BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.9779 of 2019
and
W.M.P.(MD) Nos.7660 & 7661 of 2019

St.Joseph's Higher Secondary School
rep.by its Correspondent
Block No.5, Madurai Road
Sivagangai-630 561 ... Petitioner

-vs-

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

2.Employees' State Insurance Corporation
Regional Corporation (Tamil Nadu)
rep.by its Regional Director
143, Sterling Road
Chennai-600 034

3.Employees's State Insurance Corporation
Sub-Regional Office
rep.by its Deputy Director
E.S.I.Corporation
2nd West Street, K.K.Nagar
Madurai-625 020

4.The Recovery Officer
E.S.I.Corporation
2nd West Street
K.K.Nagar
Madurai-625 020 ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records pertaining to the impugned G.O.(Ms) No.237, Labour and Employment (K1), dated 26.11.2010, passed by the first respondent and the consequential proceedings of the third respondent dated 21.08.2018 and 21.12.2018, in Nos.57/RRC/00/072492/000/1302/SRO/MDU/18 in SRO/MDU/RRC/57/072492/1302 respectively and quash the same in respect of the petitioner School.

For Petitioner	:	FR.V.John Kennedy for M/s.Father Xavier Associates
For Respondents	:	Mr.A.Baskaran Additional Government Pleader for R1 No appearance for R2 to R4

O R D E R

This writ petition has been filed questioning the Order issued by the Government in G.O.(Ms) No.237, Labour and Employment (K1) Department, dated 26.11.2010, whereby a notification has been issued extending the provisions of the Employees' State Insurance Act, 1948 (in short, “the ESI Act”) to the educational institutions and the consequential proceedings, dated 21.12.2018, issued by the third respondent under the provisions of the ESI Act.

2. Today, when the matter is taken up for consideration, it is brought to the notice of this Court by the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the first respondent that the validity of the very same notification has been upheld by the learned Single Judge of this Court and subsequently, the same was confirmed by the learned 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***.

3. This Court has carefully perused above cited decision of the learned Full Bench of this Court and is convinced that the issue on hand has already been decided by the learned Full Bench and therefore, no detailed examination is required in the present writ petition.

4. The learned Full Bench of this Court, in its decision has held as follows:

“134. Needless to state that by virtue of exercise of powers under Section 1(5) of the ESI Act, more and more educational institutions have been brought within the umbrella of the ESI Corporation to cater the needs of the subscribers. Therefore, it can no longer be stated that ESI dispensaries can be established only on the industrial belt catering the medical needs and allied services to the workers. As the nation itself is looking at 100% literacy, every town and village having sufficient number of schools and colleges, as per the norms fixed by the ESI Corporation, should, definitely, have ESI dispensaries or hospitals with all the facilities. It is mandatory on the part of the ESI Corporation to achieve the said milestone without any delay.

135. This matter was heard and reserved for orders just before the preparations for lock down of the Country on account of COVID–19 pandemic were announced. Thus, in addition to whatever we have stated above on the merits of the issue referred to us, we are also of the view that the present economic conditions necessitate some leeway and negotiations in the matter of settlement of arrears due by the Educational Institutions.

136. Section 91 C of the ESI Act comes to aid. Section 91 C provides for the writing off of loss and states as follows:

> *"91C. Writing off of losses Subject to the conditions as may be prescribed by the Central Government, where the Corporation is of opinion that the amount of contribution, interest and damages due to the Corporation is irrecoverable, the Corporation may sanction the writing off finally of the said amount."*

137. A provision is, thus, made for the Corporation to sanction the writing off of the contribution, interest and damages due to it if the Corporation is of the opinion that such amounts are irrecoverable from the Educational Institutions concerned. The pandemic has resulted in a situation where several Educational Institutions are reportedly unable to even pay regular salaries to their employees. The financial crunch faced by them, at this juncture, is a matter of public knowledge. The impugned Notification no doubt mandates certain contributions to be made and we have upheld the validity of the same. The contributions to be made under the Notification enure to the coffers of the Corporation and it is not the Corporation's case that there are claims that have been made by the *employees of the Educational Institutions that remain unfulfilled on account of the failure of the Institutions to make the contributions in the first place. No prejudice has thus been caused to the employees per se for the periods till date on account of such failure by the Educational Institutions.*

138. We, thus, strongly recommend that the provisions of Section 91C be applied in letter and spirit by the Corporation in considering the case for reduction/waiver of pending arrears, if and when made by the Educational Institutions. Such requests, if and when made, shall be considered by the Corporation in line with the object and spirit of Section 91 C, particularly in the light of the present economic conditions.

139. To sum up, we answer the questions of reference as below:

> *(i) The decision regarding the validity of the impugned notification issued under Section 1(5) of the ESI Act could well have been taken by the Division Bench and the postponement of the same pending decision of the reference in Jai Bir Singh (paragraphs 38, 41, 42 and 44 in particular) by the Larger Bench was not warranted;*

(ii) The answer to question No.(i) is in the negative and hence, question No.(ii) does not require resolution. However, we are of the view that the orders of the Division Bench dated 09.06.2015 and 16.06.2015 are only in the nature of interim orders;

(iii) The ESI Act can very well treat the private unaided educational institutions as 'establishments' within the meaning of the said Act and the term 'otherwise' has clearly been placed to specify that genus of establishments is not restricted to those organisations, which are industrial, commercial or agricultural only, but also includes organisations like educational institutions;

(iv) There is no discrimination between the private unaided educational institutions and the public and government aided private educational institutions, pursuant to the issuance of the notification No.II 2/LE/52/2013, dated 02.01.2013; and

(v) As far as question Nos.(v) and (vi) are concerned, no amendment is required to be made by the State or Central Government to implement the impugned notification."

5. In the light of the above, the petitioner herein is also granted liberty to make an application before the concerned authorities for reduction / waiver of the pending arrears, interest, penalty etc., under Section 91C of the ESI Act and incase if the petitioner makes any such application, the same shall be considered by the third respondent in the light of the object and spirit of Section 91(C) of the ESI Act by duly taking into consideration the observations made by the learned Full Bench of this Court as extracted above and appropriate orders shall be passed thereon within a period of four months from the date of receipt of such application from the petitioner.

6. Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

05.02.2025

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

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

MUMMINENI SUDHEER KUMAR, J.

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