

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.M.A.No.3049 of 2010
and
M.P.No.1 of 2010

National Textile Corporation
(TN & P) Limited, rep. by
Chairman-cum-Managing Director,
64, Somasundaram Mills Road,
Coimbatore 641 009.

... Appellant

Vs

1.United NTC Staff Union
rep.by its Secretary,
84, Sadayappa Thevar Street,
Ganesapuram, Ramanathapuram,
Coimbatore 641 045.

2.The Regional Director,
ESI Corporation,
No.143, Sterling Road,
Chennai 600 034.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 82 of the Employees' State Insurance Act, 1948, to set aside the order and decree of the Employees' State Insurance Court (Labour Court), Coimbatore dated 15.09.2010 in E.S.I.O.P.No.4 of 2003.

For Appellant : Mr.I.Haroon-Al-Rasheed for
M/s.T.S.Gopalan and Co
For R1 : No appearance
For R2 : M/s.S.Jayakumari

J U D G M E N T

The appellant is the Central Government Public Sector Undertakings. The issue in the present Civil Miscellaneous Appeal is whether the employees drawing as wages of Rs. 6,500/- and below are to be covered under the Employee's State Insurance Act or were to be governed by Private Insurance Scheme of the Company.

2.Earlier, the Staff Unions/Associations of the appellant company had filed W.P.No.1492 of 1997 and W.P.No.2173 of 1997 to restrain the appellant's Management from deducting the ESI Contribution from 01.01.1997 and to continue status quo regarding the extension of benefits under NTC Medical Rules pending disposal of the above Writ Petitions. These Writ Petitions were later disposed.

3.Under these circumstances, the circular dated 06.05.1999 was issued by the appellant to cover such of those staffs' drawing wages of Rs.6,500/- and below to be covered under ESI Act with effect from 01.04.1999. It was clarified that the appellant need not reimburse the medical benefits under the Company's Medical Rules to the staff covered under ESI Scheme from 01.04.1999.

4.Similarly, another circular was issued on 07.04.2003 pursuant to the dismissal of W.P.No.9195 of 1999 and W.P.No.35581 of 2002 by separate orders of this Court on 10.01.2003 and 07.03.2003 respectively. Therefore, Staffs & Staffs Operatives drawing the salaries of Rs.6,500/- p.m as wages and below were to be covered by ESI Scheme under the ESI Act. with effect from 01.04.2003. सत्यमेव जयते

5.These were disputed by the 1st respondent United NTC Staff Union vide E.S.I.O.P.No.4 of 2003 before the Labour Court, Coimbatore under Clause (g) of Sub-Section (1) of Section 75 of the Employees State Insurance Act, 1948. In these said proceedings, both the appellant and the 2nd respondent Regional Director, ESI

Corporation stated that as per the Section 87 of the ESI Act, it is the appropriate Government which empowered to grant exemption to an undertaking from the operation of ESI Act and therefore, courts have no power to pass any orders.

6.Ultimately, by the impugned order dated 15.09.2010 in E.S.I.O.P.No.4 of 2003, the lower Court upheld the contentions of the appellant and has held that the power to grant exemption under Section 87 of the Act is with the Central Government of India as it is the appropriate Government for the company of the Central Government. However, pending fresh application filed by the 1st respondent United NTC Staff Union to secure the interest of the employees of the appellant mills, it was observed that the appellant was to be covered under the scheme. Operative portion of the order reads as under:-

The specific objection of the respondents is that having filed an application dated 23.01.1997 before the Government of India, the petitioner is not entitled to approach this court for the same kind of relief. However, already submitted, the Government of India had not passed any order on the said application even now. As already submitted, the petitioner is agitating this matter since 1997. Therefore, in the peculiar circumstances of this case, in the interest of justice an order is to be passed granting

exemption to the employees of the mills belonging to the 2nd respondent with a condition that the petitioner is to make a fresh application for exemption before the appropriate government and the same should be decided by the appropriate government on merits as early as possible. Till passing of the order by the appropriate government on the application to be made by the petitioner for exemption, in the interest of justice the employees of the mills belonging to the respondent are to be exempted from the purview of the E.S.I. Act. As above only, the petitioner is entitled for relief in this case is the conclusion arrived by this court. For all the reasons stated herein before, it is concluded that the medical benefits availed by the members of the petitioner-union under the 2nd respondent's medical scheme are all superior to the benefits provided under the E.S.I. Act. Therefore, it is concluded that the petitioner is to be directed to make fresh and detailed application for exemption before the appropriate government seeking exemption within three months from to-day.

