

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.12705 of 2011

ORDER:

The petitioner seeks Writ in the nature of Mandamus declaring the impugned proceedings No.AP/INS-1/52-7067-13 dated 29.03.2011 issued by the 3rd respondent as arbitrary, illegal and unconstitutional and consequently direct the 1st respondent to grant exemption to the petitioner from the provisions of ESI Act for the period from 01.04.2003 to 31.03.2010 or till medical facilities are provided to its employees.

The petitioner's case is that it is a tiny factory dealing in twisting of silk yarn and it employs about 8 to 9 persons. The 3rd respondent Corporation covered the petitioner Factory under the provisions of the ESI Act. The petitioner represented to the Government of Andhra Pradesh to exempt the petitioner factory from the provisions of ESI Act in exercise of the powers under Section 87 of the ESI Act, as there was no ESI dispensary established at Rayadurg and no separate medical officer was provided for the ESI patients at the Government Hospital, Rayadurg.

The Regional Director, ESI Corporation through letter dated 28.04.2000, addressed to the 1st respondent, brought to the notice of the Government that no ESI dispensary was available and no medical arrangements were available at Rayadurg to the ESI patients and recommended to the Government to exempt the petitioner Factory from the provisions of ESI Act upto

31.03.2000. The Government thereupon by Notification dated 03.06.2003 in exercise of the power under Section 87 of the ESI Act exempted the employees of the petitioner factory for the period upto 31.03.2002. Till filing of the writ petition, there has been no change and no separate establishment or medical officer was provided for the ESI patients at Government Hospital, Rayadurg. To that effect, the Civil Surgeon of Government Hospital issued a Certificate.

The further case of the petitioner is that the petitioner has been regularly submitting representations to the 1st respondent in required Form requesting the 1st respondent to exempt the petitioner Factory from the provisions of ESI Act for the period 01.04.2003 to 31.03.2004 and thereafter till date. Subsequently, the petitioner lastly submitted a representation dated 08.04.2010 requesting the 1st respondent to exempt the petitioner Factory from the provisions of ESI Act for the period 01.04.2003 to 31.03.2010 or till medical facilities are provided by the Government Hospital, Rayadurg. While the matter stood thus, the 3rd respondent issued impugned proceedings dated 29.03.2011, which was received by the petitioner on 12.04.2011. In the said notice, the 3rd respondent raised a claim of Rs.89,262/- for the period 01.10.2005 to 30.09.2010. It is submitted that the 1st respondent did not act upon the representations submitted by petitioner from time to time for grant of exemption for the period 01.04.2006 to 31.03.2010. The 1st respondent having granted exemption to other establishments, which were similarly situated

to that of the petitioner, ought to have granted exemption to the petitioner particularly when the Civil Surgeon, Government Hospital, Rayadurg, certified that there was no separate establishment or medical officer is provided for the ESI patients at Government Hospital, Rayadurg even till today. Hence, the instant Writ Petition.

The 3rd respondent has filed counter affidavit. Respondents 1 and 2 have not filed counter affidavit.

The submission of the learned counsel for petitioner is that in respect of the period 01.04.2000 to 31.03.2002, the 1st respondent under G.O.Rt.No.1011 dated 03.06.2003 exempted the petitioner's factory from the provisions of ESI Act, in view of non-availability of ESI dispensary and ESI Doctor in the Government Hospital, Rayadurg and subsequently also, till the date of filing of the writ petition, there was no change in the circumstances and therefore, the petitioner used to make representations to the 1st respondent for considering the same and exempting the petitioner's Factory from the provisions of the ESI Act till 2010. However, the 1st respondent did not pass any orders on the representations made by petitioner.

Learned counsel would further submit that in the meanwhile, the 3rd respondent raised a claim of Rs.89,262/- under the impugned proceedings dated 29.03.2011, which is not maintainable in view of pendency of his representations with the 1st respondent. He thus prays to allow the writ petition.

Per contra, learned Standing Counsel would submit that under the scheme of ESI Act, the 3rd respondent is bound to make a claim for contribution under the ESI Act from the petitioner and the 3rd respondent is not the authority to consider and grant exemption, which power is vested with the 1st respondent. Merely because, the representations of the petitioner are allegedly pending with the 1st respondent, that cannot be a ground for the petitioner to stop claiming the amount as claimed by 3rd respondent. If the petitioner is aggrieved by the claim made under the impugned proceedings, it ought to have resorted to the ESI Court under Section 75 of the ESI Act and in that context, the present writ petition is not maintainable. He thus prayed to dismiss the writ petition.

The point for determination is whether there are merits in the writ petition to allow.

A perusal of the copy of G.O.Rt.No.1011 dated 03.06.2003 issued by the Principal Secretary to Government produced along with material papers by the petitioner would show that the 1st respondent in exercise of powers under Section 87 of the ESI Act, exempted the petitioner's factory from the provisions of ESI Act for the period 01.04.2000 to 31.03.2002, obviously, for non-availability of ESI Hospital in Rayadurg.

A perusal of the impugned proceedings dated 29.03.2011 would show that the 3rd respondent raised a claim for Rs.89,262/- under Sections 39 and 40 of ESI Act for the period 01.10.2005 to 30.09.2010, which is being challenged by the petitioner. The

challenge is mainly on the submission that subsequent to the year 2002, there was no change in circumstances and still no ESI Hospital is available at Rayadurg and therefore, the 3rd respondent ought not to have raised a claim and the 1st respondent ought to have disposed of latest representation of the petitioner dated 08.04.2010 and ought to have granted exemption in view of no change in the circumstances.

Having regard to the above facts, this Court is of the considered view that a suitable direction can be given to the 1st respondent to dispose of representation dated 08.04.2010 submitted by the petitioner within a specified time.

Accordingly, the writ petition is disposed of with a direction to the 1st respondent to consider the representation dated 08.04.2010 made by petitioner within two weeks from the date of receipt of a copy of this order. Till then, the 3rd respondent shall not take any coercive steps. However, depending upon the nature of order passed by the 1st respondent, the 3rd respondent is at liberty to proceed further in the matter.

Miscellaneous petitions, if any, pending, shall stand closed.
No order as to costs.

U.DURGA PRASAD RAO, J

Dt: 29-08-2018

Note:

Issue C.C. by tomorrow
(B/o)
Prv