BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18 .03.2021
CORAM:
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL
W.A(MD)No.911 of 2010

Kajah Enterprises Private Limited,
Rep. by its Joint Managing Director,
Post Box No.12,
No.48, South Mound Road,
Tirunelveli Town,
Tirunelveli District. ... Appellant/Petitioner

Vs.

1.The State of Tamilnadu,
Rep. by its Secretary,
Department of Labour and Employment,
Fort St. George,
Chennai - 600 009.

2.The Employees State
Insurance Corporation, Sub-Regional Office,
Municipal Shopping Complex, Salai St,
Sindupoonthurai,
Tirunelveli - 627 001. ... Respondents/Respondents

(R2 is impleaded vide Court order dated 22.02.2021 made in C.M.P(MD) No.7861 of 2018 in W.A(MD)No.911 of 2010 by PSNJ & SKJ)

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 06.10.2010 passed in W.P(MD)No.10851 of 2007 on the file of this Court.

Prayer in WP(MD). 10851/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court pleased to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of writ calling for the records relating to the order passed by the respondent in his Lr. No.16674/L1/06 dated 30.05.2007 rejecting the claim of exemption from the applicability of Employees State Insurance Act, 1948 to the petitioner w.e.f. 01-10-1986 and quahs the same as illegal and consequentially to direct the respondent to grant exemption to the petitioner by considering its application dated 01.11.2007 within the period.

For Appellant : Mr.M.Jerin Mothew
for Ajmal Associates

For R-1 : Mr.M.Murugan,
Government Advocate,

For R-2 : Mr.I.Pinayagash,
Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA,J.)

The writ appeal is directed against the order passed in W.P(MD)No.10851 of 2007, dated 06.10.2010.

2. The necessary facts leading to the above appeal are as follows:

The appellant is a private limited company engaged in the manufacture & sale of beedis. It is also coming under the purview of Employees' State Insurance Act, 1948. The appellant company had claimed exemption under section 87 of the Employees' State Insurance Act, 1948, for the period from 01.10.1986 to 31.12.2003. Already the State Government had granted exemption to the appellant company for the following periods:

S.No	Period	Order	Date
1	01.01.2004-31.12.2006	G.O.(D) No.1313	29.12.2005
2	01.01.2007-31.12.2007	G.O.(D) No.275	30.07.2008
3	01.01.2008-31.12.2009	G.O.(D) No.656	03.12.2009
4	01.08.2013-31.07.2014	G.O.(D) No.380	01.08.2013
5	01.08.2014-31.07.2015	G.O.(D)No.328	24.07.2014
6	01.08.2015-31.07.2016	G.O.(D) No.355	20.07.2015
7	01.08.2016-31.07.2017	G.O.(D) No.697	08.12.2017
8	01.08.2017-31.07.2018	G.O.(D) No.616	05.10.2017
9	01.08.2018-31.07.2019	G.O.(D) No.320	03.06.2019

3. It is also stated by the appellant that they had made contribution for the period from October 1986 to February 2004. The request made by the appellant for the grant of exemption has been rejected by the respondent corporation on 30.05.2007 stating that as already the contribution has been paid by the appellant company, the exemption was not granted for the said period.

4. According to the learned counsel for the appellant company, when the Government has already granted exemption for the subsequent period till date, in view of the above G.Os., exemption ought to have been granted for the period from 01.10.1986 to 31.12.2003 retrospectively.

5. The contention of the appellant is that the above rejection is detrimental to the interest of the company as the beneficiaries are not known. When the State Government granted exemption under section 87 of the Employees' State Insurance Act, 1948, necessarily, the Employees' State Insurance Corporation, will have to be heard in the light of the mandatory provisions under section 89 of the Employees' State Insurance Act, 1948. When G.O.(D)No.1313 (Labour & Employment) dated 29.12.2005 was passed, the Employees' State Insurance Corporation was consulted. However, in the writ petition, the Employees' State Insurance Corporation was not made as a party, who was included subsequently in the writ appeal.

6. A perusal of Section 87 of the Employees' State Insurance Act, 1948, also go to show that the exemption will not exceed one year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time.

7. Section 91-A provides for exemption to be granted prospectively on such date as may be prescribed. But, the said amendment substituting the words “prospectively” instead of “either prospectively or retrospectively” was made with effect from 01.06.2010.

