
(2022) 09 TEL CK 0079
In the Telangana High Court
Case No : Writ Petition No. 7478 Of 2021

M/S. St. Marys High School	Vs	APPELLANT
Union Of India		RESPONDENT

Date of Decision : 27-09-2022

Acts Referred:

Employees' State Insurance Act, 1948 — Section 45A, 74, 75, 75(1)(g), 75(2B)

Citation : (2022) 09 TEL CK 0079

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : Pappula Surendranath

Final Decision : Dismissed

Judgement

1. Heard Mr. Pappula Surendranath, learned counsel for the petitioner and Mr. Pasham Srinivasulu, learned counsel for respondent Nos.2 to 4.

2. This Writ Petition is filed by the petitioner seeking the following relief:

"....declaring the action of the respondents, particularly respondent Nos.3 and 4, including the impugned orders dated 21.08.2020, as illegal, arbitrary and violation of law under the ESI Act 1948 and violation of the ratio laid down by the Hon'ble Supreme Court in HP State Forest Corporation and accordingly quash and set aside the entire proceedings initiated by the respondent Nos.3 and 4 including the impugned orders, proceedings and notices issued by the respondents to the petitioner. 1) Consequently, quash and set aside the two impugned Orders A) Orders No.AP/INS-II/52-00-030185-000-1303 dated 21.08.2020; B)

Order No.AP/INSII/52-00-030185-000-1303,dated 21.08.2020; and all the subsequent actions taken in pursuit of the above-mentioned orders.

2) Refund the amount of Rs.15,98,112/- remitted by the petitioner-establishment and the interest thereon as on the date of refund of the amount

3)....”

3. The Deputy Director of Employees’ State Insurance Corporation had passed orders vide No.AP/INS-II/52-00-030185-000-1303 and No.AP/INS-II/52-00-030185-000-1303, both dated 21.08.2020 determining the contributions under the ESI Act, 1948 for an amount of Rs.70,555/- for a period from 14.10.2008 to 31.03.2009 and an amount of Rs.15,27,557/- for a period from 01.04.2009 to 31.03.2017. the said orders are under challenge before this Court. According to the petitioner, it has paid an amount of Rs.15,98,112/-. Therefore, it is seeking refund of the said amount.

4. Learned counsel for the petitioner would submit that respondent No.1, the Department of Labour, Employment, Training and Factories Department, State of Andhra Pradesh, had issued G.O. Ms.No.582, dated 14.10.2008 covering all the Educational Institutions and the Medical Institutions under the purview of Employees’ State Insurance Act, 1948. Challenging the said G.O., the petitioner herein and other similarly situated Institutions have filed batch of writ petitions. The petitioner herein had filed a writ petition vide W.P. No.20541 of 2009. According to the learned counsel for the petitioner, this Court has granted interim order. Thereafter, vide a common order dated 06.10.2015, this Court had dismissed all the writ petitions holding that it is open for the petitioners therein to file applications for exemption as per the provisions of the Act. It further held that since they have provided required medical facilities and it is for the competent authority to deal with the same as per law.

5. Perusal of the record would reveal that the petitioner herein has not filed any application to the Competent Authority seeking exemption.

6. The petitioner herein filed the present writ petition challenging the aforesaid two (02) orders, both dated 21.08.2020 passed under Section - 45A of the ESI Act, 1948 on the ground that the matter is sub-judice before this Court in W.P. No.20541 of 2009, and this Court has granted interim order till the disposal of the said writ petition in the month of October, 2015, the respondents cannot cover the petitioner’s school w.e.f. 14.10.2008. Therefore, the said coverage and determination of the contributions by the respondents vide impugned orders, both dated 21.08.2020 is illegal. The Employees’ Insurance Court constituted under Section - 74 of the ESI Act, 1948 has no power to decide the said aspect, and it is for this Court which has to decide the same. Therefore, according to the learned counsel, the respondents cannot cover the petitioner’s school retrospectively. He has also placed reliance on the judgment of the All Assam English Medium Schools v. The State of Assam W.P. (C) No.4121 of 2009, decided on 28.01.2016, wherein it was held that, since the operation of the impugned notification was stayed by this Court, it should be applied prospectively to the educational institutions and no school should be forced to subjugate themselves retrospectively, under the ESI Act. The said order was passed by the Gauhati High Court. It was not on consideration of actual facts and law. It has only persuasive value and not binding on this Court.

