



**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPL No. 1327 of 2011**

**Judgment Reserved on 14.07.2025**

**Judgment Delivered on 10.09.2025**

**1 - Adarsh Vidyalay Higher Secondary School, Through Its Principal,  
Adarsh Vidyalay Higher Secondary School, Devendra Nagar, Sector-1  
Raipur Chhattisgarh**

**--- Petitioner**

**versus**

**1 - State Of Chhattisgarh Through The Secretary, Department Of  
Labour Mantralay, D.K.S. Bhawan, Raipur, Chhattisgarh**

**2 - Employees State Insurance Corporation Through Regional Director,  
18th South Avenue, Choubey Colony, Raipur, Chhattisgarh**

**3 - Recovery Officer Employees State Insurance Corporation, 18th  
South Avenue, Choubey Colony, Raipur, Chhattisgarh**

**--- Respondent(s)**

**WPL No. 78 of 2017**

**1 - M/s Akshay Gurukul School Through Its Principal, Akshay Gurukul  
School, Vinoba Nagar, Bilaspur Chhattisgarh, Chhattisgarh**

**---Petitioner**

**Versus**

**1** - State Of Chhattisgarh Through The Secretary, Department Of Labour, Mahanadi Bhawan, Mantralaya, New Raipur, Distt. Raipur Chhattisgarh, Chhattisgarh

**2** - Employees State Insurance Corporation, Through Its Assistant Director, Employees State Insurance Corporation, Ministry Of Labour And Employment, Govt. Of India, Regional Office 107 Ramnagar Kota, District Raipur Chhattisgarh Email - Rd-Cgarh@Esic.Nic.In, District : Raipur, Chhattisgarh

**3** - Union Of India Through Its Secretary, Ministry Of Labour And Employment, Government Of India, New Delhi., District : New Delhi, Delhi

--- Respondent(s)

**WPL No. 1517 of 2009**

**1** - St. Francis Higher Secondary School Through Its Principal, Ameri Road, Bilaspur (C.G.)

---Petitioner

**Versus**

**1** - State Of Chhattisgarh Through The Secretary, Department Of Labour, D.K.S. Bhawan, Raipur (C.G.)

**2** - Employees State Insurance Corporation Through Its Regional Director, 18, South Avenue, Raipur (C.G.)

**3** - The Branch Manager Employees State Insurance Corporation, Bilaspur (C.G.)

--- Respondent(s)

**WPL No. 1666 of 2009**

**1** - Holy Cross High School Through Its Principal Mangla, Bilaspur Cg

---Petitioner

**Versus**

**1** - State Of Chhattisgarh Through The Secretary Department Of Labour, D.K.S. Bhawan, Raipur (C.G.).

**2** - Employees State Insurance Corporation Through Its Regional Director, 18, South Avenue, Raipur (C.G.).

**3** - The Branch Manager, Employees State Insurance Corporation Bilaspur (C.G.).

**--- Respondent(s)**

**WPL No. 7177 of 2009**

**1** - Holy Cross Senior Secondary School Through Its Manager, Holy Cross Senior Secondary School, Byron Bazar, Raipur (C.G.)

**---Petitioner(s)**

**Versus**

**1** - State Of Chhattisgarh Through The Secretary, Department Of Labour, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)

**2** - Employees Sales Insurance Corporation Through Its Regional Director, Employees State Insurance Corporation, 18th South Avenue, Choubey Colony, Raipur (C.G.)

**3** - Recovery Officer Employees State Insurance Corporation, 18th South Avenue, Choubey Colony, Raipur (C.G.)

**--- Respondent(s)**

**WPL No. 2387 of 2009**

**1** - Wadhwa Higher Secondary School Through- Its Principal, Wadhwa Higher Secondary School, 141 Anand Nagar Raipur District- Raipur Chhattisgarh.

**2** - Wadhwa Mission Through- Its President A Registered Society Under The Madhya Pradesh Society Registrickaran Adhiniyam 1973, 141 Anand Nagar Distt- Raipur ( Chhattisgarh ).

**---Petitioners**

**Versus**

**1** - State Of C.G. Through- The Secretary, Department Of Labour, Mantralay, D.K.S. Bhawan, Raipur, Chhattisgarh.

**2** - Employees State Insurance Corporation, Through- Its Regional Director, Employees State Insurance Corporation 18 South Avenue, Choubey Colony, Raipur Chhattisgarh.

**3** - Recovery Officer Employees State Insurance Corporation, 18 South Avenue, Chobey Colony, Raipur Chhattisgarh.

**--- Respondents**

**WPL No. 6237 of 2011**

**1** - M/s Weidner Memorial Higher Secondary School Through Its Director, Weidner Memorial Higher Secondary School, Lalbagh, Rajnandgaon

**2** - Shiksha Prachar Avum Prasar Samiti Through Its Director Pastoral Centre Byron Bazar, Raipur Chhattisgarh

**---Petitioners**

**Versus**

**1** - State Of Chhattisgarh Through The Secretary, Department Of Labour Mantralay, D.K.S. Bhawan, Raipur, Chhattisgarh

**2** - Employees State Insurance Corporation Through Its Deputy Director, Regional Office, 107 Ramnagar Road, Kota, Raipur Chhattisgarh

**3** - Recovery Officer Employees State Insurance Corporation, Regional Office, 107 Ramnagar Road, Kota, Raipur Chhattisgarh

**4** - Branch Manager Employees State Insurance Corporation, 14th Kamthin Rajnandgaon, Dist. Rajnandgaon Chhattisgarh

--- Respondent(s)

**WPL No. 3263 of 2011**

1 - Shri Durga Prasad Educational Society, Kosabadi, Korba, Tahsil & District -Korba (C.G.)

(Society Registered under the provisions of M.P. Society Registrkaran Adhiniyam 1973 vide Registration No. बि०स०/452 on 22.01.93)

Acting through its President K.B. Gurha S/o Late Shri Durga Prasad, Aged about 81 years R/o 8 - Shiv Kailash Shopping Centre, Kosabadi, Korba, Tahsil & District-Korba (C.G.)

---Petitioner

**Versus**

1 - The State of Chhattisgarh Acting through Secretary Labour and Employment Department Raipur (C.G.)