8. The question is whether the appellant is entitled for retrospective exemption has to be considered in the light of the decision in Thanjavur, West Sarvodaya Sangh represented by its secretary, A.P.Jothi Ramalingam V. State of Tamil Nadu labour and employment reported in (2010) 4 MLJ 720. The learned Single Judge also placed reliance on the same. The relevant portion of the above cited decision is extracted hereunder:

> “*17.In the oft quoted celebrated decision of the Apex Court in Union of India V. Mohan Lal Kapoor (1973-II-LLJ-504), it was held in paragraph 28 of the report, that the reasons are the links between materials on which certain conclusions are based to the actual conclusions. They disclose how mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial. They would reveal nexus between the facts considered and the conclusions reached. This view was reiterated in Gurdial Singh Fijji V. State of Punjab (1979 (2) SCC 368).*

18.There is another thinking which necessitates the recording of reasons to support the conclusions. It is well-settled law that every action of the State or instrumentality of the State must be informed by reason. Actions uninformed by reason may tantamount to arbitrariness. The State action must be just, fair and reasonable. Fair play and natural justice are part of public administration; non-arbitrariness and absence of discrimination are said to be hallmarks for good governance under the rule of law. One cannot, therefore, escape from the conclusion that it is imperative on the State Government to inform its order by recording reasons to reach a particular conclusion. With this caution in mind, and in the perspective of the law, as mentioned above, the question is whether the impugned order withstands the test of scrutiny at the altar of the principles of natural justice or not and if it is found that the reasons are conspicuously missing to arrive at the conclusion, a further question would be whether omission to record reasons vitiates the impugned order or is in violation of the principles of natural justice.

19.Therefore, the petitioner's request was considered in consultation with the ESIC and after a threadbare analysis, the request was rejected. Even in the affidavit there is no strong attack on the reasons given by the State. The petitioner seems to be rest contended with the so-called denial of personal hearing.

20.Further it must be noted that the Calcutta High Court in Everett (India) Private Ltd. Vs. State of West Bengal reported in 2002-II-LLJ-477 (Calcutta) held that a conjoint reading of Section 87 read with Section 91-A, the power to grant exemption can be available only for one year whether prospectively or retrospectively. In paragraphs 25 and 26, it was observed as follows:

> *"25.Regarding the interpretation on the joint reading of Sections 87 and 91-A, in my opinion, the submission of the ESI authorities has to be accepted. In my opinion, such notification can issue for a period of one year at a time only be it prospective or be it retrospective. When one considers the effect of such notification, which is the total effective abrogation or a Central Statute from its application to an establishment altogether. The salutary rule of keeping such abrogation limited to instalments of one year at a time is easy to understand and support.*

26.In my opinion, therefore, on facts the writ petitioner deserves no relief having shown reckless disregard of the ESI Act for 12 years altogether. On law also the prayer to the State Government of granting a one time retrospective exemption for 12 years is not permissible."

21.In the present case, a retrospective exemption is sought for more than eight years. In view of the above, there are no merits in the writ petition and hence it will stand dismissed. No costs. Consequently, connected miscellaneous petition stands closed."

9. The appellant had claimed exemption for the period from 01.10.1986 to 31.12.2006 under Section 87 of the Employees' State Insurance Act, 1948, only on 30.05.2007 belatedly after 17 years. As referred in the schedule above, exemption from 01.01.2004 to 31.12.2006 was already granted with retrospective effect as per section 91-A of Employees' State Insurance Act , 1948.

10. The second provision ie., Section 87 of the Act, mandated any renewal application to be made within three months prior to the date of expiry of the exemption period.

11. Section 91-A of Employees' State Insurance Act, 1948, specifies that exemption can be granted to take effect prospectively in the light of the amendment from 01.06.2010. Besides, the exemption sought for by the appellant company is exceeding one year, as prescribed under section 87 of Employees' State Insurance Act, 1948.

12. In this regard, the learned counsel for the second respondent Employees State Insurance Corporation placed reliance on the decisions in ***Muruga home industries v. ESIC*** reported in ***1998 SCC online Mad 947:(2000) 86 FLR 80(Mad):(2000) 2 LLJ 590*** and in ***Everett India Pvt. Ltd v. State of West Bengal*** reported in ***2002 2 LLJ 477 (Cal)***.

13. A joint reading of Section 87 and 91-A of the Employees' State Insurance Act, 1948, would go to show that exemption can be sought for only for one year at a time whether it is prospective or retrospective.In the present case, the appellant company is seeking for exemption belatedly and retrospectively for 17 years, which is not permissible under the statute. Hence, the learned single Judge had rightly dismissed the writ petition. Though the appellant company was granted exemption for the subsequent years from time to time, the exemption for the petition mentioned period cannot be granted as the contribution has already been made by the appellant.

14. In the light of the above discussion, there is no reason to interfere with the order of the learned Single Judge and the same is confirmed.

15. In the result, the writ appeal is dismissed. No Costs.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

Note :
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

The Secretary,
Department of Labour and Employment,
Fort St. George,
Chennai - 600 009.

+1 CC to M/s.I.PINAYGASH, Advocate (SR-12201[F] dated 18/03/2021)

+1 CC to M/s.SPL GP (SR-12552[F] dated 19/03/2021)

+1 CC to M/s.M.ELANGO, Advocate (SR-12602[F] dated 19/03/2021)

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