7. Heard the learned counsel for the appellant and the 2nd respondent. There is no representation for the 1st respondent union.

8. Mr. I. Haroon-Al-Rasheed learned counsel for the appellant submits that the employees of the appellant are covered by ESI scheme. Currently, those employees drawing salaries of Rs.21,000/- and below as wages/salaries are covered ESI scheme under the ESI Act.

9.The learned counsel for the appellant drew my attention to the decision of the Hon'ble Supreme Court in **Zuari Cement Limited vs Regional Director, Employee's State Insurance Corporation, Hyderabad and Others**, (2015) 7 SCC 690, wherein an identical issue as to whether the lower Court has empowered to grant exemption under Section 87 of the Act in exercise of power conferred under Section 75 (1) (g) fell for consideration. It was held as follows:-

8. Section 75 of the Act deals with the matters to be decided by the ESI Court constituted under Section 74 and the relevant provision of Section 75(1)(g) of the Act reads as under:

"75. Matters to be decided by the Employees' Insurance Court.—(1) If any question or dispute arises as to—

(a)-(ee)***

(f) *Omitted*

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act, such question or dispute subject to the provisions of sub-section (2-A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act."

A reading of the above would show that the question or dispute can be adjudicated as is provided for in clauses (a) to

(ee) of sub-section (1) of Section 75. Section 75(1)(g) of the Act essentially deals with any other matter/dispute between the employer and the Corporation or in respect of any contribution or benefit payable or recoverable under the Act in respect of an establishment covered by it. Section 75(1)(g) of the Act does not speak of a dispute between the employer and the appropriate Government which only has got the plenary power to consider the question of grant of exemption.

9. As per the scheme of the Act, the power to grant exemption is a plenary power given to an appropriate Government. It follows that the ESI Court constituted under Section 74 of the Act has no jurisdiction to take up the question of grant of exemption. The Court constituted under Section 74 of the Act cannot decide such matters including the validity of an exemption notification. The order granting or denying exemption is certainly open to judicial review under Article 226 of the Constitution of India. But the question of exemption under Section 87 cannot be raised under Section 75 of the Act and the ESI Court constituted under Section 74 of the Act, cannot decide the legality or otherwise of an order relating to exemption passed by the appropriate Government.

10. The appellant has raised the following substantial questions of law in the present appeal:-

- i. Is the petition filed by the 1st Respondent Union is maintainable within the scope of Section – 75 of the ESI Act?
- ii. Has the ESI got the jurisdiction to decide the issue and prayer sought for by the 1st Respondent Union?
- iii. Has the Employee's State Insurance Court got the

power and jurisdiction to direct the appellant Management not to cover the eligible employees under the ESI Act and further direct the appellant Management to provide medical benefit to the employees who are covered under the ESI Act?

iv. Is not the direction given by the Employees' State Insurance Court contrary to the order of the High Court dated 02.09.2010 in W.P.No.5030 of 2010?

11.The issue is no longer is res-integra. Paragraph No. 9 of decision of the Hon'ble Supreme Court in **Zuari Cement Ltd vs Regional Director, Employees State insurance Corporation**, (2015) 7 SCC 690, referred to *supra* makes it clear that the ESI Courts have no jurisdiction to decide the question of grant of exemption. Only Writ Courts have the power to review the decision of the appropriate government to grant or reject exemption and that question of exemption under Section 87 of the act cannot be raised under Section 75 of the Act. ESI Courts have no power to grant exemption whether interim or permanent or stopgap measure. Therefore, I am of the view that the order passed by the ESI Court deserves to be interfered in this appeal.

