IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.06.2024**

CORAM:

THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL

W.A.No.2749 of 2023
and CMP.No.23094 of 2023

1.M/s.A.Habeebur Rahman Sons
'S' Beedi Manufacturers
rep.by its Partner
Mr.A.Mohammed Ashraf
244/245, Santhapet,
Gudiyatham, Vellore District.

2.M/s.V.Abdul Jabber & Sons
Goat mark Beedis
rep.by Partner, V.I.Mohammed Ghouse
No.186, Chitteri Road, Ariyur, Vellore 632010

3.M/s.V.K.Abdul Jabbar Sahib Son ... Appellants

Vs.

1.The Government of Tamil Nadu
rep.by its Principal Secretary,
Labour and Employment (L1) Department,
Fort St.George,

Chennai 600 009.

2.The Regional Director,
Employees State Insurance Corporation,
Panchdeep Bhawan,
143, Sterling Road,
Chennai 600 034. ...Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters patent to set aside the order dated 02.11.2022 in W.P.No.18446 of 2014.

For Appellants	: Mr.Rishab R Jain
For R-1	: Mr.T.Chezhian, Government Advocate
For R-2	: Mr.G.Bharadwaj

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J U D G M E N T

(Judgment of the Court was made by J.NISHA BANU,J.)

Challenging the order made in W.P.No.18446 of 2014, dated 02.11.2022, the aggrieved petitioners have preferred the present appeal.

2. Brief facts that are required for consideration of these writ petitions are as follows:

2.1. The Government of India, by exercising its powers under

Sections 87, 88, 91 and 91A of the ESI Act, issued a Notification No.2-13011-5/87-SS.I dated 30.03.1998 exempting the Beedi Industries from the purview of the ESI Act, 1948 u/s 87 r/w 91 A of the Act in view of the fact that the beedi units and the Beedi rollers/ workers were brought under the umbrella of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and Beedi Workers Welfare Act, 1976.

2.2. Further, it is averred that the Director General, ESI Corporation, New Delhi vide letter No.P-13/12/TN/Misc/2000-Ins.I dated 08.03.2004 categorically directed the Regional Director of Tamil Nadu not to object to grant of exemption by the Government to Beedi Industries in light of the above Notification dated 30.03.1998.

2.3. The appellants, being Beedi Manufacturers, were being regularly exempted from the aforesaid provisions of the ESI Act and for the period from 01.04.2009 to 31.03.2010, they were exempted vide G.O.(D).No.270 dated 29.04.2020 and for the period between 10.01.2014 to 09.01.2015, as per G.O.(D) No.16, Labour and Employment Department, dated 10.01.2014, exemption was granted.

2.4. Subsequently, when the appellants applied for the regular exemption for the period between 01.01.2012 and 31.12.2012, the same came to be rejected by the 1st respondent vide G.O.(D) No.51, Labour and Employment (L1) Department dated 15.02.2012.

3. According to the learned counsel for the appellants, even though there was no change in circumstances, the respondents have rejected the appellants' application for exemption, which was regularly granted by the same first respondent during the previous years.

4. The main contention of the learned counsel for the appellants is that the first respondent has rejected the request of the appellants by overlooking the fact that the appellant's industry has been providing its workers with a large number of welfare measures, which was earlier considered by them while sanctioning such exemption.

5. Aggrieved by the said order of rejection, the appellants sought for exemption from the provisions of the Employees' State Insurance Act, 1948, for the period from 01.01.2012 to 31.12.2012, by filing a writ petition in WP.No.18446 of 2014 and the said writ petition came to be dismissed on 02.11.2022 by this Court. Challenging the said order of dismissal, the present Writ Appeal has been filed.

6. According to the learned counsel appearing for the appellants, the appellants were not given any opportunity of personal hearing, before their request for grant of exemption under the ESI Act for the above period came to be rejected. He also brought to the attention of this Court that the 1st respondent had earlier granted exemption to the appellants in the past, i.e.,01.04.2009 to 31.03.2010 and also for the subsequent period. i.e.,10.01.2014 to 09.01.2015, but failed to consider their request, specifically for the period from 01.01.2012 to 31.12.2012.

7. It is further submitted by the learned counsel for the appellants that the learned Single Judge failed to consider that the appellants are seeking a similar benefit to its employees in comparison to the benefits provided to those employees coming under the Employees' State Insurance Act and thereby, prayed for allowing the appeal.

8. Per contra, the learned counsels appearing for the respondents jointly submitted that the application for exemption was rejected as the benefits provided by the employer/Management were not found to be superior or substantially similar to the benefits provided under the ESI Act. Prior to the Amendment in the year 2010, there was no provisions under the ESI Act for the employer to provide superior or substantially similar benefits as provided under the Act, in order to avail the benefits of exemption. But after the said Amendment made in the year 2010, applications were considered only by conducting comparisons. Therefore, only after conducting such comparisons, it was found that the features are not beneficially provided under the Management Scheme and hence, according to the learned counsel, the 1st respondent has rightly rejected the application of the appellants.

