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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 524 of 2009

Judgment Reserved on 14.07.2025

Judgment Delivered on 10.09.2025

1 - Holly Cross Higher Secondary School, Though its Principal Higher Secondary School Holly Cross Pension Bada, 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 8th South Avenue, , Choubey Colony, Raipur (Chhattisgarh).

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

--- Respondents

WPC No. 672 of 2009

1 - Mahakali Badi Vidya Mandir English Medium Higher Secondary, Mahakali Badi Vidya Mandir English Medium Higher Secondary School, City Station Raipur Cg

---Petitioner

Versus

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

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

--- Respondents

WPC No. 561 of 2013

1 - St. Xavier Public School Waard No. 26, Rampur, Korba, Ps Rampur, Korba, Dist Korba, Cg, Chhattisgarh Through The Vice Principal St. Xavier Public School Ward No.26 Rmpur, Korba PS Rampur Distt. Korba C.G.

---Petitioner

Versus

1 - The State Of Chhattisgarh Through The Secretary To The Govt. Of C.G. Deptt Of Labour, Mahanadi Bhawan, Naya Raipur, PS Rakhi Dist Raipur, Cg, Chhattisgarh

2 - Employees State Insurance Corporation, Through The Regional Director, 107, Jagannath Chowk, Ramnagar Road, Kota, PS Kota, Distt Raipur, District : Raipur, Chhattisgarh

3 - The Recovery Officer Employees State Insurance Corporation 107, Jagannath Chowk, Ramnagar Road, Kota, Ps Kota, Distt Raipur, Cg, District : Raipur, Chhattisgarh

--- Respondents

WPC No. 41 of 2014

1 - Rastriya Higher Secondary School Through Its Principal, Raghav Ram Rajput, S/o Late Shri K.R. Rajput, Aged About 62 Years, Kutchery Chowk, Raipur, Civil And Revenue Distt. Raipur C.G., Chhattisgarh

---Petitioner

Versus

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

2 - Employees State Insurance Corporation Through Regional Director, Ram Nagar Road, Kota, Raipur, Distt. Raipur C.G., District : Raipur, Chhattisgarh

3 - Recovery Officer, Employees State Insurance Corporation, Ram Nagar, Kota, Raipur, Distt. Raipur C.G., District : Raipur, Chhattisgarh

4 - District Education Officer Raipur, Distt. Raipur C.G., District : Raipur, Chhattisgarh

--- Respondents

(Cause-title taken from the Case Information System)

For respective Petitioners:- 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 &
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 24.11.2008 and consequent

order dated 18.12.2008 (Annexure P-2) and order dated 05.01.2009 and 06.01.2009 (Annexure P-3).

2. Heard 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. In these writ petitions, the Respondent No. 1 issued a notification under sub-section (5) of Section 1 of the Employees' State Insurance Act, 1948, bringing educational institutions within the scope of the Act, effective from 01.04.2006, as published in the Chhattisgarh Gazette on 28.11.2005. Subsequently, Respondent No. 2 issued a notice on 24.11.2008 demanding payment of contributions totaling Rs. 7,38,238/- from the petitioner's institution for the period 01.04.1996 to 31.10.2008. The petitioners filed reply to the said recovery notice with a request to drop the same which was rejected by order dated 18.12.2008, directing recovery. The petitioner contends that the notification dated 28.11.2005 is illegal and arbitrary, as the petitioner, being an educational institution run by a society, does not qualify as an "establishment" under Section 2(5) of the Act. The petitioner argues that education is neither a commercial activity nor a manufacturing process, but a holistic process of developing knowledge, skills, character, and values through formal schooling, which cannot be brought within the Act's ambit. Therefore, the recovery notice and subsequent order are without lawful authority and liable to be quashed, warranting the interference through present petitions.

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, WPC No. 524 of 2009 (Holly Cross Higher Secondary School 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 High Court may kindly be pleased to call for the entire records leading to the notification issued on 27.10.2005 and the entire proceedings initiated by respondent no.2 by its notice dated 24.11.2008 and consequent order dated 18.12.2008, for its kind perusal.