2. Employees State Insurance Corporation (Ministry of Labour and Employment Govt. of India) First Floor, Vikas Bhawan, Near Bus Stand, Korba (C.G.) 495678

Acting through its Branch Manager Korba, Tah. & District Korba (C.G.)

3) Union of India, through Secretary Ministry of Labour & Employment Govt. of India, New Delhi

--- Respondents

**WPL No. 1048 of 2009**

1. Weidner Memorial Higher Secondary School, through its principal, Weidner Memorial Higher Secondary School, Lalbagh, Rajnandgaon

2. Shiksha Prachar Avum Prasara Samiti through its Director Pastoral Centre Byron Bazar Raipur Dist. Raipur (Chhattisgarh)

---Petitioners

**Versus**

1. State of Chhattisgarh through the Secretary, Department of Labour, Mantralay, D.K.S. Bhawan, Raipur, Chhattisgarh

2. Regional Director, Employees State Insurance Corporation, 18th South Avenue, Choubey Colony, Raipur Chhattisgarh

3. Recovery Officer Employees State Insurance Corporation, 18th South Avenue, Choubey Colony, Raipur Chhattisgarh

4. Branch Manager, Employees State Insurance Corporation, 14th Kamthin Rajnandgaon Chhattisgarh Dist. Rajnandgaon

--- Respondents

**WPL No. 159 of 2012**

1 - St.Thomas College Bhilai Through Its Principal Ruabandha Bhilai Distt. Durg C.G. , Chhattisgarh

---Petitioner(s)

**Versus**

1 - State Of Chhattisgarh Through The Secretary Deptt. Of Labour Dks Bhawan Raipur C.G. , Chhattisgarh

2 - Employees State Insurance Cor. Thro. Its Regional Director 107, Ram Nagar Road Kota Raipur C.G., District : Raipur, Chhattisgarh

3 - The Deputy Director Regional Office Employees State Insurance Corporation, 107, Jagannath Chowk Ram Nagar Road Kota Raipru C.G , District : Raipur, Chhattisgarh

4 - Social Security Officer Employees State Insurance Corporation 6/4 Priyadarshini Parishar Supela Bhilai Distt. Durg C.G. , District : Durg, Chhattisgarh

--- Respondent(s)

**WPL No. 128 of 2013**

1 - M/s Shri Gurunanak Education Society Dayalbandh Bilaspur C.G Through Secretary, M/s Gurunanak Education Society, Dayalbandh, Bilaspur C.G. , Chhattisgarh

---Petitioner(s)

**Versus**

**1** - State Of Chhattisgarh Through The Secretary Department Of Labour Mahanadi Bhawan, P.S. Rakhi, New Raipur Distt. Raipur C.G., Chhattisgarh

**2** - Employees State Insurance Corporation Through Its Deputy Director, 18 South Avenue Revenue And Civil District Raipur C.G., District : Raipur, Chhattisgarh

**3** - Union Of India Through Its Secretary, Ministry Of Labour And Employment, Government Of India, New Delhi, District : New Delhi, Delhi

--- Respondent(s)

**WPL No. 5029 of 2010**

**1** - St. Vincent Pallotti School Through its Principal Mangla Road, Bilaspur (C.G.)

---Petitioner

**Versus**

**1** - State of Chhattisgarh Through the Secretary, Department of Labour, D.K.S. Bhawan, Raipur (C.G.)

**2.** Employees State Insurance Corporation, Through its Regional Director, 18, South Avenue, Raipur (C.G.)

**3.** The Branch Manager, Employees State Insurance Corporation, Bilaspur (C.G.)

--- Respondents

**(Cause-title taken from the Case Information System)**

For respective Petitioners :- Mr. K.R. Nair, Mr. Sourabh Sharma & Mr. Vinod Deshmukh, Advocates

For State :- Mr. Atanu Ghosh, Dy. G.A.

For Respondent- :- Mr. Pranav Saxena, Advocate  
(Employees State Insurance Corporation)

**Division Bench- Hon'ble Smt. Justice Rajani Dubey &**  
**Shri Justice Amitendra Kishore Prasad**  
**CAV Judgment**

**Per, Amitendra Kishore Prasad, J.**

1. In these bunch of cases, the petitioners have challenged the notification dated 27.10.2005 (Annexure P-1) published in Chhattisgarh Gazette under section 1 (5) of the Employees State Insurance Act, 1948 and the entire proceedings initiated by respondent no. 2 by its notice dated 27/28.01.2011 (Annexure P-2).
2. Heard Mr. K.R. Nair, Mr. Sourabh Sharma & Mr. Vinod Deshmukh, Counsel for the petitioners. Mr. Atanu Ghosh, Dy. G.A. for the State and Mr. Pranav Saxena, Counsel for the respondent- Employees State Insurance Corporation.
3. The petitioners, educational institutions operated by a registered society, challenge the applicability of the Employees State Insurance Act, 1948 (ESI Act) to its establishment following a notification issued by the State Government under Section 1(5) of the Act, published on 28.11.2005, making the Act applicable to educational institutions from 01.04.2006. Pursuant to this, a demand notice dated 27/28.01.2011 was issued by the authorities seeking contribution amounting to Rs. 13,83,168/- for specified periods between 2008 and 2010. The petitioners contend that the said notification is arbitrary, illegal, and beyond the scope of the Act, asserting that an educational institution is not an



"establishment" within the meaning of Section 2(5) of the ESI Act, as it does not engage in any manufacturing or commercial activity. The institution's sole purpose is to impart education, which involves moral, intellectual, and physical development of students and cannot be equated with profit-making activities or business enterprises. As such, the petitioners argue that extending the ESI Act to cover educational institutions is a misapplication of the law and seeks quashing of both the notification and the consequential recovery notices.

