BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.6411 of 2021
&
W.M.P.(MD).Nos.5013 and 5015 of 2021

A1301, Madurai District Co-operative Milk
Producers Union Ltd(Aavin)
Rep through its General Manager
Sathamangalam, Madurai-20 ... Petitioner

Vs.

1.Principal Secretary to Government
Labour and Employment (L1) Department
Fort St.George
Chennai-9

2.The Deputy Director
Employees State Insurance Corporation
2, West Street, K.K.Nagar
Madurai-20 ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the notice of the 2nd respondent in No.

57000052300000009/8182020321/ME CELL dated 18.08.2020 and quash the same and direct the 2nd respondent not to proceed further pending disposal of the proposals for exemption forwarded to the 1st respondent and also direct the 1st respondent to dispose of the proposals forwarded to the 1st respondent for granting exemption for the period from June 2016 to June 2020 in reference No.2750/IR.

For Petitioner	:	Mr.V.O.S.Kalaiselvam
For Respondents	:	Mr.D.Sasikumar AGP for R1
		Mr.I.Pinaygash for R2

ORDER

The petitioner is a Milk producing Society and engaged in collecting milk from its members and supply them. The petitioner Society is controlled by Milk Producers Federation and is managed by the Milk Commissioner, who is an IAS Officer. The petitioner organization is a Quasi~Governmental Organization hence, the Milk Producers Federation is exempted from provisions of ESI Act. The Government of Tamilnadu time and again by invoking Section 88 read with Section 91A exempted the regular employees of the Society from the coverage of ESI Act.

2. The contention of the petitioner is that they are seeking exemption only for the permanent employees and not for the temporary employees, and from time to time the 1st respondent has been granting exemption as above but for the years 2016 to 2020, though the petitioner had submitted applications for exemption within the prescribed time, the 1st respondent has not disposed of the applications and the same are still pending. Since there is no exemption from the 1st respondent, the 2nd respondent invoked the provisions of ESI Act and passed the impugned order under Section 45(A), directing the petitioner to pay the contribution along with 6.5% interest. Aggrieved by the said impugned order, the present writ petition has been filed.

3. Heard Mr.V.O.S.Kalaiselvam, learned Counsel appearing for the petitioner, Mr.D.Sasikumar, learned Additional Government Pleader appearing for the 1st respondent and Mr.I.Pinaygash, learned Counsel appearing for the 2nd respondent and perused the records.

4. For the said period from June 2016 to June 2020, the

contribution payable is determined as Rs.1,46,69,136/- with 6.5% interest. The contention of the petitioner is that, since the exemption application is pending, the respondents are not empowered to exercise their power under the Act and require the petitioner to pay the contribution with interest.

5. However, the learned Counsels appearing for the respondents submitted that, the Writ Petition is not even maintainable, since the petitioner is having an alternative remedy of appeal before the Tribunal or the ESI Court. The next contention of the respondent is that the Government is empowered to grant prospective exemption and not retrospective exemption. Therefore, the respondents prayed to dismiss the writ petition.

6. As far as the plea that the 1st respondent is empowered to grant only prospective exemption is concerned, the petitioner has filed the exemption petition in time and the petitioner has discharged their duty. It is not the mistake of the petitioner, if the 1st respondent has not passed any orders. Therefore, this Court is of the considered opinion that when the petitioner had filed exemption petition in time, it has to be construed as

prospective exemption only. Therefore, the contention of the respondents in this regard is rejected.

7. As far as the plea of availability of alternative remedy is concerned, this Court is of the considered view that the ESI Court or the Tribunal is not empowered to consider whether the exemption application is maintainable or not. It is only High Court under Article 226 can consider such plea. Hence this Court is of the considered view that the writ petition is maintainable.

8. Due to efflux of time it is possible that the 1st respondent may not have the copy of the exemption application submitted by the petitioner. Therefore, the petitioner is directed to submit the duplicate copy of the exemption applicable already submitted to the 1st respondent within two weeks from the date of receipt of the copy of the order, and the 1st respondent is directed to consider the exemption application and pass appropriate orders within a period of eight weeks thereafter. The 2nd respondent shall not take any coercive steps, until the above said process is completed.

9. With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

13.03.2024.

NCC : Yes/No
Index : Yes/No
Internet : Yes
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1.Principal Secretary to Government
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2.The Deputy Director
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MUMMINENI SUDHEER KUMAR, J.

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