



WP(MD) No.12165 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.06.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.12165 of 2024
and
W.M.P(MD)No.10790 of 2024

Indian Missionary Society
Represented by its Secretary,
Rev. D.Immanuel Pondurai,
11 B, Trivandrum Road,
Palayamkottai,
Tirunelveli - 627 002.

... Petitioner

Vs.

1.Employee State Insurance Corporation,
Ministry of Labour and Employment,
Government of India,
Represented by its Deputy Director,
Office of the ESI Corporation,
Sub Regional Office (Tirunelveli,
'Pachedeep Bhavan',
ESIC Complex, Salai Street,
Vannarpettai, Tirunelveli – 627 003.



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2. Employee State Insurance Corporation,
Ministry of Labour and Employment,
Government of India,
Represented by its Assistant Director (Inspection),
Office of the ESI Corporation,
Sub Regional Office (Tirunelveli,
'Pachedeep Bhavan',
ESIC Complex, Salai Street,
Vannarpettai,
Tirunelveli – 627 003.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration declaring that the order of the First Respondent dated 04.04.2024 passed in proceedings No.66-00051119-000-0999/45-A/SRO/TLI/235/2023 6/24 without jurisdiction as illegal and in violation of Article 25, 26 and 27 of the Constitution of India and quash the same with consequential directions to the respondents forbearing to interfere with the activities of the petitioner-society in any manner in violation of the fundamental rights enshrined in Articles 25, 26 and 27 of the Constitution of India so as to bring the petitioner - Religious Society in the absence of jurisdictional facts under the net of the ESI Act, 1948.



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For Petitioner : Mr.P.Hari Babu

ORDER

The petitioner has filed this writ petition seeking for a Writ of Declaration declaring that the order of the First Respondent, dated 04.04.2024 passed in proceedings No.66-00051119-000-0999/ 45-A/SRO/TLI/235/2023 6/24 without jurisdiction as illegal and is in violation of Article 25, 26 and 27 of the Constitution of India and quash the same with consequential directions to the respondents forbearing to interfere with the activities of the petitioner-society in any manner in violation of the fundamental rights enshrined under Articles 25, 26 and 27 of the Constitution of India so as to bring the petitioner - Religious Society in the absence of jurisdictional facts under the net of the ESI Act, 1948.

2. Heard Mr.P.Hari Babu, learned counsel for the petitioner and perused the materials available on record.



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3. The learned counsel for the petitioner submitted that the petitioner, being a Religious Institution, ought not to have been brought under the ambit of Employees State Insurance Act and subjected to Section 45A enquiry and issued an impugned order.

4. The Section 1(5) of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the ESI Act' for short) would read as under :

“(5) The appropriate Government may, in consultation with the Corporation and 5[where the appropriate Government is a State Government, with the approval of the Central Government], after giving 7[one month's] notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise:”



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5. Even though there is no explicit reference about religious institution for new inclusion or for exemption, the learned Senior Counsel for the petitioner makes out an argument that the petitioner cannot be subjected to Section 45 A enquiry. The impugned order makes reference about the same argument as it has been advanced before the appropriate authority also. After having dealt the above argument in the light of the earlier Supreme Court judgments rendered in this regard, the appropriate authority has passed the impugned order by determining the arrears of contribution to the tune of Rs.1,52,70,255/-.

6. The order itself says that the coverage under the Act cannot be dispensed or delayed for the reasons stated therein. In fact there is a categorical finding that ESI coverage to Indian Missionary Society is as per Section 1(5) of ESI Act, 1948 and the existing pronunciation of judgments by various Courts.

7. If the petitioner is aggrieved due to the above order, he can challenge the same by way of preferring a statutory appeal after complying the due procedure as contemplated under the ESI Act.



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Without exhausting the statutory remedy, this writ petition has been filed and hence, is not maintainable.

8. With the above observation, this writ petition is **disposed of** and the petitioner is at liberty to file an appeal with a delay condonation petition, if any. No costs. Consequently, connected miscellaneous petition is closed.

10.06.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

RM



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Ministry of Labour and Employment,
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2. Employee State Insurance Corporation,
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R.N.MANJULA, J.

RM

Order made in
W.P.(MD)No.12165 of 2024

Dated:
10.06.2024