the opinion that we would not be justified in acceding to this request on the part of the appellant. In this case the submission that the award was bad being an unreasoned one, was neither mooted before the learned Subordinate Judge nor before the High Court. This contention was also not raised in the objection to the award, filed originally. It is only in the special leave petition that such a plea has been raised for the first time. Arbitration is resorted to as a speedy method of adjudication of disputes. Stale and old adjudication should not be set at naught or examination of that question kept at bay on the plea that the point is



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pending determination by a larger Bench of this Court. Even if it is held ultimately that the unreasoned award per se is bad, it is not sure whether such a decision would upset all the awards in this country which have not been challenged so far. Certainly, in the exercise of our discretion under Article 136 of the Constitution and in view of the facts and circumstances of this case, we would not be justified in allowing the party to further prolong or upset adjudication of old and stale dispute.

4. In that view of the matter, we think that the pendency of this point before the larger Bench should not postpone the adjudication and disposal of this appeal in the facts of this case. The law as it stands today is that awards without reasons are not bad per se. Indeed, an award can be set aside only on the ground of misconduct or on an error of law apparent on the face of the award. This is the state of law as it is today and in that context the contention that the award being an unreasoned one is per se bad, has no place on this aspect as the law is now. This contention is rejected.”

66. When the Division Bench passed the orders referred to in Question No.(i), the reference in Jai Bir Singh was cited without pointing out the fact that the said reference was not under the ESI Act. A reading of the Division Bench order dated 09.06.2015 (supra), also goes to show that the submissions of the learned counsels were just recorded. Thus, the final orders of



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interim nature were invited by the learned counsels from the Division Bench of this Court.

70. In the light of the above discussion, we are inclined to hold that the decision in regard to the validity of the impugned notification issued under Section 1(5) of the ESI Act could well have been taken and the postponement of the same pending decision of the reference in Jai Bir Singh by the larger Bench, was not warranted. Therefore, question No.(i) is answered in the negative and hence, the necessity to answer question No.(ii) does not arise.”

2. The aforesaid extract is self-explanatory. In the said decision, the Hon'ble Full Bench had ultimately held that the provisions of the ESI Act shall be applicable to the Private Unaided Educational Institutions, as well as the Public and Government Aided Private Educational Institutions, pursuant to the notification issued on 02.01.2013 in this regard.

3. The learned Single Judge while granting the restraining order on 24.05.2017, did not have the benefit of the decision of the Hon'ble Full Bench in ***All India Private Educational Institutions Association's case***



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(*supra*), which came to be later decided only on 29.07.2020. In view of the law now having been laid down by the Hon'ble Full Bench, the restraining order of the learned Single Judge cannot be sustained.

4. Accordingly, the Writ Appeal stands allowed and the order passed by the learned Single Judge of this Court in W.P.No.13182 of 2017 dated 24.05.2017, is set aside. No costs. Connected miscellaneous petition is closed.

[M.S.R., J] [C.K., J]
12.08.2024

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes/No
Neutral Citation: Yes/No

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To

1. Administrative Officer,
Rathinavel Subramaniam Educational
Trust (Pondicherry),
Kallikuppam, Thiruvettakudi, Kottucherry Commune,
Karaikal – 609 605.

2. The Additional Secretary to Government of Puducherry,
Labour Department,



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General Secretariat, Puducherry.

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