



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.12810 of 2012

Poopuhar Shipping Corporation Ltd.,
Represented by its Chairman and Managing Director,
MHU Complex, 4th Floor,
692, Anna Salai,
Nandanam, Chennai- 600 035. ..Petitioner

Vs

- 1.The Director General,
Employees State Insurance Corporation
Panchdeep Bhavan
CIG Marg,
New Delhi-110002.
- 2.The Regional Director
Employees State Insurance Corporation
143 Sterling Road,
Chennai- 600 034.
- 3.The Recovery Officer,
Employees State Insurance Corporation
143, Sterling Road,
Chennai- 600 034. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to grant exemption to the Petitioner Company from the provisions of the E.S.I.Act for the period from 01.04.2006 to 31.05.2010 retrospectively, prior to introduction of New ESI Act and to regularize the period from 01.06.2010 to 07.07.2011 as per the new E.S.I.Act by a writ, order or direction in the nature of a writ.

For Petitioner : Mr.Abdul Wahab
for M/s.K.V.Subramanian Associates

For Respondent : Mr. T.N.C.Kaushik (R1 to R3)



O R D E R

This Writ Petition has been to direct the respondents to grant exemption to the Petitioner Company from the provisions of the E.S.I. Act for the period from 01.04.2006 to 31.05.2010 retrospectively, prior to introduction of New ESI Act and to regularize the period from 01.06.2010 to 07.07.2011 as per the new E.S.I. Act.

2. The brief facts of the case, are as follows:

(i) The petitioner Corporation is engaged in the transportation of coal by ships on behalf of TANGEDCO (formerly Tamil Nadu Electricity Board) for its Thermal Power Station at Ennore, Tuticorin and operating Ferry service for the tourist public to visit Vivekananda Rock Memorial and Iyyan Thiruvallur statue at Kanniyakumari. There are 125 permanent employees working in the petitioner company and they were granted benefits such as medical benefits, leave entitlement, amount payable to the dependent of an employee in the case of his/her death due to an employment, injury etc. Further, the benefits listed as per ESI Act are being extended to the employees of the petitioner company without any variation or deviation. Apart from that, Tamil Nadu Government Employees New Health Insurance Scheme was also introduced with effect from June 2008. All the Labour Unions of the petitioner Company have given consent for the schemes introduced by the petitioner company and clearly stated that medical and other benefits available in the petitioner company are definitely more beneficial and favourable to them than the benefits under the ESI Act. Therefore, out of 92 employees only 5 Nos of employees who are drawing salary less than the wage ceiling fixed by ESI Act are alone covered under the ESI Scheme. Hence the Petitioner Company is continuously sought exemption from the ESI Act under Section 87 of the ESI Act. The said exemption was granted by the Government from 01.01.1990 to 31.03.2006 as per G.O.(D) No.658 to 665 dated 24.07.2003. Further the said Department has granted exemption retrospectively for the period from 01.04.1998 to 31.03.2006 on 18.03.2010 as per Government Order No.153 to 160 dated 18.03.2010 with the concurrence of Regional Director ESI Corporation, Chennai. In the meantime, new amendment to ESI Act came into force with effect from 01.06.2010. But, the petitioner Company submitted application for exemption prior to 01.06.2010 i.e., the application was submitted on 02.12.2009 for granting exemption from 01.04.2006 to 31.06.2010 and subsequent reminder made on 24.03.2010 but the exemption was given upto 31.03.2006 only. Further, the Government has given exemption for the current period of one year from 08.07.2011. Even though the same was applied by the petitioner Company i.e., on 02.12.2009, well before the New Act came into force, exemption for the period from 01.04.2006 to 31.03.2010 was not granted without any reason. Further, exemption for the period from 01.04.2010 to



31.03.2011 had been applied on 19.08.2010 but the same was also not considered.

(ii) Whiles, the 2nd and 3rd respondents as per their order dated 03.08.2010 and 20.08.2010 demanded a sum of Rs.2,31,660/- and Rs.34,320/- from Petitioner Company being the alleged contribution to be paid for the period from April 2006 to March 2009 and October 2009 to March 2010 respectively. Therefore, the petitioner Company approached the Principal Labour (ESI), Chennai to waive condition under Section 72 (2B) of the ESI Act for pre-deposit of the amount. The said Court by finding that a prima facie case has made out in favour of the Petitioner Company, directed the Petitioner company to deposit 25% of the amount claimed, with the ESI Authority. Accordingly the petitioner Company deposited a sum of Rs.66,495/- on 29.10.2010.

(iii) Based on the letter dated 20.08.2010 issued by the Deputy Director ESI Corporation Chennai, the Labour and Employment department, Government of Tamil Nadu has informed the Petitioner Company that as per the new Employees' State Insurance amendment Act, 2010 which is in force from 01.06.2010 exemption from the provisions of Employees' State Insurance Act under Sections 87,88,90 read with Section 91-A, for the period from 01/04/2006 to 31/03/2010 cannot be granted with retrospective effect. Further, the Labour and Employment department, Government of TamilNadu have forwarded the Petitioner's Company application to 1st respondent for exemption from the provisions of ESI Act for the period from 01.04.2010 to 31.03.2011 vide their letter dated 04.10.2010 but no order has been passed by the first respondent. Hence, this Writ Petition has been filed seeking for the aforesaid relief.

3. A counter affidavit has been filed by the respondents, denying the allegations made by the petitioner. It is stated that the Labour and Employment Department, Government of Tamil Nadu vide letter dated 08.09.2011 stated that the State Government had not considered the request of the petitioner for exemption for the period from 01.04.2010 to 31.03.2011, by relying upon Section 91 of the ESI Act. It is further stated that since the State Government is the appropriate authority to grant exemption and the petitioner's application was rejected by the State Government, the respondents have role to play.

4. The learned counsel appearing for the respondents 1 to 3 seeks time to get order from the State Government regarding exemption for the period in question and if any exemption is granted from the State Government, the same shall be placed before the respondents.

5. Heard both sides. Perused the records available before this Court.



6.A perusal of the counter affidavit filed by the respondents would go to show that the respondents has stated that the State Government is the appropriate authority for granting exemption and though the petitioner had applied to State Government for exemption. Apart from that, the State Government is not a party to the Writ Petition and therefore the prayer sought for in this Writ Petition cannot be granted. However, by accepting the submissions of the learned counsel for the respondents, this Court is inclined to grant twelve weeks time to the Petitioner Company to get exemption order from the State Government.

7. Accordingly, twelve (12) weeks time is granted for the Petitioner to get appropriate orders from the State Government under Section 87 of the Employees State Insurance Act, 1948 for the period in question. If no such order is produced within the aforesaid period, the respondents are directed to proceed in accordance with law.

8. With the aforesaid directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

arr

To

- 1.The Director General,
Employees State Insurance Corporation,
Panchdeep Bhavan, CIG Marg, New Delhi-110002.
- 2.The Regional Director
Employees State Insurance Corporation
143 Sterling Road, Chennai- 600 034.
- 3.The Recovery Officer,
Employees State Insurance Corporation
143, Sterling Road, Chennai- 600 034.

W.P. No.12810 of 2012

UM (CO)
PR (27/01/2022)