



WP(MD)No.19156 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.19156 of 2024 and
WMP(MD)No.16220 and 16221 of 2024**

Namma Ooru Glogbal Schools,
No.63/3, 64/2, 65/1, Madurai Main Road,
Gangaikondan,
Tirunelveli District – 627 352,
Represented by its Manager,
S.A.Charles Miller

... Petitioner

Vs

- 1.The Regional Director,
Regional Office (Chennai),
Employees State Insurance Corporation,
Panchdeep Bhawan, No.143, Sterling Road,
Chennai – 600 034.
- 2.The Deputy Director,
Sub Regional Office,
Employees State Insurance Corporation,
Panchdeep Bhavan, ESIC Complex,
Salai Street, Vannarpettai,
Tirunelveli – 627 003.
- 3.The Authorised Officer,
Sub Regional Office,
Employees State Insurance Corporation,
Panchdeep Bhavan, ESIC Complex,
Salai Street, Vannarpetti,
Tirunelveli – 627 003.



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4. The Recovery Officer,
Sub Regional Office,
Employees State Insurance Corporation,
Panchdeep Bhavan, ESIC Complex,
Salai Street, Vannarpettai,
Tirunelveli – 627 003.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records relating to the impugned order issued by the 2nd respondent in No. 66-00-044618-000-1302-45-A/SRO/TLI/269-23/159/24 dated 03.06.2024 and the subsequent impugned order issued by the 3rd respondent in No.66-00-044618-000-1302/Ins/SRO/TLI/255/24 dated 03.06.2024 and the consequential impugned proceedings issued by the 4th respondent in Ref.No.66000446180001302/CP/600095/225/24, dated 21.06.2024 and to quash the same.

For Petitioners : Mr.P.Deepak

For Respondent : Mr.C.Karhick

ORDER

The petitioner is a CBSE school. This petition has been filed as against the proceedings of the 2nd respondent dated 03.06.2024 and the consequential proceedings dated 21.06.2024 issued for determination of contribution under Section 45A of the Employees State Insurance Act, 1948 for the financial year 2021 -2022.



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2.The learned Counsel for the petitioner submits that the school has commenced its operation on 01.06.2018 and they are having 351 students. It is affiliated to the Central Board of Secondary Education. The Government of Tamil Nadu vide order in GO.Ms.No.237 Labour and Employment (K1) Department, dated 26.11.2010 has accepted the applicability of the Employees State Insurance Act, 1948 to the educational institutions (excluding government and government aided institutions) for determining the contribution as required under Section 45A of the Act. The officials of the 2nd respondent, viz., the Social Security Officer (SSO) has visited the petitioner's school on 24.03.2023 and on 11.04.2023 and passed an order on 18.04.2023 that 10 employees were found to be employed. Based on that, the Deputy Director has issued the proceedings on 21.12.2023 calculating the contribution payable with determination of contribution under Section 45 of the Act and called upon the petitioner school to show cause as to the assessment not to be made as proposed. The learned Counsel further submits that the 2nd respondent has not provided the proper calculation for arriving at the amount and determination as required under Section 45A of the Act. However he passed the impugned order on



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03.06.2024 under Section 45 of the Act determining the contribution as Rs.2131/- for the financial year 2021-22. However the Authorised Officer, ESIC, Tirunelveli has also issued an application for recovery of contribution under Section 45C to 45I of the ESIC Act and claimed a sum of Rs.10,10,941/- as contribution and Rs.4,52,877/- towards interest for the period from June 2018 to February 2023. In total the petitioner was directed to pay a sum of Rs.14,63,818/-. Consequently the 4th respondent has also issued the recovery order dated 21.06.2024 and therefore, both these order dated 03.06.2024 of the 2nd respondent and the consequential order dated 21.06.2024 passed by the 4th respondent are challenged in this writ petition.

3.The learned Counsel further submits that the school commenced its operation from June 2018. However, the order of determination of contribution under Section 45A of the Act was passed only on 03.06.2024 for the financial year 2021-2022, whereas the claim has been made retrospectively from June 2018. The determination of contribution from June 2018 is statutorily hit as per proviso to Section 45A of the Act and as per the provisions no order shall be passed by the Corporation in



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respect of the period beyond five years from the date of contribution shall become payable.

4.The learned Counsel for the respondents raised preliminary objection for questioning the impugned orders that the petitioner is having efficacious alternate remedy by way of an appeal before the appellate authority under Section 45AA of the Act or before the Employees State Insurance Court under Section 75 of the Act. In this regard the learned Counsel appearing for the respondent has relied on the judgment of this Court in WA.No.828 of 2005, dated 26.04.2005.

5.This Court has considered the rival submissions made and perused the materials placed on record.

6.The petitioner school has filed the writ petition as against the orders of the 2nd respondent determining the contribution under Section 45A of the Act on 03.06.2024 and the consequential recovery order issued by the 4th respondent on 21.06.2024. As rightly pointed by the learned Counsel for the respondent Corporation the petitioner is



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having effective alternate remedies before the appellate authority and also before the ESI Court. The First Bench of this Court in WA.No.828 of 2005 by its judgment dated 26.04.2005 has held as under:

“2.The appellant filed the writ petition challenging the demand notice issued under section 45(B) of the Employees State Insurance Act. In our opinion, the petitioner/appellant has a clear alternative remedy of filing an application under section 75 of the Employees State Insurance Act before the Employees State Insurance Court. We cannot approve this kind of practice of directly filing writ petition in this Court when a clear alternative remedy is available. We have repeatedly held in Indian Additives Limited v. Indian Additives Employees Union, 2005 Writ L.R. 22 and in Madura Sugars Staff Union & others v. Madura Sugar Mills, 2005 Writ L.R. 25 that when alternative remedy is available ordinarily that must be availed of. That is the settled legal principle that has been repeatedly held by the Supreme Court in Premier Automobiles Limited v. Kamlekar Shantaram Wadke, 1976 1 SCC 496, The Rajasthan State Road Transport Corporation v. Krishna Kant, AIR 1995 SC 1715, Whirlpool Corporation v. Registrar of Trade Marks, 1998 (8) SCC 1, and



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*U.P.State Bridge Corporation Ltd. & others v.
U.P.Rajya Setu Nigam S.Karamchari Sangh, (2004) 4
SCC 268.*

3. Hence we dismiss the writ appeal and also the writ petition on the ground of alternative remedy before the Employees State Insurance Court under Section 75 of the Employees State Insurance Act.

4. If the appellant files an application under Section 75 of the Act within one month from today, the same will be entertained by the E.S.I Court without raising any objection as to limitation and shall be decided expeditiously thereafter in accordance with law after hearing the parties concerned without being influenced by the judgment of the learned single Judge.”

7.In view of the order passed by the Division Bench of this Court in a similar issues, this Court is not inclined to entertain this writ petition. Accordingly this writ petition is dismissed with liberty to the petitioner to invoke the effective alternate remedy available under the Employees State Insurance Act within period of four weeks from today. In the event if the petitioner files an application either under Section 45AA or Section 74 of the Act, within a period of four weeks from today, the same shall be



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entertained by the respective authority without raising objection with regard to the limitation and it shall be decided on merits in accordance with law. No costs. Consequently connected miscellaneous petitions are also dismissed.

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Internet : Yes / No

Index : Yes / No

DSK

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B.PUGALENDHI.J.,

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