BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.04.2021
C O R A M

THE HONOURABLE MR. JUSTICE P.D.AUDIKESAVALU
W.P. (MD) No.10339 of 2013

M/s.Arulmozhi Spinning Mills Private Limited,
Represented by its Managing Director,
Shri M.Tharmaraj ... Petitioner

vs.

1.Employees' State Insurance Corporation,
Rep. by its Joint Director,
Sub-Regional Office,
Municipal Shopping Complex,
Sidhupoondurai, Salai Street,
Tirunelveli - 627 001.

2.Employees' State Insurance Corporation,
Rep. by its Regional Director of ESIC9Tamil
Nadu) No.143, Sterling Road,
Nungampakkam, Chennai - 600 034.

3.The Secretary,
Ministry of Labour and Employment,
Government of India,
Shram Shakti Bhavan,
Rafi Marg, New Delhi - 110 001.

4.Smt.Santha,

5.V.Devaraj ...Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorari calling for the records of the impugned communication of the first respondent in No.66/31270/11 dated 17.06.2009 and quash the same as illegal.

For Petitioner : Mr. P.M.Raja Thiyaneswaran

For Respondents : Mr. P.Ganapathysamy
(for R1 and R2)

: Mrs. L.Victoria Gowri (for R3)
Assistant Solicitor General of India
: Mr.N.Murugesan
(for 4 and 5)

O R D E R

(through video conference)

Heard Mr. P.M.Raja Thiyaneswaran, Learned Counsel for the Petitioner, Mr. P.Ganapathysamy, Learned Counsel for the First and Second Respondents and Mrs. L.Victoria Gowri, Learned Assistant Solicitor General of India appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is a Spinning Mill. The Central Government by Notification No. S-38013/4/96-SSI dated 08.01.1996 under Section 1 (3) of the Employees' State Insurance Act, 1948, (hereinafter referred to as 'ESI Act' for short), made the provision of the Act applicable to Vilathikulam area where the mill of the Petitioner is situated. It was noticed during inspection on 13.06.2009 by an official of the Employees' State Insurance Corporation (hereinafter referred to as 'the ESI Corporation' for short) that 17 employees were working in the factory of the Petitioner receiving wages below Rs.10,000/- and as such, it fell under the coverage of the Act and a visit note was issued to the Petitioner in that regard. The First Respondent by another letter dated 17.06.2009 informed the Petitioner that it has been allotted ESI Code No.66/31270/11 and it has been attached to the Branch Office at Kovilpatti of ESI Corporation and the Petitioner was required to comply with the provisions of the Act, by registration of its workers and payment of contributions and maintenance of records, which was followed and that voluntarily payment of contributions had been made for the period from 13.06.2009 to 31.03.2011. The Petitioner made a representation dated 20.03.2010 stating that though it is willing to comply with the provisions of the Act, requisite facilities had not been extended by ESI Corporation to its employees, and in particular, it was pointed out that the nearest ESI hospital is situated at Ettaiapuram, at a distance of 25 kms. away from its mill and there was also no frequency of bus services to reach that place, and in such circumstances, the employees of the mill were refusing to join the ESI Scheme itself, and as it would not be possible to make contribution without their willingness, it was requested to arrange hospital facilities at Vilathikulam or a mobile hospital in its factory. It was also requested to permit the Petitioner to make remittance at State Bank of India, Vilathikulam Branch. The First Respondent by Show Cause Notice No. 66-00-031270-000-0101/SCN/140/10 dated 27.10.2010 called upon the Petitioner to explain why prosecution for the offences under the Act should not be launched for its failure to submit return of contribution in prescribed form. The Petitioner by reply notice dated 28.11.2010 submitted the prescribed form for remittance made and informed that

deduction had not been made from employees' wages and non-payment of their share towards contribution does not arise. At that stage, this Writ Petition has been filed challenging the order17.06.2009 by which the First Respondent intimated the Petitioner that it had been covered under the Act.

3. It is contended by the Petitioner relying on the decisions of the Hon'ble Supreme Court of India in ***Fertilizer and Chemicals Travancore Ltd., -vs- ESI Corporation*** [(2009 (9) SCC 485)] and ***ESI Corporation -vs- Bhakra Beas Management Board*** [(2009 (10) SCC 6710] that since the primary beneficiaries under the Act are workers, the Trade Union, or in its absence, some workers in representative capacity, have to be made parties and fulfilling that requirement, the Fourth and Fifth Respondents, who are said to be employees' representatives, have impleaded in the Writ Petition. The Fourth and Fifth Respondents have filed Counter-Affidavit supporting the case of the Petitioner in the Writ Petition.