4. Since all the petitioners have filed separate petitions while raising a common grievance. Therefore, these petitions are being clubbed together, heard together, and decided together by this common order.
5. The reliefs prayed for by the petitioners in all the writ petitions are same and one with certain variations, however, in order to adjudicate these petitions, WPL No. 1327/2011 (Adarsh Vidyalay vs. State of Chhattisgarh and Others) has been taken as lead petition for deciding the issues involved in these cases.
6. The reliefs sought in the said petition are quoted hereinbelow:-

*"10.1 That the Hon'ble court may kindly be pleased to issue a writ, writs, order, orders or direction etc. for quashing the notification dated 27.10.2005 (Annexure P-1) issued by respondent no.1 and the entire proceeding initiated by respondent no.2 by its notice dated 27/28.01.2011 (Annexure P-2) demanding the petitioner to pay contribution of a sum of Rs.13,83,168/- and declare them as void*

*and inoperative in law.*

*10.2 Any other relief or relief(s) which this Hon'ble Court may think proper in view of the facts and circumstances of the case may also kindly be granted."*

7. The petitioner in WPL No. 1327/2011, Adarsh Vidyalay Higher Secondary Schools in Raipur, managed by Raipur Kerala Samajam, challenges the validity of a State Government notification dated 27.10.2005, which extended the provisions of the Employees State Insurance Act, 1948 (hereinafter referred to as 'ESI Act') to educational institutions, including the petitioner schools, effective from 01.04.2006. The petitioner contests the demand notice issued by Respondent No. 2 on 27/28.01.2011, requiring payment of contributions totaling Rs. 13,83,168/- for the period between March 2008 and November 2010, asserting that educational institutions do not qualify as "establishments" under Section 1(5) of the ESI Act, and that imparting education is neither a commercial nor industrial activity but a charitable and societal service recognized by the Hon'ble Supreme Court in landmark cases such as Unni Krishnan and P.A. Inamdar. The petitioner argues that the Act, originally meant for factories and industrial establishments, cannot be arbitrarily extended to schools through such notification, making the imposition of ESI contributions illegal and unsustainable in law. The issue is currently under judicial consideration, with similar petitions

pending, and interim relief granted in related cases, emphasizing the question of whether educational institutions fall within the scope of “establishments” as intended by the Act.

8. Facts of the case at hand is that the petitioner Adarsh Vidyalay Higher Secondary Schools, Devendra Nagar, Raipur, are higher secondary schools duly recognized by the competent authority to impart primary, middle, and higher secondary courses, fulfilling all the requisite criteria. These schools are managed by Raipur Kerala Samajam, which runs the petitioner schools and other schools in Raipur City, and has decided to file the instant writ petition challenging the notification dated 27.10.2005 and the proceedings initiated under the provisions of the Employees State Insurance Act, 1948 by Respondent No. 2 through its notice dated 27/28.01.2011. The petitioner in the instant writ petition seeks to challenge the legality and validity of the notification issued under sub-section (5) of Section 1 of the Employees State Insurance Act, 1948, and the proceedings initiated under the said Act, including the consequent order passed by Respondent No. 2 requiring the petitioner’s institutions to pay contribution under the provisions of the Act. The Employees State Insurance Act, 1948 was enacted to provide certain benefits to employees in case of sickness, maternity, and employment injury, and to make provision for related matters. By virtue of sub-section (4) of Section 1 of the Act, it applies to all factories (including government factories), other than seasonal factories. Sub-section

(5) of Section 1 further provides that the appropriate Government, in consultation with the Corporation and with the approval of the Central Government, may, after giving six months' notice by notification in the official Gazette, extend the provisions of the Act, wholly or partly, to any other establishment or class of establishments, whether industrial, commercial, agricultural, or otherwise. Thus, the Act is a piece of social security legislation aimed at remedying widespread social evils arising from poverty. It contemplates the extension of benefits to employees in establishments beyond factories, via notification by the appropriate Government. The Act does not define the term "establishment." According to Webster's Dictionary, "establishment" means a place permanently fixed for business with the necessary equipment or any office or place of business. Similarly, Section 2(e) of the Contract Labour (Regulation and Abolition) Act, 1970 defines "establishment" as (i) any office or department of the Government or a local authority; or (ii) any place where industry, trade, business, manufacture, or occupation is carried on. The question in this petition is whether the petitioner schools would qualify as "establishments" within the meaning of sub-section (5) of Section 1 of the Employees State Insurance Act, 1948 for the purpose of extending the Act's provisions. In particular, whether imparting education can be considered a commercial activity. It is pertinent to refer to the meaning of education. It has been held by the Hon'ble Supreme Court in Unni

Krishnan that education has never been regarded as commercial in this country. To treat it otherwise runs counter to the ethos, traditions, and sensibilities of the nation. Imparting education has historically never been treated as trade or business but rather as a religious and charitable duty. The Supreme Court in P.A. Inamdar held that education is the process of developing and training human powers and capabilities, encompassing moral, intellectual, and physical training, beyond mere instruction at school or college. Education includes moral and religious instruction and is sometimes synonymous with “learning.” It is a vital input for the growth of society and individuals, contributing to cultural richness, positive attitudes towards technology, governance efficiency, and societal progress. Education opens new horizons for individuals, develops aspirations and values, strengthens competencies, and fosters critical social and political awareness, self-examination, and self-monitoring. Further, the Supreme Court in T.M. A. Pai Foundation case reiterated that education plays a cardinal role in transforming society and accelerating national progress. It is the State’s duty to facilitate education for all, recognizing it as continual personality growth, character development, and qualitative life improvement. Education trains the mind and is not mere information stuffing; imparting education by an institution is a service to society. Therefore, educational institutions cannot be equated to trade or business establishments under Section 1(5) of the Employees

State Insurance Act, 1948. The extension of the Act's provisions to educational institutions is, therefore, illegal, arbitrary, and contrary to the Act. The State Government issued a notification under Section 1(5) of the Act on 27.10.2005, stating its intention to extend the provisions of the Act to the class of establishments specified in the annexed schedule effective from 01.04.2006. Respondent No. 2 issued a notice dated 27/28.01.2011 requiring the petitioner schools to pay contributions amounting to Rs. 13,83,168/- for the periods 01.03.2008 to 30.04.2010 and 01.05.2010 to 30.11.2010 (Annexure P-2). It is pertinent to mention that W.P.(C) No. 524/2009 titled "Holly Cross Higher Secondary Schools vs. State of Chhattisgarh & Others" challenging the same notification (Annexure P-1) is pending before this Hon'ble Court, which has granted interim relief vide order dated 28.01.2009 (Annexure P-5). The issues involved in that petition are identical to those raised herein. The petitioner submits that the notification dated 27.10.2005, as well as all proceedings flowing from the demand notice dated 27/28.01.2011, are unsustainable and bad in law. The petitioner schools do not constitute "establishments" within the meaning of Section 1(5) of the Employees State Insurance Act, 1948. Accordingly, the provisions of the Act cannot be applied to the petitioner schools, and the impugned notification dated 27.10.2005, published on 18.11.2005, deserves to be quashed.

