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W.P.No.2354 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.06.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.2354 of 2021
and WMP.Nos.2663 & 2665 of 2021

Prince Sri Venkateswara Arts and Science College
Rep by its President-Chairman Mr.K.Vasudevan
(Under the Management of Prince Educational Society)
Venkateswara Nagar, Gowrivakkam
Chennai - 601 302.

... Petitioner

Vs

1.The State of Tamil Nadu
Rep by its Principal Secretary to Government
Labour and Employment Department
Fort St.George, Chennai - 600 009.

2.Employees' State Insurance Corporation
Rep by its Regional Director
143, Sterling Road
Nungambakkam, Chennai - 600 034.

3.Employees' State Insurance Corporation
Rep by its Deputy Director
143, Sterling Road
Nungambakkam, Chennai - 600 034.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the third respondent passed in No.TN/Ins.VIII/51-00-111400-000-1303/C18 Adhoc-63/19 dated 13.01.2021 and to quash the same and direct the respondents to waive/write-off the amount demanded under Section 91-C of the ESI Act, 1948.

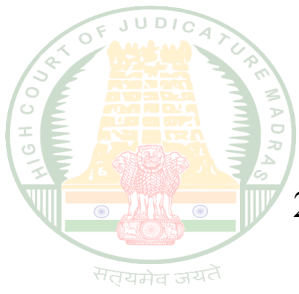
For Petitioner : Mr.P.Muthusamy

For Respondent : Mr.M.Murali
Government Advocate for R1

Mr.T.N.C.Kaushik for R2 & R3

ORDER

The petitioner which is a self-financing Arts and Science College has filed the above writ petition seeking to quash the order passed by the third respondent dated 13.01.2021, and to direct the respondents to waive/write-off the amounts demanded under Section 91-C of the Employees State Insurance Act, 1948.



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2. The facts are briefly set out herein below :

- a) The petitioner-College is a self-financing educational institution, which was established to cater to the educational needs of the students aspiring in the field of Arts and Science. The College has not obtained any aid from the Government and are depending entirely on their resources for running their institution.
- b) The Employees State Insurance Corporation had issued a notification in the year 2008, extending the provisions of the Employees State Insurance Act, 1948 (hereinafter called 'Act') to all educational institutions excluding the Government and Government aided institutions.
- c) The petitioner institution which is a private institution, are collecting fees from the students as per the norms fixed the Government, and that no provisions were made to allocate the contributions to ESI.
- d) Be that as it may, the petitioner was served with a demand notice dated 10.11.2020 by the Recovery Officer of the respondent-Corporation, calling upon the petitioner to pay



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arrears of a sum of Rs.32,35,263/-, which includes the amount due towards contribution as well the interest from the year 2013.

- e) On receipt of this demand notice, the petitioner had sent a representation on 31.12.2020, requesting the Recovery Officer to waive/write-off the demand made and had also sought for an opportunity of personal hearing to furnish certain details relevant to their above claim. The few reasons stated by the petitioner in its representation seeking waiver/write-off the demand notice are that the petitioner had not made any provisions to contribute the employer share from the year 2013, since the fees were collected from the students as per the norms fixed by the Government. Further some of their employees, after their probation period, were likely to quit their job in petitioner-institution and no contribution of such employees can be recovered. Therefore, only few employees under them, are eligible to deduct the contribution as per the salary norms fixed in the Act. The petitioner had also highlighted that they have not even collected the fees from the students during the



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COVID lock down.

- f) The petitioner would also submit that as against the similar issue on hand, various associations and individuals have filed several writ petitions including the petitioner herein, and during the pendency of the said writ petitions, the respondent-Corporation had sent a notice to the petitioner to appear before him. Pursuant to which, the petitioner had appeared and explained that similar issues are pending before this Court. During the said enquiry, the petitioner had also pointed out to the respondent-Corporation that the matter was subjudiced before the Hon'ble Supreme Court.
- g) The said notification was challenged by various associations of the private educational institutions and they had obtained an order of stay before the Hon'ble Supreme Court and the High Courts.
- h) Ultimately, a Full Bench of this Court on 29.07.2020 in W.P.No.34236 of 2019 etc., batch, had answered the reference, upholding the extension of Act to all private educational institutions in the State. Pursuant to the same, the ESI



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Corporation had started issuing demand notices to all private institutions including the petitioner herein.

