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Moot Court Federation, M.S.Ramaiah College of Law, Bangalore.

**ABC Educational Society**

vs

**State of Karunaadu**

- 1) The State of Karunaadu in the country, Dharath has issued a notification dated 16.3.2011 under Section 1(5) of the Employees' State Insurance Act, 1948 which reads as under.

*Whereas, the draft to extend the provisions of Employees' State Insurance Act, 1948 to the classes of establishments specified in the schedule annexed to the draft was published in Karunaadu Gazette on 13-1-2011, in Notification No. LD 323 LSI 2010, dated 6-12-2010, inviting objection and suggestions from persons likely to be affected thereby within one month from the date of publication in the Official Gazette.*

*And whereas, the said Gazette was made available to the public on 13-1-2011*

*And whereas, no objection and suggestions have been received from any persons within the specified period.*

*Now, therefore, in exercise of the powers conferred under sub-section (5) of Section 1 of Employees State Insurance Act, 1948, the Government of Karunaadu hereby extends the provisions of the Act to the classes of establishments specified in the schedule annexed here to:*

**SCHEDULE**

<i>Description of establishments</i>	<i>Areas in which establishments are situated</i>
<i>(1)</i>	<i>(2)</i>
<i>The following establishments where in tenor more persons are employed, or were employed on any day of the preceding twelve months namely:-</i>  <i>1) Shops</i>	<i>All are as where the provisions of the ESI Act, 1948 have already been brought into force under Section 1(3) of the Act.</i>



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<p>2) <i>Hotels</i></p> <p>3) <i>Restaurants</i></p> <p>4) <i>Road Motor Transport Establishments</i></p> <p>5) <i>Cinemas including preview theatres</i></p> <p>6) <i>Newspaper establishments as defined in Section 2(d) of the Working Journalists (conditions of service) and Miscellaneous Provisions Act, 1955(45 of 1955)</i></p> <p>7) <i>Educational institutions (including public, private, aided or partially aided) run by individuals, trustees, societies or other organization</i></p> <p>8) <i>Medical institutions (including corporate, Joint sector, trust, charitable and private ownership hospitals, nursing homes, diagnostic centers, pathological labs)</i></p>	
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2) ABC Educational Society is a premier educational institution established over a century ago running hundreds of institutions from kindergarten to super specialty medical courses. Some of the institutions of the petitioner are aided and some of the institutions are un-aided. The service conditions of the employees are governed by the service rules framed by the society. The service rules provides for sick leave, maternity benefit, medical treatment reimbursement, provident fund. The persons working in the aided institutions are governed by several rules, regulations and policies made by the Government from time to time.



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- 3) The ABC Educational Society has filed a writ petition challenging the constitutional validity of Section 1(5) of the ESI Act in so far as by employing the words “or otherwise” there is excessive delegation of legislative power. It has also challenged the said notification as arbitrary, unconstitutional, made without application of mind and at any rate there is non-compliance with the requirement under Section 1(5) of the ESI Act. It is contended that the hospitals established by the ESI Corporation do not enjoy a very high reputation. In fact given an option no one would wish to opt for treatment at the hospitals managed or run by ESIC. It is common knowledge that the service in ESI hospital is pathetic if not deplorable.

When the ESI Corporation has not been able to cater to the needs of the employees already covered under the scheme, it is not known why the State Government has ventured to extend the provisions of the Act to educational institutions. When in the health sector the move is towards privatization, it is not understandable why retrograde steps of extending the benefits of the ESI Insurance to the institutions run by the petitioner have been contemplated. There is no infrastructure created to cater to the additional coverage introduced by the notification and therefore virtually amounts to imposing a tax without there being any element of service.

- 4) The Respondents have filed their statement of objections denying the allegations and substantiating their stand that ESI Corporation has the necessary infrastructure at all places where the geographical area is covered under Section 1(3) of the ESI Act. They relied on a letter from the Deputy Secretary of the Central Government to show compliance with requirements of Section 1(5) of the ESI Act. They also raised question of maintainability of the petition without adding the affected employees as parties.
- 5) Considering the constitutional importance of the question raised in the writ petition, the Single Judge referred the matter to a Full Bench of the High Court for decision.

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*The laws of Karunaadu and Dharath are in pari materia with the laws of the state of Karnataka and India respectively for the purposes of this Moot Court Competition.*