**9.** Learned counsel for the petitioners submits that the notification

dated 27.10.2005, published on 28.10.2005, is arbitrary, illegal, discriminatory, and contrary to the provisions of the Employees' State Insurance Act, 1948 ("the Act") and the said notification is liable to be quashed. The petitioners' institution is an educational establishment engaged solely in imparting education for the development of human beings. It cannot be classified as an "establishment" within the meaning of Section 1(5) of the Act, 1948. Therefore, the petitioners' institution does not fall within the purview of the Employees State Insurance Act, 1948. It is stated that the impugned notification, which seeks to bring the petitioners' educational institution within the ambit of the Act, is per se illegal and contrary to law as the petitioners' institution is neither a factory nor an establishment engaged in manufacturing processes or commercial activities. It is purely an educational institution providing services for the betterment of society. Imparting education cannot be considered a trade or business. Accordingly, the institution cannot be treated as a factory or establishment to which the provisions of the Act, 1948 shall apply. It is submitted that to brand the educational institution as a factory or establishment under Section 1(5) of the Act, 1948 is a gross misuse and abuse of the legislative provisions and the impugned notification is also procedurally defective. The appropriate government, which is the State Government, is required to publish a notification in the official gazette after giving six months' notice of its intention. It is further stated that in the instant case,

the notification dated 27.10.2005 was published only on 18.11.2005, thus failing to comply with mandatory procedural requirements. The Act applies only to establishments where manufacturing processes are carried out, with or without the aid of power, and where commercial activity is conducted. Education being a service for societal benefit, cannot be regarded as a commercial or trade activity. Hence, the educational institution cannot be branded as an establishment carrying on commercial activity to which the Act would apply. The entire proceeding initiated by respondent no. 2 through the notice dated 27/28.01.2011 (Annexure P-2), demanding the petitioner to pay contribution amounting to Rs. 13,83,168/-, is without jurisdiction, illegal, bad in law, and liable to be quashed. In view of the above submissions, it is prayed that the impugned notification dated 27.10.2005 and the subsequent proceedings be quashed and set aside by allowing the present bunch of writ petitions.

10. On the other hand, learned counsel for the respondent-Employees State Insurance Corporation submits that the instant bunch of petitions challenging the notification dated 04.03.2011 (Annexure P/1), published in the Chhattisgarh Gazette on 25.03.2011 under Section 1(5) of the Employees' State Insurance Act, 1948 (hereinafter referred to as the 'Act of 1948'), is wholly devoid of merit and has been preferred with a mala fide intent to evade statutory social security obligations towards employees. The petitioners' allegations of procedural irregularities, including



the absence of central government approval, failure to give the requisite one-month notice, and objection to the composite nature of the notification, are factually incorrect and unsustainable in law. Prior approval from the Central Government was duly obtained as evidenced by the letter dated 28.02.2005 from the Ministry of Labour & Employment, Government of India, and the procedural requirements including the statutory notice period were complied with, as supported by the notification dated 22.10.2010 inviting objections, which the petitioners have deliberately suppressed from this Hon'ble Court to mislead the proceedings. Further, the impugned notification follows the settled legal position upheld by this Hon'ble Court in *Maharishi Shikshan Sansthan* (W.P.(C) No.: 4714 of 2008) which recognized the validity of similar notifications extending the Act to educational institutions after the mandatory six-month notice period, a decision which has attained finality and remains binding. The doctrine of judicial comity precludes conflicting orders on the same subject matter, as reiterated by the Hon'ble Apex Court in *India Household and Healthcare Ltd. and Shankara Cooperative Housing Society Ltd.*, thereby reinforcing the binding nature of precedent in this matter. Moreover, the Act of 1948 being a beneficial social security legislation demands liberal construction to further its humanitarian objectives, as reiterated by the Apex Court in *Bombay Anand Bhavan Restaurant*, mandating that the law must not be allowed to be defeated by subterfuge. The petitioners' institution, although

educational in nature, squarely falls within the definition of 'establishment' under Section 1(5) of the Act and is therefore liable to be covered. The contention that minority educational institutions are exempt under Article 30(1) of the Constitution of India is unsustainable, as held by the Full Bench of the Madras High Court in All India Private Educational Institutions Association, affirming the applicability of labor welfare laws to such institutions. It is further submitted that the impugned notification was effected with sufficient prior publication, including newspaper notices, and despite these clear mandates, the petitioners willfully neglected their statutory obligations until a survey was conducted, indicating clear mala fide conduct and delay in approaching the Court after approximately three years from the effective date of notification, thus rendering the petition liable to be dismissed on grounds of delay and laches. Additionally, rescinding the notification would unjustly deprive thousands of employees across nearly 1900 other educational institutions of their legitimate social security benefits. The request for liberty to raise disputes before appropriate authorities is also objected to on the basis that the petitioners have not acted with clean hands and any such liberty would enable further evasion of statutory compliance, defeating the legislative intent and social welfare objectives. In light of the above, it is humbly prayed that the instant bunch of petitions be dismissed with exemplary costs in the interest of justice.