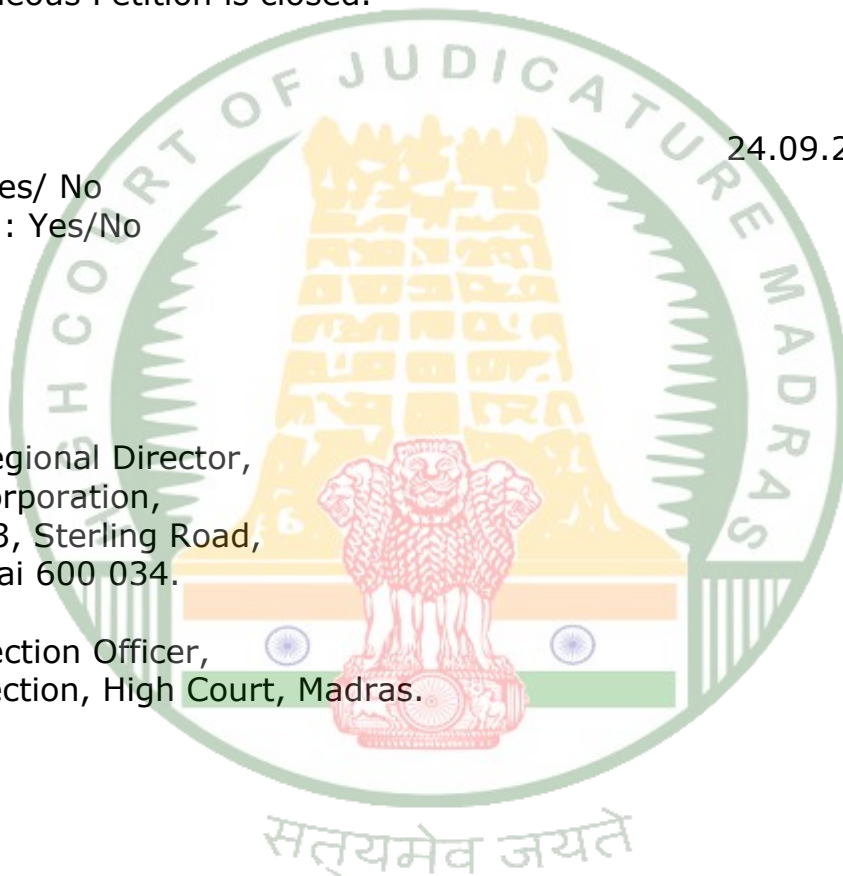
12.Accordingly, the questions of law raised by the appellant stand answered in favour of the appellant. The present Civil Miscellaneous Petition is allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

24.09.2019

Index: Yes/ No
Internet : Yes/No
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To

- 1.The Regional Director,
ESI Corporation,
No.143, Sterling Road,
Chennai 600 034.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

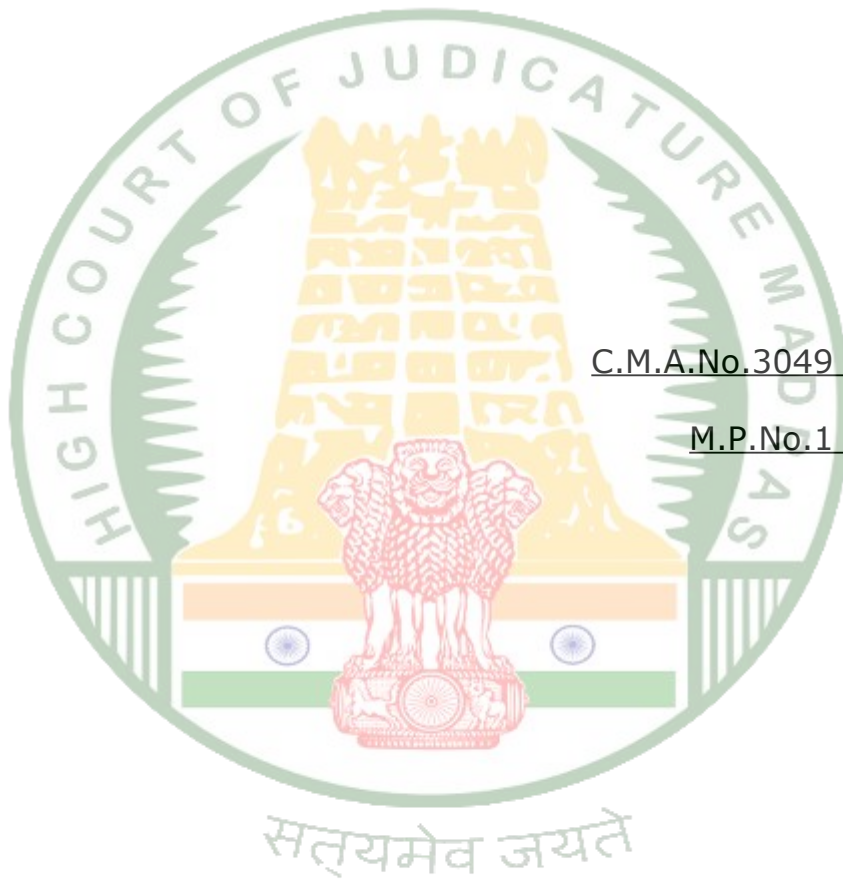


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C.SARAVANAN,J.

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