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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-10-2026

CORAM

THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE E.MANOHARAN

W.A.No.2067 of 2026

CNR:{HCMA011512472025}

The Employees State Insurance Corporation (Tamil Nadu),
Rep. by its Additional Commissioner
and Regional Director 143, Sterling
Road, Nungambakkam,
Chennai-600 034 … Appellant

Vs

St Josephs College of Engineering
Rep. by its Chairman Dr. B.Babu
Manoharan … Respondent

Prayer: Writ Petition has been filed under Clause 15 of the Letters Patent, pleased to set aside the impugned order passed by the learned Single Judge in W.P.No.21471 of 2024 dated 19.09.2024 and allow the above Writ Appeal.

For Appellant: Mrs. G.Narmadha

For Respondent: Mr.S.Rajasekar

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O R D E R

(Order of the Court was made by G.Jayachandran J.)

Intra-Court appeal is filed by the Employees' State Insurance Corporation (in short, 'ESIC'), being aggrieved by the order passed by the Learned Single Judge directing the Corporation to reconsider the proposal of imposing damages on the employer for non-payment of contributions in time.

2. The short point involved in this case is that the respondent, which is an Education Institution, was asked to pay contributions under the ESIC scheme for its employees. The demand was the subject matter of Writ Petitions filed by several institutions and ultimately, the Full Bench of this Court held that they are liable to pay contributions. However, the delay in paying the contribution and the levy of damages or penalties shall be subject to Section 91 C of the ESI Act and Rule 53 of the Employees' State Insurance (Central) Rules, 1950.

3. As far as this respondent is concerned, he has paid the contribution belatedly with interest. However, the respondent is aggrieved by imposing of damages. According to the respondent, the reasons for belated payment are the intervening Covid -19 pandemic period and the pendency of the matter before the Full Bench of this Court.

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4. The Learned Single Judge, having considered the contentions raised by the ESIC and the petitioner, remitted the matter back for fresh consideration with the following observations:

> *"13. Since the pandemic situation is an extraordinary one, the authorities can not expect that to be listed as one of the conditions prescribed under Rule 53 of the ESI Act. The Court has mandated in its judgment to consider the claim of waiver in letter and spirit. Since the impugned order has been passed, without having least regard to the spirit in which the Full Bench had directed, I feel it appropriate to direct the respondent to redo the exercise by following the spirit and object of the directions/observations made in the orders of the Full Bench."*

5. Mrs.G.Narmadha, Learned Counsel appearing for the appellant/ESIC, submits that a harmonious reading of Section 91 C of the ESI Act and Rule 53 of the Employee's State Insurance (C) Rules, 1950 would clearly show that the respondent is not entitled for any waiver of damages.

6. The Full Bench of this Court, after considering the scope of Section 91C regarding the power of the ESIC to sanction Writing off contribution,

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interest and damages in case of loss or impossible of recovery, had not given any immunity or right to the Educational Institutions to seek waiver. Therefore, there is no necessity to remit the order for fresh consideration and even if it is remitted back, it will be only be an empty formality.

7. The Learned Counsel appearing for the ESIC further submitted that since the decision of the Full Bench dealing with Section 91 C of the ESI Act, as spoken in paragraph Nos.136 to 138 of ***All India Private Education Institutions Association, Rep. By its State General Secretary K.Palaniyappan vs. State of Tamil Nadu Rep. By Principal Secretary to Government, Labour and Employment Department and another*** *reported in* ***(2020) 5 CTC 93 (FB),*** is the subject matter of Special Leave Petition pending before the Hon'ble Supreme Court, wherein interim stay of operation of the order has been granted.

8. The Learned Counsel for the respondent, in alternate submitted that *dehors* of the specific direction of the Learned Single Judge to reconsider imposing of damages, the respondent is ready to participate in the Amnesty Scheme and has also submitted the proposal to the Corporation on 30.09.2020 and if the Corporation/appellant is directed to consider the proposal for Amnesty, the respondent is ready to accept the order passed under the Amnesty scheme.

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9. Considering the rival submissions and alternate proposal given by the respondent, we find that the Corporation had given a restricted meaning to Section 91 C of the Act read with Rule 53 of the Employee's State Insurance (C) Rules, 1950.

10. The Learned Single Judge, taking note of extraordinary and unexpected situation that arose due to Covid-19 pandemic, had directed the Corporation to reconsider whether the case of the 1st respondent can be brought within the umbrella of Rule 53 of the Employee's State Insurance (C) Rules, 1950, to give waiver in full or in part.

11. We do no find any reason to hold that the direction of the Learned Single Judge to reconsider suffers from any illegality or infirmity. Therefore, we dismiss the appeal with liberty to the Corporation to either consider afresh the proposal to impose damages on the respondent in the light to the observations made by the Learned Single Judge or process the Amnesty application made by the assessee and pass appropriate orders. Either of the two options can be exercised by the Board and the respondent shall be made known the outcome of the decision within a period of four weeks.

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12. Accordingly, the Writ Appeal is dismissed. There shall be no order as to costs.

(Dr. G.JAYACHANDRAN, J.) & (E.MANOHARAN J.)
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Index :Yes/No.
Speaking/Non-speaking order
Internet :Yes.
Neutral Citation :Yes/No.

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