



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 27452 of 2018

and

W.M.P. Nos. 31962 and 31964 of 2018

The Deputy Director,
Employees State Insurance Corporation,
No.39/57, Theerthamalai Vaniga Valagam,
Three Roads, Salem - 636 009.

...Petitioner

-vs-

1. The Government of Tamil Nadu,
Rep. by its, Principal Secretary,
Labour and Employment Department,
Fort St. George, Chennai.

2. Tamil Nadu Cements Corporation Ltd.,
Ariyalur Cements Works, Ariyaur,
Rep. by its Unit Head.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to G.O. (D) No. 362 dated 05.07.2016 issued by the First Respondent and quash the same on the ground of it being violative of Sections 87, 89, 90, 91A and Section 40 of ESI Act, 1948, principles of natural justice, Article 21 of the Constitution of India and consequently, direct the Second Respondent make ESI contribution for the coverable employees under the ESI Act, 1948 from 01.02.2015 onwards.

For Petitioner	:	Mr. S.P.Srinivasan
For Respondents	:	Mrs. C.Sangamithirai
		Special Government Pleader (for R1)
		Mr. A.Sivaji (for R2)

O R D E R

Heard Mr. S.P.Srinivasan, Learned Counsel for the Petitioner, Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First Respondent and Mr. A.Sivaji, Learned Counsel appearing for the Second Respondent and perused



the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, which is the Employees State Insurance Corporation established under the provisions of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the Act' for short), is aggrieved by the order of exemption granted for the period from 01.02.2015 to 31.01.2016 by the First Respondent in G.O. (D). No. 362, Labour and Employment (L1) Department dated 05.07.2016 under Section 87 read with Section 91-A of the Act to the Second Respondent, which is an undertaking of the Government of Tamil Nadu.

3. It is required to be noticed here that the Government of Tamil Nadu had earlier rejected such claim for exemption by an order dated 06.08.2015 which had been challenged by the Second Respondent in W.P. No. 40619 of 2015 and this Court by order dated 22.12.2015 had set aside that order and directed to afford an opportunity of hearing to the Second Respondent and pass reasoned order. It is in furtherance to the said direction that the impugned order has been passed.

4. Learned Counsel for the Petitioner referring to Section 91-A of the Act contends that the exemption could be given only prospectively and in terms of Section 89 of the Act, exemption cannot be granted without providing a reasonable opportunity to the Petitioner to make representation.

5. It is borne out from the materials placed on record that the Deputy Director (Inspection Branch), Employees' State Insurance Corporation, Chennai by letter dated 03.05.2016 had placed his objections before the First Respondent for grant of exemption to the Second Respondent highlighting that similar benefits had not been extended by the Second Respondent to its employees in order to be entitled for such exemption, but the impugned order does not contain any discussion in that regard though various conditions have been imposed for grant of exemption and the Petitioner has been required to ensure its compliance. At the same time, it is relevant to notice here that the Second Respondent has obtained exemption for the subsequent years which have not been challenged by the Petitioner and has attained finality. That apart, it is brought to notice that no contribution has been recovered from the Second Respondent or its employees from 01.02.2015 onwards in view of the exemption orders passed and no claim under the Act has been made by any of the employees of the Second Respondent against the Petitioner during the period for which exemption has been granted by the First Respondent. In such circumstances, there does not appear to be any useful purpose served by setting aside the impugned order of exemption and remitting the matter for fresh



consideration to the State Government. It is made clear that while considering the application for exemption for future years, it shall be incumbent upon the State Government to consider any objection raised by the Petitioner and pass reasoned orders following the prescribed procedure after hearing all parties concerned in accordance with law.

In fine, the Writ Petition is disposed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government of Tamil Nadu,
Labour and Employment Department,
Fort St. George, Chennai.
2. The Deputy Director,
Employees State Insurance Corporation,
No.39/57, Theerthamalai Vaniga Valagam,
Three Roads, Salem - 636 009.

Copy to
The Unit Head,
Tamil Nadu Cements Corporation Ltd.,
Ariyalur Cements Works, Ariyaur.

+1cc to Government Pleader, SR.NO.15555
+1cc to M/s.A.Sivaji, Advocate, SR.NO.15725
+1cc to M/s.SP.Srinivasam, Advocate, SR.NO.15290

W.P. No. 27452 of 2018

PMK(CO)
KKV/15/06/2022