



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P. (MD)No.3439 of 2011

and

M.P. (MD) Nos.1 and 2 of 2011

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The Madurai District Cooperative
Milk Producers Union Ltd.,
Represented by its General Manager,
No.A1301, Sathamangalam Post,
Madurai - 20.

: Petitioner

Vs.

1.The Principal Secretary to Government,
Labour and Employment (L1) Department,
Fort St. George,
Chennai - 600 009.

2.The Regional Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Nungampakkam,
Chennai - 34.

3.The Assistant Director,
Employees State Insurance Corporation,
Sub Regional Office,
4th Main Road, K.K. Nagar,
Madurai - 20.

: Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records from the file of the first respondent herein and to quash his order in G.O.(D) No.567, dated 25.10.2010.

For Petitioner : Mr.S.Balamurugan

For Respondent 1 : Mr.A.Karthick
Government Advocate

For Respondent 2 : No appearance.

For Respondent 3 : Mr.K.Hemakarthiskeyan

**ORDER**

The case of the petitioner is that the petitioner union comprised of three units one at Madurai and others are at Theni Chilling centre and cattle feed plant at Kapaloor. The total strength of employees are 572. These units are not covered under the E.S.I. Act. As per the bye-laws, the very object of the the union *inter alia* is to carry out activities conducive to the economic development of agriculturists and agricultural tenants and labourers by authorizing effective production, processing and marketing of commodities. The petitioner union has its own medical facilities and other benefits which are much superior to the facilities extended under the E.S.I. Act. The petitioner union had applied to the Government seeking exemption of E.S.I. scheme under the E.S.I. Act, 1948 beyond 31.03.2005 and reminders dated 30.05.2005 and 29.07.2005. The Deputy Secretary to Government, vide letter dated 20.12.2005 replied that grant of exemption to the Milk Chilling plant at Theni does not arise as the said unit has not been covered yet under E.S.I. Act and further requested to send the petitioner's proposals for exemption for the feeder balancing dairy at Madurai and cattle feed plant at Kappaloor. After inspection on 03.08.2005, the Deputy Director (Inspection) under the ESI Act, submitted a report on 18.08.2005. Taking all those things into consideration, the first respondent by its order vide G.O.(D) No.1306, Labour and Employment (L1) Department, dated 23.12.2005 granted exemption to the petitioner herein from the provisions of E.S.I. Act for the period from 01.04.2005 to 31.03.2006.

2.It is the case of the petitioner that for the further period from 01.04.2006 to 31.03.2007 a proposal has been sent by letter dated 05.04.2006 seeking exemption from the provisions of E.S.I. Act under Section 88 read with Section 91-A of the said Act. In the said representation, it was made clear that the employees are given medical allowance as applicable to the Government servants. However, the first respondent returned the proposal raising certain queries in its letter dated 12.06.2007 and the petitioner had replied on 30.07.2007. Again, the first respondent sent a communication dated 03.07.2008 to the petitioner for certain clarifications and for further particulars. Immediately, the petitioner replied on 05.07.2008 providing all the details and the petitioner awaited for favourable order from the Government. However, the first respondent had straight away passed an order vide the impugned G.O.(D)No.567, Labour and Employment (L1) Department, dated 25.10.2010 rejecting the petitioner's prayer for exemption for the period from 01.04.2006 to 31.03.2008 without any valid reasons. Challenging the same, the present Writ Petition has been filed.



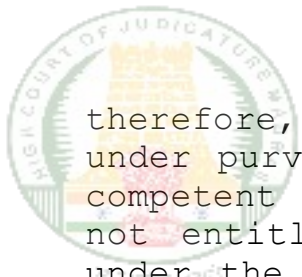
3.The learned Counsel appearing for the petitioner would submit that the petitioner cooperative union is giving superior quality of medical facilities to their employees and all those particulars were communicated to the first respondent who is the competent person to grant exemption from the Act. However, the first respondent mechanically rejected the request of the petitioner and the same is unsustainable in law. According, he prayed for allowing this Writ Petition.

4.The first respondent has filed a counter stating that the averments set out in paragraphs 7 and 8 of the affidavit are denied and that it is the discretion of the State Government to grant exemption or not, based on the examination and conclusion that a unit seeking for exemption provides better facilities than the one provided under the Employees' State Insurance Scheme and in fact, the petitioner unit had made partial compliance for certain periods and therefore, satisfying with the facilities given by the petitioner, the first respondent herein had granted exemption only for the permanent employees for some time. It is further submitted that the exemption is not an automatic and the Government shall grant exemption only on satisfying with the facilities done by the petitioner to their employees. But in the present case, the facilities which were given by the petitioner is not a satisfactory one and therefore, the first respondent herein had rightly rejected the claim of the petitioner herein after analysing various factors including the facilities which were given by the petitioner herein. Apart from that, the petitioner has not even specified the nature and a term of benefits provided by them to its employees. Accordingly, they prayed for dismissal of this Writ Petition.

5.This Court paid its careful consideration to the contentions advanced by the learned counsel on either side and perused the materials available on record.

6.The issue to be decided in the present case is whether the Government in rejecting the exemption sought by the petitioner union is correct or not.

7.Admittedly, under the E.S.I. Act, the State Government is the authority for granting exemption and the State Government has to exercise its discretion based on the available materials and also on considering the fact that whether the petitioner union is giving superior quality or ESI is giving superior quality of medical facilities to the employees. In the present case, the first respondent has filed a counter affidavit wherein in paragraph 9 of the counter affidavit it is stated that after inspect the State arrived at a conclusion that the medical facilities given by the petitioner is not satisfactory and



therefore, the petitioner is not entitled for seeking exemption under purview of the Act. When the first respondent, who is the competent person, arrived at a conclusion that the petitioner is not entitled to get any exemption from payment of contribution under the purview of the Act, this Court cannot take any contra view unless there are valid materials placed before this Court. Therefore, in the absence of any valid materials, this Court is not inclined to interfere with the order passed by the first respondent in G.O.(D) No.567, Labour and Employment (L1) Department, dated 25.10.2010 which is perfectly in order.

8.For the reasons stated above, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SRM

To

1.The Principal Secretary to Government,
Labour and Employment (L1) Department,
Fort St. George, Chennai - 600 009.

2.The Regional Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
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Employees State Insurance Corporation,
Sub Regional Office, 4th Main Road, K.K. Nagar,
Madurai - 20.

+1 CC to M/s.K.HEMA KERTHIKEYAN, Advocate (SR-555[F] dated 08/01/2021)

+1 CC to M/s.GP (SR-664[F] dated 08/01/2021)

+1 CC to M/s.S.BALA MURUGAN, Advocate (SR-627[F] dated 08/01/2021

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