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W.P.O. No. 483 of 2011

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

M/S. CALCUTTA TRAMWAYS CO. (1978) LTD. & ANR.
Versus
STATE OF WEST BENGAL & ORS.

For the Petitioners	: Ms. Deblina Chattaraj, Adv.
Hearing conclude on	: December 10, 2020
Judgement on	: December 10, 2020

ABHIJIT GANGOPADHYAY, J:-

The Court: This is a matter of 2011, which is pending for last 9 years or so without any final decision. In this matter the petitioners being Calcutta Tramways Company (1978) Limited, (CTC, in short) prayed for not giving effect or further effect to the order dated 10th February, 2011 being Memo No. N/INS V/41-3977-73/326/231 issued by the Deputy Director of Employees' State Insurance Corporation (ESI, in short).

By the said order dated 10th February, 2011 the respondent no. 3, an officer of the respondent no. 2 ESI, directed CTC to pay certain amount towards CTC's unpaid contribution in respect of ESI Scheme under the Employees' State Insurance Act, 1948.

This direction of ESI gives rise to the present dispute.

The petitioners have contended that CTC was never under the purview of ESI and since inception of ESI Act, 1948 till the year 1976 ESI never raised any claim of any nature under any statutory obligation under the said Act of 1948.

It has further been contended by the petitioners that they maintained separate medical units and provided medical aid for the employees in every depot and factory to the said company which is better than benefits provided under ESI Act and for these reasons it has never come within the scope of ESI Act, 1948 but ESI by issuing the above notice claims certain amounts of money showing the due contribution of CTC. In the writ application the petitioner has disclosed one letter dated 20th August, 1996 issued by the Transport department of Government of West Bengal (Annexure –P2) which is as follows:-

> *"In connection with the subject mentioned above, I am directed to say that under provision contained in Sub-Section 1(4) of the ESI Act as amended, if the administrative Deptt. is of the opinion that the employees of any organization under their control are in receipt of benefits substantially similar or superior to those provided under the ESI Scheme nothing contained in this Sub-section shall be applicable to those organization.*
> *Therefore, in view of the similar opinion expressed the Transport Department as above, the State Government in the Department of Labour has decided that, the employees of the aforesaid Public Sector Undertakings, being beneficiaries of similar or superior benefits, do not come under the purview of the ESI Act and in that case no permission for exemption is necessary.*
> *File no. TR/O/12B-2/95 is also returned borowith"*

It is found from the said letter dated 20th August, 1996 that a copy of the same was forwarded to the Regional Director of ESI at its Calcutta office.

The petitioner has also disclosed an order passed by a Writ Court of this High Court on 17th March, 2010 in respect of another writ application being W.P. No. 265 of 2010 wherein referring to Sub-Section (4) of Section 1 of Employees' State Insurance Act, 1948 this Court passed an interim order restraining ESI from giving effect to an order passed by ESI for payment of money. In the said order the prima facie view of the Court is clearly recorded to the effect that if a Government undertaking is stepped outside the preview of the Act in terms of proviso to Sub-Section 4 of Section 1 of ESI Act then such an undertaking need not be required to take recourse to the application and exemption process contemplated in Chapter-VIII of the said Act.

Therefore, in view of the letter of the Labour Department, Government of West Bengal dated 20.08.1996 of the writ application CTC was not required to any exemption process also and no claim can be made against CTC by ESI.

This matter was taken up for hearing from time to time from May, 2011. On 12th May, 2011 the respondents were directed to file affidavit-in-opposition. Further opportunity of filing affidavits were given by this Court on 14th November, 2019, but till date no affidavit-in-opposition has been filed either by the respondent no. 2 or by the respondent no. 3.

Therefore, it appears that regarding the contentions of the petitioners the respondents have nothing to object and, therefore, it has not used any affidavit-in-opposition for last 11 years.

Today when the matter is taken up for hearing nobody has appeared for the respondent nos. 2 and 3.

Section 1 (4) of the ESI Act, 1948 is quoted below:-

> *"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"

I am of the view that CTC, which is now under West Bengal Transport Corporation, as has been submitted by the learned advocate appearing for the petitioners, clearly comes within the proviso of the above Sub-Section (4) of Section 1 and, therefore, the ESI Act, 1948 does not apply to CTC and ESI cannot make any claim as dues of CTC.

On the basis of the above observation I set aside and quash the order impugned being order dated 10th February, 2011 being Memo No. N/INS V/41-3977-73/326/231.

The writ application is, therefore, allowed.

(ABHIJIT GANGOPADHYAY, J.)

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