11. Learned counsel for the State submits that the petitioners' challenge to the notification dated 27.10.2005, published in the Official Gazette on 28.10.2005, is devoid of merit and liable to be dismissed. The notification was issued in strict compliance with the procedural requirements under Section 1(5) of the Employees' State Insurance Act, 1948 ("the Act"), following due approval from the Central Government and after due publication. The petitioners' assertion that their institution does not qualify as an "establishment" within the meaning of Section 1(5) of the Act is incorrect and misconceived. The Hon'ble Courts have consistently held that educational institutions, though engaged in imparting education, do qualify as establishments under the Act, particularly when they employ workers and engage in activities necessitating social security provisions. The scope of "establishment" under Section 1(5) is broad and not limited to factories or manufacturing processes alone but extends to any establishment where employees are engaged in services, including educational institutions. Furthermore, the contention that imparting education is not a trade or commercial activity but purely a societal service is legally untenable in the context of labor welfare legislation, which focuses on providing social security to employees irrespective of the nature of the employer's commercial or non-commercial status. The Act's primary objective is to safeguard the welfare of employees and ensure their social security benefits, which cannot be denied on the ground that the

institution is engaged in education. Additionally, the procedural compliance of the notification is well established. The six months' notice requirement was duly met, and the notification was published after all due formalities, including prior approval from the Central Government. The delay in publication alleged by the petitioners is immaterial and does not vitiate the notification's validity. Moreover, the petitioners' institution, being covered under the Act, is bound to comply with the statutory obligations, including payment of contributions. The notice dated 27/28.01.2011 demanding contributions amounting to Rs. 13,83,168/- is within the jurisdiction of the competent authority and is issued in accordance with the provisions of the Act and relevant rules. The petitioners' attempt to evade statutory liability under the guise of legal challenges is misconceived and against the spirit of social welfare legislation. In light of the above, it is humbly submitted that the impugned notification dated 27.10.2005 and the consequential proceedings initiated for enforcement of the provisions of the Employees' State Insurance Act, 1948, are legally valid, binding, and in public interest. The petition deserves to be dismissed with costs.

- 12.** We have heard learned counsel for the parties and perused the material available on record.
- 13.** From perusal of the bunch of petitions, it appears that at an earlier point of time, the petitioners had filed these petitions seeking relief in respect of the grant of pay contribution towards

the Employees' State Insurance. However, at that time, they had not challenged the notification in question. This Court, in W.P.(C) No. 4714/2008, in the matter of **Maharishi Shikshan Sansthan vs. State of Chhattisgarh & Another**, had upheld the legality and validity of the said notification. The Division Bench, while deciding the matter, observed in Paragraph 7 as under:-

*"Section 1(5) of the Act permits the State Government to extend the provisions of the Act after giving six months' notice. The notification is dated 27.10.2005 and stipulates intention to extend the provision of the Act of the educational institutions covered in the schedule on or after 01.04.2006. It was so extended on 01.04.2006. This is after expiry of six months."*

14. After the decision of the said petition, the petitioners have filed the present petition challenging the notification dated 27.10.2005, which reads as follows:-

***"56.Notification No. F-4-9/04/16 dated the 27th October, 2005.-In exercise of the powers conferred by sub-section (5) of Section 1 of the Employees State Insurance Act, 1948, the Government of Chhattisgarh, in consultation with the Employees State Insurance Corporation and with the approval of the Central Government, hereby gives notice of its intention to extend the provisions of the said Act to the classes of establishments specified in the schedule annexed hereto, on or after 1-4-2006.***

**Schedule**

<i>Description of establishments</i>	<i>Areas in which the establishments are situated</i>
<i>(1)</i>	<i>(2)</i>

<i>Educational institutions (including private, aided or partially aided) run by individuals, trustees, societies or other organizations, wherein 20 or more persons are employed or were employed on any day of the preceding twelve months.</i>	<i>Areas where the Scheme has already been brought into force under Section 1(3) and 1(5) of the Act.</i>
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*(Published in C.G. Rajpatra Part I dated 18.11.2005 Page 1858)”*

15. From the perusal of the notification under challenge, it appears that the main bone of contention relates to the notice which is required to be given on or after 14.02.2006. According to the petitioners, the notice mandated by law has not been issued. Therefore, the petitioner institution cannot be brought within the purview of the Employee State Insurance Act, 1948. In the present case, the contention of the petitioner institutions is that

they cannot be treated as factories or obligate establishments under the law. Being educational institutions, they are not governed by the challenged notification. Therefore, no amount is recoverable from them under the Employees' State Insurance Act, which aims to provide certain benefits to employees in cases of sickness, maternity, injury, or employment-related injury.

16. The main question to be decided in the present case is whether educational institutions qualify as “establishments” under Section 2(5) of the Employees’ State Insurance Act, 1948. This issue has been addressed by various High Courts. In particular, the Division Bench of the Kerala High Court, in the matter of **Kerala CBSE School Management’s Association & Ors. vs. State of Kerala & Ors.** reported in **2010 (II) LLJ 240**, has held that-

*“14. We have gone through the relevant statutory provisions and also the decisions cited at the Bar and other materials on record. Section 1 (5) of the ESI Act reads as follows:*

*"1(5) The appropriate Government may, in consultation with the corporation and where the appropriate Government is a State Government, with the approval of the Central Government after giving six months' notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment establishments, or industrial, agricultural or otherwise:*

*Provided that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State.”*

*(emphasis supplied)*

*Following the procedure prescribed in the above sub-section, the appropriate Government can extend the provisions of the Act "to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise". The point to be answered is, whether the above provision empowers the appropriate Government to extend the provisions of the Act to educational institutions. A plain reading of the above provision leaves no doubt in our mind, that the appropriate Government can do that. No direct authority of the Apex Court on this point has been brought to our notice, but there are a few decisions of other High Courts directly in point.*

*15. The Allahabad High Court in **Maharishi Shiksha Sansthan, New Delhi v. State of U.P., 2009 (1) A.L.J. 654**, upheld the notification under Section 1(5), covering The relevant portion of the said educational institutions. judgment reads as follows:*

*"6. In my opinion, the word "otherwise" is of wide amplitude covering all establishments including educational institutions.*



7. In this case, learned counsel for the respondents has cited an authority of this Court and another authority of Rajasthan High Court, which are quoted below.

1. Civil Misc. Writ Petition No.44821 of 2008, St. Joseph's College and others (decided on 1-9-2008)

2. S.B. Civil Writ Petition No.2291 of 2005, Bhopalwal Arya Higher Secondary Managing Committee, Sriganganagar v. State of Rajasthan and others (decided on 12-5-2008).