- i) The petitioner was served with a demand notice dated 10.11.2020 by the ESI authorities, directing it to pay a total sum of Rs.32,52,263/-, which includes the ESI contribution + interest amount.
- j) In reply, the petitioner had sent a representation on 31.12.2020, which was received by the respondents 2 and 3 on 01.01.2021. The petitioner would reiterate that in its representation dated 31.12.2020, the petitioner had specifically asked for an opportunity of personal hearing. But the third respondent, without even affording an opportunity of personal hearing and without even referring to its request, had passed an order dated 13.01.2021 under Section 45A of the Act, which is impugned herein, alleging that since there are 102 employees working in the petitioner-institution, it directed the petitioner to pay an adhoc sum of Rs.21,76,961/- towards contribution of ESI amount for the period 11/2016 to 03/2019.
- k) The petitioner would also contend that in addition to the above



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demand notice, they were served with a show cause notice dated the same date i.e., 13.01.2021, threatening to initiate a criminal prosecution against the petitioner for non-compliance of the Act.

Aggrieved by the impugned demand notice dated 13.01.2021, the petitioner is before this Court.

3. The learned counsel for the petitioner would submit that in the petitioner institution there are only few employees who are eligible for ESI contribution, but the order is passed by the third respondent alleging that there are 102 employees employed in the petitioner-institution. This statement is incorrect and is without any basis. That apart, despite the petitioner having requested the respondent-Corporation for a personal hearing in its representation dated 31.12.2020, the third respondent without affording an opportunity to the petitioner to putforth his case, had mechanically passed the impugned order under Section 45-A of the Act, determining the contribution on an adhoc basis, which purely against the principles of natural justice. Therefore, the petitioner left with no other option, has moved this Court to quash the impugned order.



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4. The learned counsel appearing for the State Insurance Corporation would submit that the petitioner had been given an opportunity to put forth its case in person on several occasions i.e., 07.06.2019 and 28.10.2020 but the petitioner failed to appear. It is also pertinent to state that by notice dated 28.10.2019, the petitioner was directed to appear in person with his records before the respondent-Corporation on 04.11.2020, but the petitioner failed to appear on the said date also. Further the order of the Full Bench of this Court, insofar as it relates to paragraph Nos.131 to 133, had been stayed by the Hon'ble Supreme Court. He would therefore submit that the writ petition has to be dismissed.

5. A mere perusal of the impugned order would clearly show that neither had the petitioner been given an opportunity of personal hearing nor his representation dated 31.12.2020 had been taken into consideration. The Supreme Court in its order in SLP. (C) Nos.19410-19431/2021 has granted a limited stay with regard to paragraph Nos.131 to 133 of the orders of this Court dated 29.07.2020 in W.P.No.34236/2019 etc., batch . These paragraphs relates to the request for waiver/withdrawal.

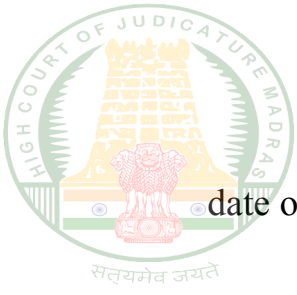


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6. In the light of the above, the third respondent ought not to have passed the impugned order directing the payment under Section 45-A of the ESI Act, without calling the petitioner for a personal hearing.

7. Considering the fact that despite the request of the petitioner to afford an opportunity of personal hearing to put forward its case, the respondents have not considered their request and had passed the impugned order requiring it to pay an adhoc sum of Rs.21,76,961/- towards contribution of ESI amount for the period 11/2016 to 03/2019, this warrants interference of this Court. Accordingly, the order of the third respondent dated 13.01.2021, which is impugned herein, is set aside and the matter is remitted back to the third respondent for fresh consideration. The representation of the petitioner dated 31.12.2020 which is appended to in the typed set of papers shall be treated as its response to the notice dated 28.10.2020. The third respondent shall give an opportunity of personal hearing to the petitioner, hear him and thereafter, pass a speaking order. The said exercise shall be completed within a period of one month from the



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date of receipt of a copy of this order.

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8. In the result, the writ petition is allowed with the above directions.

No costs. Consequently, connected miscellaneous petitions are closed.

09.06.2025

Index : Yes / No

Neutral Citation : Yes / No

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To:

1.The Principal Secretary to Government
State of Tamil Nadu
Labour and Employment Department
Fort St.George, Chennai - 600 009.

2.The Regional Director
Employees' State Insurance Corporation
143, Sterling Road
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P.T. ASHA, J.

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