10.2 That the Hon'ble Court may kindly be pleased to issue a writ of certiorari or any other appropriate writ order or direction etc., commanding the respondents 1 & 2 for quashing the notification dated 27.10.2005 (Annexure P-1) issued by respondent no.1 and the order dated 18.12.2008 (Annexure P-2) and passed by respondent no.2 demanding the petitioner to pay contribution Rs.08,39,536/- and declare them as void and inoperative in law. And further be pleased to quash the consequential orders (Annexure P-3)10.3 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 WPC No. 524/2009, Holy Cross Higher Secondary School, Raipur, a duly recognized institution managed by the Raipur Crucelian Society, challenges the notification dated 27.10.2005 issued under sub-section (5) of Section 1 of the Employees' State Insurance Act, 1948 (ESI Act), which extended the Act's applicability to educational institutions effective from 01.04.2006. Following this, Respondent No. 2 issued a notice on 24.11.2008 demanding payment of Rs. 7,38,238/- as contribution under the ESI Act for the period from 01.04.1998 to 31.10.2008, which the petitioner contested by filing preliminary objections stating that the institution is not covered under the Act and gives employment to fewer than 20 staff members. Despite objections, an order dated 18.12.2008 was passed directing recovery of the said amount along with interest. The petitioner contends that education is a charitable service and not a commercial or manufacturing activity, and thus the institution cannot be classified as an "establishment" within the meaning of Section 1(5) of the Act. The petitioner relies on Supreme Court verdicts emphasizing education's non-commercial nature and asserts that the extension of the ESI Act to educational institutions is arbitrary, illegal, and contrary to the Act's provisions, seeking to quash the notification, the recovery notice, and related orders.
8. Facts of the case at hand is that the petitioner, Holy Cross Higher Secondary School, Pension Bada, Raipur, is a Higher Secondary School, duly recognized by the competent authority to impart primary

and higher secondary courses, fulfilling all the necessary criteria. The petitioner school is managed by the Raipur Crucelian Society, which runs the petitioner school, 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, culminating in the order dated 18.12.2008. 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, the proceedings initiated under the said Act, and the consequent order passed by Respondent No. 2 requiring the petitioner's institution to pay contribution under the provisions of the Act of 1948. The Employees' State Insurance Act, 1948, was enacted to provide certain benefits to employees in cases of sickness, maternity, and employment injury and to make provisions for certain other related matters. By virtue of sub-section (4) of section 1 of the Act, 1948, it has been made applicable to all factories (including factories belonging to the Government), other than seasonal factories. Sub-section (5) of section 1 further provides that the appropriate Government, in consultation with the Corporation, where the appropriate Government is a State Government, and with the approval of the Central Government, after giving six months' notice of its intention by notification in the official Gazette, may extend the provisions of this Act, or any of them, to any other establishment, or class of establishments, industrial, commercial, agricultural, or

otherwise. Thus, the Act of 1948 is an outcome of policy to provide remedy for widespread evils arising from the consequences of national poverty and is essentially a piece of social security legislation. The Act envisages the extension of benefits to employees in other establishments or classes of establishments, whether industrial, commercial, agricultural, or otherwise. Such extension of benefits is to be done by means of notification by the appropriate Government. Therefore, the benefits conferred by the Act cover a larger area of employees than what the Factory Act and similar legislation intended, as it is welfare legislation. The word “establishment” has not been defined in the Act of 1948. According to Webster’s Dictionary, “establishment” means the place in which one is permanently fixed for business with necessary equipment; any office or place of business. The word “establishment” is defined under section 2(e) of the Contract Labour (Regulation and Abolition) Act, 1970, as follows: Establishment means (i) any office or department of the Government or a local authority; (ii) any place where an industry, trade, business, manufacture, or occupation is carried on. The question in this petition is whether the petitioner’s educational institution would be an establishment within the meaning of sub-section (5) of section 1 of the Act, 1948, for extension of the provisions of the Act to educational institutions, and whether imparting education would be considered a commercial activity or not? It is pertinent to refer to the meaning of education. It has been

held by the Hon'ble Supreme Court in the case of Unni Krishnan that education has never been commercial in this country. To treat it as such is opposed to the ethos, traditions, and sensibilities of this nation. The argument to the contrary is wholly untenable. Imparting education has never been treated as a trade or business in this country since time immemorial. It has been treated as a religious duty and a charitable activity. It has also been held by the Supreme Court in the case of P.A. Inamdar that education is the process of bringing up, developing, and training the powers and capabilities of human beings. In its broadest sense, the word "education" comprehends not merely the instructions received at school or college but the whole course of moral, intellectual, and physical training; it is not limited to ordinary instruction in literature. It also includes proper education in the moral and religious sentiments of the child and is sometimes used as synonymous with "learning." It further means systematic instruction. According to India Vision 2020, education is an important input both for the growth of society and the individual. Properly planned educational input can contribute to an increase in gross national product, cultural richness, a positive attitude towards technology, and improved efficiency and effectiveness of governance. Education opens new horizons for an individual, provides new aspirations, and develops new values. It strengthens competencies and develops commitment. Education generates in an individual a critical outlook on social and political realities and sharpens the ability of self-examination, self-monitoring,