8. In the said authorities, it has been held that educational institution can be brought under the umbrella of the Act. Moreover, the Act is beneficial legislation and in case of any ambiguity it requires to be interpreted in favour of those, who are to be benefitted by the application of the Act.

9. In this regard, application of the Act. reference may also made to the Supreme Court authority reported in AIR 2004 SC 3972 'E.S.I. Corpn. v. Hyderabad Race Club' authorities mentioned therein. and the In the said authority, it was held that race club was establishment and could be brought under Act through notice under the aforesaid provision.

10. Learned counsel for the petitioner has argued that the word 'establishment' must have some relation with factory and educational institution is not even remotely connected with the activity, which is carried out in factories. This argument is not tenable for the reason that under Section

*1(5), there is no such restriction. Thereafter, learned counsel for the petitioner has argued that the aforesaid sub-section suffers from the vice of excessive delegation as the power to bring any establishment under the Act has been conferred upon the Government without providing any guidelines.*

*11. This argument is also not acceptable. The purpose of the Act is to confer certain benefits upon the employees and employees of any establishment may deserve such benefits. This question has also been considered in the Supreme Court authority reported in AIR 1987 SC 1166, "Hindu Jea Band, M/s.Jaipur Regional Director, Employees' State Insurance Corporation, Jaipur." Learned counsel has, in the end, argued that in the case of judgment of St. Joseph's College's case (supra), notification was not challenged. However, in the said authority, it was argued that the said provision could not be applied on minority educational institutions. In the said judgment, it was held that educational institution including minority educational institution could be brought under the Act."*

*16. Interpreting the words "or otherwise" in Section 1(5) of the E.S.I Act, The Bombay High Court in Mumbai Kamgar Sabha v. State of Maharashtra, 1991LAB.I.C. 1206, held as follows:*

*"... The government can extend the Act or any portion thereof. It can do so vide any other establishment (in contra distinction to factories*

*other than seasonal factories) or class establishments. The class contemplated may be industrial, commercial, agricultural or otherwise. That there can be establishments of a character other than industrial, commercial or agricultural cannot be disputed. An example of this a travel That being the position, it will be agency. erroneous to hold that the words "or otherwise" are to be read in a restricted sense and take their colour from the three words preceding them. These preceding words cannot supply the idea of a genus. Indeed the genus lies in the words "any other establishment or class of establishment". The three words which follow each represent a specie. But the legislature did not want to restrict the operation of the Act to these 3 species and therefore used the catch-all words otherwise".*

*We are of the opinion that the view taken by the Allahabad High Court regarding the extension of the provisions of the ESI Act to educational institutions and the interpretation given to the words "or otherwise" by the Bombay High Court lay down the correct legal position."*

17. The judgment rendered by the Kerala High Court was further upheld by the Honorable Supreme Court in Special Leave to Appeal (C) No.28285/2009. Similarly, the Division Bench of the Calcutta High Court, in the matter of **The Principal Secretary, Department of Labour vs. Om Dayal Educational and Research Society & Others**, reported in 2019 SCC Online Cal

**5174**, has also taken the same view. It held that the notification is in accordance with the law and cannot be said to violate any constitutional provisions.

18. Again, the Full Bench of the Madras High Court, in the matter of **All India Private Educational Institutions Association vs. The State of Tamil Nadu & Another** reported in **AIR ONLINE 2020 Mad 1142**, has taken the same view, which is quoted below:-

*“29. A Division Bench of the Kerala High Court in CBSE School Management's Association (cited supra), dealt with Section 1(5) of the ESI Act and held as follows:*

*17. We hold that the notification under Section 1(5) of the ESI Act can cover an educational institution for two reasons:- Our first reason is that, the educational institutions like schools are industrial establishments, in view of the decision of the Apex Court in Bangalore Water Supply and Sewerage Board's case, (supra). Though a few Benches of lesser strength have expressed the necessity for reconsidering the dictum in Bangalore Water Supply and Sewerage Board's case, (supra), until such a reconsideration is done by a larger Bench, we are absolutely bound by the decision of the Apex Court in Bangalore Water Supply and Sewerage Board's case, (supra). If that be so, the only possible view that could be taken in the face of the words contained in Section 1(5) of the ESI Act is that educational institutions are also covered by the*

*expression 'Industrial establishment'. The main thrust of the argument of the writ petitioners was that educational institution is not not an industry. In view of the binding precedent mentioned above, we cannot accept that contention. Further, the interpretation of the definition of "industry" in Section 2(1) of the Industrial Disputes Act is applicable to the interpretation of the word "industrial" in Section 1(5) of the E.S.I. Act, in view of Section 2(24) of the latter Act which reads as follows:*

*"2. Definitions:-*

*xxxx    xxxxxx    xxxxxxxxxxxx    xxxxxxxxxxxx*

*(24) all other words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 (14 of 1947), shall have the meanings respectively assigned to them in that Act.*

**30.** *As stated above, the Special Leave Petitions (SLPs) were filed against the said order before the Hon'ble Supreme Court, which were JUDIC 2009 and 2016, and the Hon'ble Apex Court by the order dated 15.03.2016 rejected all those SLPs in Kerala Unaided School Managements Association V. State of Kerala observing that "we do not find any legal and valid ground for interference. The s Special Leave Petitions are dismissed".*

**31.** *A similar Notification dated 13.05.2011 issued by the Government of Karnataka under Section 1(5) of the ESI Act was put to challenge before the Karnataka High Court by the private*

*schools. While dismissing the writ petitions upholding the notification, in the decision reported in ILR 2012 Kar 2664, Managements of Independent CBSE Schools Association, Karnataka and Others V. Union of India, the Karnataka High Court held as follows: purt held as follows:*

*"42. The last word 'otherwise' used in Section 1(5) of the ESI Act has wide amplitude. The legislature, in exercise of its wisdom, has empowered the Government to bring in not merely the industrial, commercial or agricultural establishments, but also other establishments including the educational establishments. When the provisions of the ESI Act can be made applicable to educational establishments or the institutions, then the word 'employee' would accordingly apply to the employees working therein.*

*43. The word 'otherwise' used in Section 1(5) of the ESI Act cannot be given restrictive meaning by applying the principle ejusdem generis. The legislature has closed all the escape routes by consciously using the word 'otherwise'".*