7. As stated above, vide order dated 06.10.2015, this Court has dismissed the aforesaid writ petition granting liberty to the Institutions to approach competent authority seeking exemption. Now, the petitioner herein is contending that the respondents cannot cover the petitioner's school retrospectively and, therefore, both the orders, dated 21.08.2020 passed under Section - 45A of the ESI Act, 1948 are illegal, and there is violation of principles of natural justice. Therefore, alternative remedy is not a bar to maintain present writ petition.

8. On the other hand, Mr. Pasham Srinivasulu, learned counsel for the respondent Nos.2 to 4 would submit that the petitioner can take the said pleas before the Employees' Insurance Court in a petition filed under Section - 75 (1) (g) of the ESI Act, 1948, and the petitioner has alternative and efficacious remedy under the said Act. Instead of availing the same, it has filed the present writ petition.

9. In view of the aforesaid rival submissions, it is relevant to note that respondent No.1 has constituted the Employees' Insurance Court under Section - 74 of the ESI Act, 1948. Section - 75 of the Act deals with matters to be decided by Employees' Insurance Court. Section - 75(1) (g) says that any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, 194 or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act, such question or dispute 195 subject to the provisions of sub-section (2A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

10. As stated above, both the orders dated 21.08.2020 were passed under Section - 45A of the Act, 1948. The issue of applicability including coverage, date and wages etc. can be raised by the petitioner before the Employees' Insurance Court in an application to be filed under Section - 75 (1) (g) of the ESI Act, 1948. Even the Employees' Insurance Court constituted under Section - 74 of the ESI Act, 1948 is empowered to decide the said issue of applicability including prospective and retrospective. Even the petitioner can raise about the pendency of the aforesaid writ petition and the interim order passed by this Court and seek adjudication of the said aspect before the Employees' Insurance Court in an application under Section - 75 (1) (g) of the ESI Act, 1948. The said Court on completion of full-fledged trial will consider the said aspect. The petitioner instead of availing the said alternative remedy filed the present writ petition.

11. It is relevant to note that this Court vide order dated 26.03.2021, directed the respondents to revoke the attachment order of the petitioner's property on the condition of its depositing 50% of the amount within four (04) weeks. According to the learned counsel, the petitioner has complied with the said order by depositing 50% of the amount. The said fact is not disputed by the learned counsel for the respondents.

12. It is also relevant to note that the petitioner herein is seeking refund of Rs.15,98,112/- from the respondents. The petitioner can seek the said refund in an application to be filed under Section - 75 (1) (g) of the ESI Act, 1948.

13. Thus, the petitioner has an alternative efficacious remedy under Section - 75 (1) (g) of the ESI Act, 1948. The petitioner can lead evidence and produce documents in support of its contentions and it will be given an opportunity of cross-examination of witnesses to be examined on behalf of respondents. On completion of inquiry only, the Employees' Insurance Court will decide all the issues. Even Employees' Insurance Court will frame issues to be decided in an application to be filed under Section - 75 (1) (g) of the ESI Act, 1948. Therefore, this Court is of the considered opinion that it is not only an alternative, but it is a efficacious remedy and the petitioner herein has to avail the same. Therefore, this Court is not inclined to entertain the present writ petition.

14. Thus, the present Writ Petition is dismissed, granting liberty to the petitioner to avail the aforesaid alternative remedy available under the provisions of the ESI Act, 1948 by filing an application under Section - 75 (1) (g) and of the ESI Act, 1948 and under Section 75 (2B) of the Act, 1948 seeking waiver to deposit and also to contend that it had already deposited 50% of the disputed amount by virtue of the interim order dated 26.03.2021. It is for the Employees' Insurance Court to consider the same. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the Writ Petition shall stand closed.