IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1128 OF 2019

Employees State Insurance Corporation
Through its Joint Director (I/C)
Panchdeep Bhavan, Ganesh Peth,
Nagpur 440018 … Petitioner

-vs-

1. State of Maharashtra
Through The Principal Secretary,
Industries Energy & Labour Department,
Madam Cama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai 440032

2. The Nagpur District Security Board, Nagpur
Lotus Plaza, Plot No.1, 2, First Floor,
Opp. Old VCA Stadium, Civil Lines,
Nagpur-440001
Through its Secretary … Respondents

Smt B. P. Maldhure, Advocate for petitioner
Shri S. M. Ghodeswar, Assistant Government Pleader for respondent No.1/State.
Shri M. R. Pillai, Advocate for respondent No.2.

CORAM : NITIN W. SAMBRE AND MRS VRUSHALI V. JOSHI, JJ.
DATE : February 11, 2025

Oral Judgment (Per : Nitin W. Sambre, J.)

1. Heard.

2. **Rule.** Rule returnable forthwith. Heard Rule finally with consent of counsel for the parties.

3. Impugned in the petition is the notification dated 18/12/2018 issued by the respondent No.1 thereby granting exemption in favour of the respondent No.2-Board from the provisions of the Employees' State Insurance Act, 1948 (herein after referred as "the Act of 1948").

4. The facts necessary for deciding the petition are as under :

The petitioner-Employees State Insurance Corporation, which was established under Section 3 of the Employees State Insurance Act, 1948 (hereinafter referred to as 'the Act of 1948' for the sake of brevity) is required to act for the benefit of the employees in cases of sickness, maternity, suffering injury while in employment and certain other matters in relation thereto. Same is a welfare piece of legislation and also extend insurance cover to employees. Pursuant to the provisions under Section 26 of the Act of 1948, the establishment of Employees State Insurance Fund through the contributions made under the Act of 1948 is provided. Section 28 of the Act of 1948 contemplates purpose for which the funds may be expanded. The respondent no.1 is the appropriate Government under sub-Section1 of Section 2 of the Act of 1948 and is an authority for issuance of a notification granting exemption under Sections 87, 88, 90 and 91 of the Act of 1948. Similarly, the respondent no.2 is the statutory authority constituted under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981. The said Act was enacted with an object of regulating the employment of private security guards employed in the factories and private establishments and also to provide better service conditions and welfare measures. The said Act provides for framing of a scheme for the registration of the employees and security guards in the factories or establishments and also to provide general terms and conditions with regard to the welfare of the security guards. The respondent no.2-Board came to be covered under the provisions of the Act of 1948 and a communication to that effect was issued on 01.04.2004 directing implementation of the provisions of the Act of 1948 by the respondent no.2. Accordingly, a code was allotted to the respondent no.2.

5. The provisions of Sections 87 and 91-A also contemplate grant of exemption from the provisions of the Act of 1948. Consequently, the respondent No.2 applied for grant of exemption for a period from 2016 onwards. Such prayer for exemption was considered and granted from time to time and last exemption prior to filing of the petition appears to be granted vide notification dated 18/12/2018. Vide said notification, exemption is granted with retrospective effect i.e. from 15/07/2017 to 14/07/2018 by taking recourse to provisions of Sections 87 and 91A of the Act of 1948. While questioning the same, counsel for the petitioner made two-fold submissions. (a) neither Section 87 nor 91-A of the Act of 1948 contemplates grant of retrospective exemption, (b) apart from above, it is claimed that already the State Government has taken a stand of not granting exemption on earlier point of time since the exemption is granted contrary to the statutory provisions.

6. As against above, Shri Ghodeswar, learned Assistant Government Pleader would invite our attention to the stand of the respondent State Government. According to him, the exemption is granted from the date of the application. He would claim that as the grant of exemption is in the interest of members of the respondent No.2-Board, the State Government is justified in exercising the statutory powers of grant of exemption. He would as such urge that since exemption is to be granted from the date of application, it cannot be inferred that the powers are exercised with retrospective effect. He would draw support from the pleadings in paragraph 13 of affidavit of respondent No.1 which read thus :

> *" 13. The respondent No.1 humbly submits that, the State Government vide notification dated 18.12.2018 granted exemption to the respondent No.2 Board for the period from 15/07/2017 to*

14.07.2018. The respondent No.2 initially submitted the representation on 16.10.2017 to the State Government seeking exemption from the provision of the Act of 1948. Thereafter, the respondent No.2 submitted various representations to the State Government giving reminders for deciding the application towards grant of exemption from the provisions of the Act of 1948. The State Government i.e. respondent No.1 vide order dated 18.12.2018 granted re-exemption to the Board. The respondent No.2 humbly submits that timely application was made by the Board for grant of exemption and taking into consideration, the application and representation, the State Government granted exemption. The respondent No.1 humbly submits that the exemption granted by the State Government is in exercise of power under section 87 r/w section 91-A of the Employees State Insurance Act, 1948. The exemption is from the date of application and hence cannot be termed to the retrospective."