*32. The Uttar Pradesh Government issued a similar notification 22.08.2018, which was unsuccessfully questioned before the Allahabad High Court in Maharishi Shiksha Sansthan V. State of Uttar Pradesh, 2009 (1) LLN 381, wherein, it was held as follows:*

*"9. Learned counsel for the petitioner has argued that the word 'establishment' must have some*

*relation with factory and educational institution is not even remotely connected with the activity, which is carried out in factories. This argument is not tenable for the reason that under Section 1(5), there is no such restriction.*

*10. Thereafter, learned counsel for the petitioner has argued that the afore said sub-section suffers from the vice of excessive delegation as the power to bring any establishment under the Act has been conferred upon the Government without providing any guidelines.*

*11. This argument is also not acceptable. The purpose of the Act is benefits upon the employees and and employees of any to confer certain establishment may deserve such benefits. This question has also been considered in the Supreme Court authority reported in (1987) 2 SCC 101, Hindu Jea Band, Jaipur v. Regional Director, Employees' State Insurance Corporation, Jaipur.*

*33. While dismissing the appeal preferred against the said order, a Division bench of the Allahabad High Court in the judgment reported in Maharishi Shiksha Sansthan V. State of Uttar Pradesh, 2009 (120) F.L.R. 332, observed as follows :*

*"We are of the considered opinion that the Hon'ble Single Judge has rightly held that educational institution would be covered under the definition of establishment specifically in view of the use of the word 'otherwise'. It has rightly been held that the word 'otherwise' is of*

*wide amplitude covering all other establishments including educational institutions.”.*

*73. It is relevant to note the judgments of the Hon'ble Apex Court in K.K.Kochunni V. State of Madras, AIR 1960 SC 1080 and Bangalore Turf Club V. Regional Director, ESI Corporation, 2014 (9) SCC 657. In the above cases, holding that a dictionary meaning of a word cannot be looked at where the said word has been statutorily defined or judicially interpreted, but where there is no such definition or interpretation, the Court may take the aid of dictionaries to have the meaning of the word in common parlance and in Bangalore Turf Club held as follows:*

*"6. The meaning of the words "or otherwise" after the words "industrial, commercial or agricultural" establishments in sub-section (5) of Section 1 indicates that the Government can extend the ESI Act or any portion thereof to any other establishment or class of establishments. The genus lies in the words "any other establishment or class of establishments". The three words industrial, commercial and agricultural represent a specie. Since the legislature did not want to restrict the operation of the ESI Act to these three species, has used the catch words "or otherwise".*

*31. We may safely conclude that the literal rule of construction may be the primary approach to be utilised for interpretation of a statute and that words in the statute should in the first instance be given their meaning as understood in*



*common parlance. However, the ESI Act is a beneficial legislation. It seeks to provide social security to those workers as it encompasses. In the light of the cases referred above. it may be seen that the traditional approach can be substituted. A dictionary meaning may be attached to the words in a statute in preference over the traditional meaning. However, for this purpose as well, the scheme, context and objects of the legislature must be taken into consideration. Taking into due consideration the nature and purpose of the ESI Act, the dictionary meaning as understood in the context of the said Act would be preferable to achieve the objects of the legislature.*

*37. The term "establishment" would mean the place for transacting any business, trade or profession or work connected with or incidental or ancillary thereto. It is true that the definition in dictionaries is the conventional definition attributed to trade or commerce, but it cannot be wholly valid for the purpose of constructing social welfare legislation in a modern welfare State. The test of finding out whether professional activity falls within the meaning of the expression "establishment" is whether the activity is systematically and habitually undertaken for production or distribution of the goods or services to the community with the help of employees in the manner of a trade or business in such an undertaking. If a systematic economic or commercial activity is carried on in the premises, it would follow that the*

*establishment at which such an activity is carried on is a "shop". This Court, in Hyderabad Race Club case [ESI Corpn. v. Hyderabad Race Club, (2004) 6 SCC 191], keeping in view the systematic commercial activity carried on by the club has held that the race club is an establishment within the meaning of the said expression as used in the notification issued under Section 1(5) of the ESI Act. Therefore, in our considered view, the view expressed by this Court is in consonance with the provisions of the ESI Act and also settled legal principles. Therefore, the said decision does not require reconsideration."*

**83.** *It is in the light of the above that Section 1(5) of the ESI Act has to be read. The ESI Act being a socio-economic welfare oriented legislation, it has brought with it the avowed objective of securing the social and economic justice and for upholding the human dignity and it is not a law regulating the education. Curiously, the vires of Section 1(5) of the ESI Act is not under challenge in any of the petitions. It is always the endeavour of the Courts that the social perspective must play upon the interpretative process. Therefore, the ESI Act can treat the private educational institutions as 'establishments' coming within the meaning of the 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. The issue No.(ii) is answered accordingly.*

*110. Thus, the last phrase 'or otherwise' used in Section 1(5) of the in exercise of its wisdom has ESI Act has wide amplitude. The legislature in e empowered the Government to bring in not only industrial, commercial or agricultural establishments, but but also also other establishments, including education Institutions/establishments. It is argued that whether the provisions of the ESI Act can be made applicable for the self-financing unaided institutions. We do not find any legal impediment in bringing such institutions also within the purview of this Act. Section 1(5) of the ESI Act enables the State Government to extend the scheme to any establishments or class of establishments unaided educational institutions being no exception.”*

19. The aforesaid pronouncements have categorically held that educational institutions qualify as establishments under Section 2(5) of the Employees' State Insurance Act, 1948. The next issue raised in these petitions concerns whether unaided institutions fall within the scope of the Act, particularly in light of the protection granted to them under Article 30(1) of the Constitution of India. The Employees' State Insurance Act, 1948, being a welfare legislation aimed at employee protection, is enforceable against all institutions, including unaided institutions.