4. The First and Second Respondents have resisted the Writ Petition as belatedly prosecuted with ulterior motives to avoid payment of contributions falling due for effective implementation of the welfare legislation. While denying the claim of the Petitioner that the benefits under the Act have not been extended to its employees, the following aspects which reflect the real state of affairs, have been brought to the notice of the Court:-

(i) The large number of ESI Dispensaries have been established in the State of Tamil Nadu and also in other States. A worker can choose any dispensary and his family can choose the same or another dispensary inside or outside Tamil Nadu convenient to them. The ESI Dispensary at Ettaiyapuram is the nearest from the location of the factory of the Petitioner, where its workers and their families can avail primary medical care.

(ii) ESI Hospitals have been established in major cities/towns to give advanced medical care to the workers and their families. ESI Hospital has been constructed at Tirunelveli with ultra-modern facilities and the beneficiaries can visit the ESI Hospital at Tirunelveli, where OPD is functioning for secondary and tertiary care.

(iii) A large number of private hospitals have also been approved by the Government of Tamil Nadu to give super-speciality treatment to the workers and their families on cashless basis. In emergency, the workers and their families can get direct admission and get cashless treatments.

(iv) More than 500 private hospitals have been tied up in the entire country by the ESI Corporation for providing round the clock super-speciality and other treatments to the beneficiaries.

(v) Reimbursement under the ESI Scheme is made for emergency treatments of the beneficiaries in unapproved private hospitals.

(vi) The beneficiaries can also take treatment in approved private hospitals in Vilathikulam, Tuticorin etc., and thereafter, claim medical reimbursement from ESI Corporation as per Central Government Health Scheme rates.

(vii) Other than medical benefit which one of the five major benefits under ESI Scheme, the insured persons are also extended to sickness benefit, disablement benefit, maternity benefit, and dependants benefits. In addition thereto, there are many cash benefits available under the ESI Scheme.

(viii) It is not necessary for a person to visit the Branch Office of the ESI Corporation for getting cash benefits under ESI Scheme and claim can be sent by post and the eligible amount will be remitted into personal account in the bank of the beneficiary concerned or the money would be sent by money order at the cost of ESI Corporation.

(ix) Remittance of the contribution in banks could be made using online facilities and it is not required to go any particular branch of a bank for the same.

The earlier rulings of this Court and other High Courts have been cited to buttress that similar writ petitions filed either by employers or trade unions have been rejected by pointing out that the implementation of the provisions of the Act is compulsory and there is no discretion for the employees to opt out of the same and it is immaterial as to whether the employees were willing to avail its benefits or not.

5. Having due regard to the rival submissions made by the parties, it is apparent that the nature of relief sought by the Petitioner in this Writ Petition is to the effect of frustrating the statutory mandate, which cannot be countenanced in law. If the Petitioner wants to avoid making contributions that are falling due, it has to only apply for prospective exemption to the appropriate government every year under Section 87 of the Act by showing that its employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under the Act. It is not the case of the Petitioner that after satisfying those conditions, it has made any such application for exemption to the appropriate government so far. That apart, the First and Second Respondents have convinced with particulars about existing facilities available to the employees of the factory of the Petitioner under the Act, which

have been referred earlier. In such circumstances, there does not appear to be any justification in the contentions raised by the Petitioner in this Writ Petition, which is only frivolous and vexatious litigation abusing the legal process. The decisions of this Court in ***Sri Shanmugavel Mills Employee Union -vs- Director General, Employees State Insurance Corporation*** (Order dated 03.10.2007 in W.P. No.23929 of 2007) and ***Sterling Spinners Limited -vs- Employees State Insurance Corporation*** (Order dated 27.10.2009 in W.P. No.7823 of 2003) fortifies this view taken. This conclusion arrived by the Court shall not, however, absolve the ESI Corporation of its elementary obligation to constantly take efforts for expanding its services to remote and interior areas in the country including the location of the factory of the Petitioner so that timely and qualitative health care at affordable costs would be made available to the feasible extent to the families of the working class in future.

6. In the result, the Writ Petition is dismissed with the aforesaid observations. No Costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm/dm

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

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Copy to

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Shri M.Tharmaraj,
No.4/154, Ayyan Bommaiyapuram - 628907,
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