and self-criticism. In the T.M. Pai Foundation case, the Hon'ble Supreme Court further held that education plays a cardinal role in transforming a society into a civilized nation. It accelerates the progress of the country in every sphere of national activity. No section of citizens can be ignored or left behind, as that would hamper the progress of the country as a whole. It is the duty of the State to do all it can to educate every section of citizens who need a helping hand in marching ahead along with others. Education is the continual growth of personality, study, development of character, and qualitative improvement of life. A trained mind has the capacity to draw spiritual nourishment from every experience, be it defeat or victory, sorrow or joy. Education is training the mind and not stuffing the brain. Thus, imparting education by an institution is a service to society and cannot be equated with trade or business. Therefore, an institution imparting education cannot be branded as an establishment within the meaning of sub-section (5) of section 1 of the Act, 1948, and consequently, the provisions of the Act cannot be made applicable to educational institutions. Imparting education is a service to society in the development of human beings and does not, even remotely, connect with any systematic economic or commercial activity as contemplated in sub-section (5) of section 1 of the Act, 1948. Hence, extending the said Act to educational institutions is apparently illegal, arbitrary, and contrary to the provisions of sub-section (5) of section 1 of the Act, 1948. The State Government issued a notification under sub-section (5) of section 1 of the Act,

1948, stating its intention to extend the provisions of the said Act to the class of establishments specified in the Schedule annexed, effective from 01.04.2006. The notification was published in the Gazette on 18.11.2005 at page no. 1858. The Respondent No. 2 issued a notice dated 24.11.2008 to the petitioner requiring payment of contributions from 01.04.1998 to 31.10.2008 amounting to Rs. 7,38,238/-. The petitioner filed a preliminary objection on 29.11.2008, contending that the petitioner's institution is not covered by the Act and that the number of employees is less than 20. Thereafter, Respondent No. 2, by its order dated 18.12.2008, directed payment of Rs. 7,38,238/- along with interest of Rs. 1,01,298/-. The petitioner submits that the notification dated 27.10.2005 as well as all proceedings emanating from the notice for payment of contribution and the order dated 18.12.2008 are unsustainable and bad in law. The petitioner submits that the educational institution is not an establishment within the meaning of sub-section (5) of section 1 of the Act, 1948, and therefore, the provisions of the Act cannot be made applicable to the petitioner's educational institution. Consequently, the notification dated 27.10.2005, published on 18.11.2005, deserves to be quashed on the foregoing grounds.

9. Learned counsel for the petitioner submits that the notification dated 27.10.2005, published on 28.10.2005, which seeks to bring the petitioner's educational institution within the ambit of the Employees

State Insurance Act, 1948, is arbitrary, illegal, discriminatory, and contrary to law. The petitioner's institution, being purely an educational establishment dedicated to the development of human beings and societal service, cannot be classified as a factory or an establishment engaged in manufacturing or commercial activities as envisaged under Section 1(5) of the Act, 1948. The impugned notification is therefore per se illegal and bad in law as it wrongfully attempts to extend the Act's applicability to an institution whose core function is to impart education and not trade or business. Moreover, the procedural requirements prescribed under Section 1(5) have not been complied with, as the State Government failed to issue the mandatory six months' prior notice of intention in the official Gazette, and did not obtain the necessary approval from the Central Government before issuing the composite notification. The notification was published belatedly on 18.11.2005, while the effective date of enforcement was stated as 01.04.2008, thereby violating the statutory notice period and denying the petitioner a fair opportunity to raise objections. The impugned act of branding an educational institution as an establishment carrying out commercial activity constitutes a gross abuse of the statutory provisions and causes grave prejudice to the petitioner. Therefore, the writ petition challenging the validity of the notification is fully justified and ought to be allowed, while quashing the notification and exempting the petitioner's institution from the purview of the Employees State Insurance Act, 1948.