20. The Full Bench of the Madras High Court has categorically confirmed this position in the matter referred to **All India Private Educational Institutions Association (supra)**, at paragraphs 112 to 114 of the judgment. The same are quoted hereinbelow:-

*“112. Though we would not embark on the individual factual before us, in the light of the above referred judgment and also there are substantial number of private educational institutions run by the religious minority having protection under Article 30(1) of the Constitution, which are represented by Fr.Xavier Arulraj, learned Senior Counsel before us, we would specifically deal with the same.*

*113. In Haryana Unrecognized Schools' Association, referred supra, the Hon'ble Apex Court placed reliance on the judgment in A.Sundarambal V. Government of Goa, Daman and Diu, 1988 (4) AT Acome F that the teachers would not come within the definition SCC 42, and held that the teachers would not come within the definition of the term 'employee' as found in the Minimum Wages Act. In Sundarambal's case, it was found a teacher is not a 'workman' within the meaning of Section 2(s) of the ID Act, even though the educational institutions can be considered to be 'industry' in terms of Section 2(j) of the ID Act. As we have already held that the impugned notification issued under the ESI Act is an independent notification under Section 1(5) of the ESI Act and that the term 'industry', as defined in the ID*

*Act need not be gone into once again. However, the teachers can be considered as employees so as to become 'insured persons' under the ESI Act.*

**114.** *In Christian Medical College Hospital Employees' Union Christian Medical and another V. Christian Medical College Vellore Vellore Association and Others, 1987 (4) SCC 691, it has been held that the labour welfare legislation will apply even to minority institutions, notwithstanding Article 30(1) of the Constitution and the relevant paragraph of the said judgment is as follows:*

*18. It has to be borne in mind that these provisions have been conceived and enacted in accordance with the principles accepted by the International Labour Organisation and the United Nations Economic, Social and Cultural Rights. The International Covenant on Economic, Social and Cultural Rights, 1966 which is a basic document declaring certain specific human rights in addition to proclaiming the right to work as a human right treats equitable conditions of work, prohibition of forced labour, provision for adequate remuneration, the right to a limitation of work hours, to rest and leisure, the right to form and join trade unions of one's choice, the right to strike etc. also as human right. The Preamble to our Constitution says that our country is a socialist republic. Article 41 of the Constitution provides that the State shall make effective provision for securing right to work. Article 42 of*

*the Constitution provides that the State shall make provision for securing just and humane conditions of work and for maternity relief. Article 43 of the Constitution states that the State shall endeavour to secure by suitable legislation or economic organisation or in any other way to all workers agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. These rights which are enforced through the several pieces of labour legislation in India have got to be applied to every workman irrespective of the character of the management. Even the management of a minority educational institution has got to respect these rights and implement them. Implementation of these rights involves the obedience to several labour laws including the Act which is under consideration in this case which are brought into force in the country. Due obedience to those laws would assist in the smooth working of the educational institutions and would facilitate proper administration of such educational institutions. If such laws are made inapplicable to minority educational institutions, there is very likelihood of such institutions being subjected to maladministration. Merely because an impartial tribunal is entrusted with the duty of resolving disputes relating to employment, unemployment, security of work and other conditions of workmen it cannot be said that the*

*right guaranteed under Article 30(1) of the Constitution of India is violated. If a creditor of a minority educational institution or a contractor who has built the building of such institution is permitted to file a suit for recovery of the money or damages as the case may be due to him against such institution and to bring the properties of such institution to sale to realise the decretal amount due under the decree passed in such suit is Article 30(1) violated? Certainly not. Similarly the right guaranteed under Article 30(1) of the Constitution is not violated, if a minority school is ordered to be closed when an epidemic breaks out in the neighbourhood, if a minority school building is ordered to be pulled down when it is constructed contrary to town planning law or if a decree for possession is passed in favour of the true owner of the land when a school is built on a land which is not owned by the management of a minority school."*

- 21.** From the perusal of the pleadings of the parties, as well as the documents appended to the petition, it is evident that initially, approximately 75 institutions were brought under the coverage of the Employees' State Insurance Act, 1948. As of now, around 1,900 educational institutions are covered under the Act, and the benefits provided under its provisions are being extended to thousands of employees working in these institutions.

**22.** From the aforementioned pronouncement, it is evident that where activities are systematically and habitually undertaken for the production and distribution of goods or services rendered to the community with the assistance of employees, carried out in the manner of trade, business, or service, such an entity can be termed as an “Establishment” under the ESI Act. Section 1 of the ESI Act, being a socio-economic legislation aimed at securing socio-economic justice in accordance with human dignity, defines “establishment” not only as industries, commercial activities, or agricultural undertakings but also includes educational institutions. The same is reproduced hereinbelow:-

**“Section-1-**

*4.It shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories:Provided that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.*

*5.The appropriate Government may, in consultation with the corporation and where the appropriate Government is a State Government, with the approval of the Central Government, after giving one month's notice of its intention of so doing by notification in the Official Gazette, extend the provisions of*



*this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise: Provided that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State.*

*6.A factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power.”*

- 23.** Considering the overall facts of the matter, and when the prayers sought by the petitioners institutions are examined, it appears that setting aside the notification would be unjust, improper, and contrary to the welfare of thousands of employees who are currently receiving benefits under the said provisions. These provisions were enacted with the objective of establishing a welfare state, aimed at securing social security benefits for employees and labourers working in such institutions. There are thousands of employees who are already availing the benefits provided under the Employees' State Insurance Act, 1948, and many more stand to benefit in the future. Therefore, merely for

the sake and benefit of the institutions, the larger interest and welfare of a significant number of employees cannot be ignored or compromised.

**24.** Accordingly, this Court is of the opinion that the challenge raised by the petitioner institutions does not merit consideration, particularly in view of the authoritative legal pronouncements made by various High Courts, one of which has been affirmed by the Hon'ble Supreme Court in **Special Leave to Appeal (C) No.28285/2009.**

**25.** We are, therefore, of the considered opinion that the petitions, as framed and filed by the petitioners, are devoid of merit and do not warrant any interference.

**26.** In the result, all the petitions filed by the petitioner institutions are hereby **dismissed**.

**Sd/-**

**(Rajani Dubey)  
Judge**

**Sd/-**

**(Amitendra Kishore Prasad)  
Judge**

**HEAD-NOTE**

**"An educational institution qualifies as an establishment under the Employees' State Insurance Act, 1948 (ESI Act) because it provides services and activities to the public at large regularly with the help and support of its employees."**