

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 3670 of 2006 (J)

PETITIONER(S):

**CALICUT UNIVERSITY CO-OPERATIVE
STORES LTD.NO.24, REPRESENTED BY ITS SECRETARY,
THENHIPALAM, UNIVERSITY CAMPUS P.O., MALAPPURAM.**

BY ADV. SRI.ASOK M.CHERIAN

RESPONDENT(S):

- 1. STATE OF KERALA REPRESENTED
BY THE SECRETARY TO GOVERNMENT,
LABOUR AND REHABILITATION (B) DEPARTMENT,
THIRUVANANTHAPURAM.**
- 2. EMPLOYEES STATE INSURANCE CORPORATION,
REPRESENTED BY ITS DIRECTOR GENERAL, NEW DELHI.**
- 3. THE REGIONAL DIRECTOR,
ESI CORPORATION, REGIONAL OFFICE, PANCHADEEP BHAVAN,
POST BAG NO.2, THRISSUR.**
- 4. THE RECOVERY OFFICER,
OFFICE OF THE RECOVERY OFFICER
REGIONAL OFFICE (KERALA), ESI CORPORATION, THRISSUR.**

**R1 BY GOVERNMENT PLEADER SRI.P.V.ABDUL RAHIM
R2 TO 4 BY ADV. SRI.T.P.M.IBRAHIM KHAN, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1(A) TO P1(H)- A TRUE COPIES OF THE COMMUNICATIONS ISSUED BY THE R1 TO THE PETITIONER CO-OPERATIVE STORES GRANTING EXEMPTION FROM THE PROVISIONS OF THE ESI ACT.**
- P2- A TRUE COPY OF THE REPRESENTATION DATED 22/7/03 SUBMITTED BY THE PETITIONER BEFORE THE R1**
- P3- A TRUE COPY OF THE LETTER DATED 22/9/04 ISSUED BY THE R2 CORPORATION**
- P4- A TRUE COPY OF THE LETTER DATED 5/10/04 OF THE PETITIONER**
- P5- A TRUE COPY OF THE LETTER OF THE R1 DATED 12/1/06 ADDRESSED TO THE PETITIONER**

RESPONDENT(S)' EXHIBITS

- R1(A): A TRUE COPY OF THE COMMUNICATION DATED 23/99/02**
- R1(B): A TRUE COPY OF THE COMMUNICATION DATED 9/9/04**
- R1(C): A TRUE COPY OF THE COMMUNICATION DATED 3/11/04.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.M. SHAFFIQUE, J.

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Dated this, the 9th day of November, 2015

J U D G M E N T

Petitioner challenges Ext.P5 order dated 12/1/2006 by which the Government rejected the application of the petitioner for exemption under Section 87 of the Employees' State Insurance Act, 1948. The impugned order reads as under;

"I am directed to invite your attention to reference cited and to inform you that the application of the Calicut University Co-operative Stores Ltd. for exemption from the purview of ESI Act is rejected as the benefits provided by the co-operative store is not substantially similar or superior to that provided under the ESI Scheme. I am also directed to request you to take immediate steps to bring the employers under the ESI coverage with effect from 1.1.2006."

2. It is argued by the learned counsel for the petitioner that there is no provision under the ESI Act by which the Government was entitled to reject the application for exemption merely on the ground that the benefits provided by the co-operative store is not substantially similar or superior to that provided under the ESI Scheme.

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3. A statement has been filed on behalf of the 1st respondent and a counter affidavit has been filed on behalf of respondents 2 to 4. It is *inter alia* stated that the discretion to grant exemption is purely within the realm of jurisdiction of the Government and no hard and fast rule can be imposed on the Government. The main argument raised by the learned counsel for the petitioner is that the exemption was denied by the Government based on certain guidelines issued by the ESI Corporation. This, according to the learned counsel, cannot be a reason as the Government is bound to consider the application based on the particular factual circumstances involved in the matter and no guidelines issued by the Corporation can fetter that right of the Government.

4. Section 87 of the ESI Act reads as under;

“87. Exemption of a factory or establishment or class of factories or establishments- *The appropriate Government may, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment or class of factories or establishments in any specified area from the*

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operation of this Act for a period not exceeding one year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time."

5. It is apparent that the proviso had been incorporated only w.e.f. 01/06/2010. Hence we have to consider the claim of the petitioner with reference to the unamended provision under Section 87. Section 87 gives absolute right on the part of the Government and subject to such conditions as may be specified in the notification to exempt any establishment from the operation of the Act for a period not exceeding one year. The facts involved in the case clearly disclose that for the previous five years, i.e., upto 31/12/2005, the petitioner was enjoying exemption. It is thereafter that the Government had rejected the claim for exemption w.e.f. 01/1/2006. The very purpose of granting exemption for a certain period is to enable the institution to tide over the initial difficulties which they may face and thereafter to take appropriate measures to ensure that the employees get the benefit of the provisions of the ESI Act. When 5 year period has already been exempted from the operation of the ESI Act,

thereafter the Government decided not to extend the same. Further, it was also indicated that the benefits granted to the petitioner is neither similar or superior to the benefits provided under the Act. Though there is a reference of a guideline issued by the Corporation, it is always open for the Government to either take into consideration such guidelines or to ignore such guidelines. Such guidelines apparently do not affect the discretionary power that is vested with the Government under Section 87. But if the Government feels that the employee should be given certain benefits, which are either similar or superior to that provided under the ESI Act and thereafter to grant exemption or not, I do not think that such exercise of discretion is unjustified in any manner.

In the result, I do not think that this Court will be justified in interfering with Ext.P5 in exercise of the power of judicial review and accordingly, this writ petition is dismissed.

Learned counsel for the petitioner seeks time to effect payment in instalments. Taking into consideration the fact that

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this writ petition has been pending before this Court for a long time, there will be a direction that the petitioner shall be granted six months' time to pay the amount in equal monthly instalments.

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp
11/11/2015

//True Copy//

P.S to Judge