7. Counsel for the respondent No.2 would urge that the applicability of the Act of 1948 is an issue which is already subjudice before this Court. As such, this Court should defer hearing of the petition by tagging it with Writ Petition No.435/2019 which is pending adjudication. Apart from above, he would claim that the exemption is in the interest of the members and that being so, same is quite justified.

8. We have considered the submissions.

The perusal of record depicts that the respondent No.1 at the behest of the respondent No.2-Board has issued notification on 18/12/2018 thereby granting exemption from the provisions of Sections 87 and 91-A of the Act of 1948 for a period from 15/07/2017 to 14/07/2018. As such exemption is granted by issuing notification dated 18/12/2018, the same is granted with a retrospective effect as above response of respondents demonstrate that representation for grant of exemption was moved on 16/10/2017 and not prior to 15/07/2017 i.e. the date of grant of exemption.

9. The Act of 1948 is a beneficial social legislation which creates a fund, contributed by both the employees and employer (Section 26) to meet and provide for sickness, maternity and employment injuries to the injured employees (Section 28). The Apex Court in the matter of *Transport Corporation of India Versus Employees' State Insurance Corpn. and another* reported in ***(2000) 1 SCC 332***, has articulated the objective behind the Act of 1948 in paragraph 27 which has been quoted as under:

> *"27. Before parting with the discussion on this point, it is necessary to keep in view the salient fact that the Act is a beneficial piece of legislation intended to provide benefits to employees in case of sickness, maternity, employment injury and for certain other matters in relation thereto. It is enacted with a view to ensuring social welfare and for providing safe insurance cover to employees who were likely to suffer from various physical illnesses during the course of their employment. Such a beneficial piece of legislation has to be construed in its correct perspective so as to fructify the legislative intention underlying its enactment. When two views are possible on its applicability to a given set of employees, that view which furthers the legislative intention should be preferred to the one which would frustrate it………… "*

10. Now we are required to examine whether the exemption under Sections 87 and 91-A of the Act of 1948 can be granted with retrospective effect. Sections 87 and 91-A read thus :

> ***87. Exemption of a factory or establishment or class of factories or establishments*** *: The appropriate Government May, by notification*

in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment or class of factories or establishments in any specified area from the operation of this Act for a period not exceeding one year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time:

(Provided that such exemptions may be granted only if the employees in such factories or establishments are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act :

Provided further that an application for renewal shall be made three months before the date of expiry of the exemption period and a decision on the same shall be taken by the appropriate Government within two months of receipt of such application.

91-A. Exemptions to be either prospective or retrospective :- *Any notification granting exemption under section 87, section 88, section 90 or section 91 may be issued so as to take effect (prospectively) on such date as may be specified therein.*

11. The proviso to Section 87 contemplates as to the mode and manner in which an application for exemption has to be moved and the period within which the State Government must take a decision on the same. Admittedly, the impugned notification granting exemption is beyond the very scope of proviso to Section 87 of the Act of 1948.

12. We are required to be equally conscious of the fact that Section 87 once provides for calendar to be adopted in the matter of grant of deciding the prayer for exemption, such calendar being a part of the statute, is required to be followed by the respondents. It is a settled position of law that in case of exercise of statutory powers, if the statute provides for a particular procedure to be adopted, then such procedure must be adopted within the time-frame prescribed under

the said statute. It appears that the grant of exemption under the provisions of Sections 87 can be exercised only in case if benefits occur after the exemption by the employer, are more than the one which are extended under the Act which does not appear to be the case of the respondent No.2. At least to that effect no material is placed on record so as to establish that the respondent No.2 is extending benefit better than the one which are extended by the petitioner. Such grant of exemption under Section 87 of the Act of 1948 goes contrary to the proviso to Section 87 of the Act of 1948.

13. Apart from above, Section 91-A in categorical terms and expressly provides that exemption cannot be granted with retrospective effect. Similar view has also been taken in the matter of *Indian Coffee Workers' Co-op Society Ltd. Versus Secretary, Industries, Energy and Labour Department, Mumbai and another* reported in ***2019 (2) Mh.L.J. 219****,* wherein it is observed that in so far as section 91-A is concerned, it states that any notification granting exemption may be issued so as to take effect prospectively. Contrary to the aforesaid provision, the respondent No.2 has passed the impugned notification granting exemption with retrospective effect that too without furnishing any reasons.

That being so, as the impugned notification granting exemption issued on 18/12/2018 goes squarely contrary to the mandate provided under Sections 87 and 91-A of the Act of 1948 being expressly illegal, is hereby quashed and set aside.

14. Rule is made absolute in aforesaid terms with no order as to costs.

(Mrs Vrushali V. Joshi, J.) **(Nitin W. Sambre, J.)**