10. On the other hand, learned State counsel submits that the instant writ petition challenging the notification dated 27.10.2005 is barred by delay and laches, as the petitioners, being organizations, have not explained the unexplained delay of over five years since the issuance of the notification, and have remained dormant despite having actual knowledge of the notification, which was widely published in a leading newspaper, *Danik Bhaskar*, on 04.05.2006. The petitions filed in 2009 and 2010 thus suffer from inordinate delay and are liable to be dismissed on this ground alone. Further, the contention that the State Government issued the notification without prior approval from the Central Government is unfounded and factually incorrect, as the Central Government had granted its approval on 28.02.2005, and the notification itself explicitly states that it was issued with the consent and approval of the Central Government, complying fully with the requirements of Section 1(5) of the Employees State Insurance Act, 1948. Regarding the challenge that educational institutions do not fall within the definition of “establishment” under the Act, the State relies on binding judicial precedent, including the decision of the Madras High Court Full Bench dated 29.07.2020, which has upheld that unaided private educational institutions can be considered establishments within the meaning of Section 1(5) of the Act. The Court recognized the social welfare object of the ESI Act and held that the term “establishment” is not limited to industrial or commercial organizations but encompasses educational institutions as well, thereby justifying the

extension of the Act to such institutions. Moreover, a similar challenge was dismissed by this Hon'ble Court in WPC No. 4714 of 2008 (Maharishi Shiksha Sansthan), which attained finality without any appeal, further strengthening the validity of the notification. Consequently, the petitioner has failed to raise any substantial or valid ground warranting interference with the notification, which has been issued in strict compliance with statutory mandates and judicial precedents. In light of the above, it is prayed that the writ petition be dismissed with costs.

11. Learned counsel for the respondent-Employees' State Insurance Corporation (ESIC), respectfully submits that the instant writ petition challenging the notification dated 27.10.2005 (published on 18.11.2005) issued under Section 1(5) of the Employees' State Insurance Act, 1948 (hereinafter 'the Act') is without merit and liable to be dismissed. Firstly, the petitioner's claim of procedural irregularity is unfounded as prior approval of the Central Government was duly obtained vide letter dated 28.02.2005, and the impugned notification clearly mentions that it was issued with such approval, thereby fully complying with the statutory mandate. Further, the contention that the mandatory six months' notice was not given is negated by the settled position affirmed by the Division Bench of this Hon'ble Court in **Maharishi Shikshan Sansthan v. State of Chhattisgarh (W.P.(C) No. 4714/2008)**, wherein it was held that the notification dated 27.10.2005 satisfied the six months' notice requirement by stipulating the Act's extension to educational

institutions with effect from 01.04.2006, post expiry of the notice period. This judgment has attained finality, having not been challenged before the Apex Court or reviewed, and hence is binding on the petitioner. It is stated that the petitioner's delay in filing the petition which is nearly three years after the notification came into force and the failure to explain such inordinate delay, compounded by their deliberate non-compliance despite public notices and widespread awareness, amounts to acquiescence and laches, disentitling them from judicial relief. Regarding the core issue of whether educational institutions qualify as "establishments" under Section 1(5) of the Act, the respondent relies on a plethora of judicial pronouncements, including decisions by the Kerala High Court, Calcutta High Court, and the Full Bench of the Madras High Court (*All India Private Educational Institutions Association v. State of Tamil Nadu*), which have uniformly held that private educational institutions fall within the ambit of the Act as establishments. The social welfare object of the Employees' State Insurance Act mandates a liberal and purposive interpretation to extend benefits of social security to employees even in educational institutions. The petitioner's contention of protection under Article 30(1) of the Constitution as a minority institution does not exempt it from labour welfare legislation, as held by the Madras High Court Full Bench, since social security laws are secular in nature and apply to all establishments irrespective of their minority status. Additionally, the practical reality that nearly 1900 educational institutions are presently covered and

thousands of employees are benefitting under the Act underscores the legislative intent and necessity of the notification's application. Lastly, the prayer for liberty to approach the appropriate authority for dispute resolution is opposed on the grounds that the petitioner has not acted in good faith and has sought to evade compliance with the Act for years, thereby defeating its objectives and denying social security benefits to employees. In view of the above, the respondent humbly prays that the writ petition be dismissed with exemplary costs in the interest of justice and to uphold the social welfare objectives of the Employees' State Insurance Act, 1948.

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</i>	<i>of Areas in which the</i>	<i>establishments are</i>
<i>establishments</i>	<i>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</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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*are employed or were
employed on any day
of the preceding
twelve months.*

*(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 folows:*

"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 a employees so as to become 'insured persons' under the ESI Act.

114. *In Christian Medical College Hospital Employees' Uni Christian Medical and another V. Christian Medical cal College College Vellore Vellore A Association a Others, 1987 (4) SCC 691, it has been held that the labour wel legislation will apply even to minority institutions, notwithstanding Ar 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 petitioner 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 can also be regarded as an 'Establishment' under the Employees' State Insurance Act, 1948 (ESI Act), as it provides services and activities that are systematically and habitually undertaken to serve the community with the assistance of its employees."