9. The learned counsel appearing on behalf of the respondents would submit that the grant of exemption is a discretionary power exercised by the Government, by comparing the benefits offered under ESI Act and the Management. Therefore, the learned Single Judge has passed a well considered and reasoned order and the procedure contemplated under the ESI Act has been duly complied with and therefore, the order of the learned Single Judge needs no interference of this Court and prayed for dismissing the appeal.

10. This Court has carefully considered the rival submissions and also perused the records.

11. On considering the submissions made by the learned counsel for the appellants, it is found that the main ground raised by the appellants is that they were not given any opportunity of personal hearing, while considering their application for grant of exemption. However, it is the submission of the learned counsel for the respondents that no such opportunity is required to be provided to the appellants, since the powers are vested with the Government under Section 88 and 91 of the Act and the same is discretionary in nature.

12. Further, the Government had made a comparative study of the benefits under the ESI Scheme together with the scheme floated by the

Management and thereafter, has come to the conclusion that the scheme under the Act is more beneficial to the employees of the petitioner. In ***M/s.Mangalore Ganesh Beedi Works vs. Principal Secretary to Government, Labour and Employment Department, & 2 others,*** in W.P.No.17948 of 2012, this Court vide order dated 02.03.2022, has passed the following order:-

> *"13. To sum up the comparison, it was found that the ESI scheme provides for sickness benefits for 91 days in a year when compared to the 18 days provided by the management. Apart from the sickness benefits, the ESI scheme provides for long term cash benefits for diseases upto a maximum period of 730 days as against the 240 days of accrued earned leave on medical grounds provided by the management. The sickness benefits under the ESI scheme extends to both men and women together with cash benefits and full medical care, which is absent under the management scheme. There is no compensation provided for loss incurred during injury or accident by the management, whereas the ESI scheme provides for the same. The dependant's benefits and maternity benefits under the ESI scheme is far more beneficial than the management Scheme. The full medical care given under the ESI hospitals/dispensaries and through tie-up arrangements with accredited private hospitals is not a benefit extended by the*

management. Apart from these benefits, the ESI scheme takes care of funeral expenses, RGKSY unemployment allowance, confinement expenses, vocational rehabilitation and physical rehabilitation, which features are not beneficially provided under the management scheme.

14. Thus, while exercising the discretion under Section 91 of the Act, the Government has made a comparative study, by substantiating the beneficial features available under the ESI Act and has therefore had come to the judicious conclusion that such features are much more beneficial than the scheme provided by the management and thereby have rejected the petitioner's request.

15. I do not find any reason to interfere with the discretion exercised by the Government in this regard. The very object of the ESI Act is to provide certain benefits to the employees covered under the Act, in cases of sickness, maternity and employment injury. When most of the benefits of the scheme seem much more beneficial than the management scheme, I do not find any logical reason to deprive the employees of the petitioner from such benefits by directing the Government to grant exemption. Since the Government has exercised its jurisdiction in a judicious manner, the impugned order cannot be found fault with.

16. There is yet another aspect of the matter. Section 91A of the Act provides for prospective exemption. In the instant case, the petitioner has sought for retrospective exemption through his application dated 05.06.2008, whereby, they have sought for exemption for the period from 12.02.1978 to 31.03.2005. Since Section 91A does not provide for retrospective exemption, the application itself seeking for retrospective exemption cannot be sustained. ....”

In the present case, it can be seen that the 1st respondent has made a comparative study between the benefits of the Scheme provided under the Employees' State Insurance Scheme and the benefits provided by the Management and has come to a conclusion that the exemption for the relevant period cannot be granted.

13. On a perusal of the order passed by the learned Single Judge, it can be inferred that the learned Single Judge has specifically compared the various benefits of the employees provided under the ESI Scheme and by the Management and found that several features (comparatively) are not beneficially provided under the Management Scheme. By substantiating the beneficial features available under the ESI Act, the learned Single Judge has rightly come to the conclusion that the benefits under the ESI Scheme are much more beneficial than the Scheme provided by the Management and has reached a conclusion that he did not find any reason to deprive the employees of the appellants' Manufacturing Unit from such benefits, by directing the Government to grant exemption and thereby has rightly dismissed the writ petition, which this Court finds no infirmity.

14. For the reasons stated above, we are not inclined to interfere with the order made in W.P.No.18446 of 2014, dated 02.11.2022. Accordingly, this Writ Appeal stands dismissed. No costs. Consequently connected miscellaneous petition is also closed.

(J.N.B,J.) (P.D.B., J.)
18.06.2024

sk/sts

To:

1.The Principal Secretary,
Labour and Employment (L1) Department,

Fort St.George,
Chennai 600 009.

J. NISHA BANU, J.
and
P.DHANABAL,J.

sts

2.The Regional Director,
Employees State Insurance Corporation,
Panchdeep Bhawan,
143, Sterling Road,
Chennai 600 034.

Order made in
W.A.No.2749 of 2023

Dated:
18.06.2024