IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON : 27.03.2025
PRONOUNCED ON : 09.04.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No.8528 of 2020
and
WMP No. 10301 of 2020

M/s. Ninety Nine Beedi Factory
Rep by its Proprietor Mr.K.Azhar,
8, Commissary Bazar,
Vellore – 632 004. ….Petitioner

Vs.

1.The Government of Tamil Nadu
Rep. by its Principal Secretary,
Labour and Employment (L1) Department
Fort St.George,
Chennai – 600 009.

2.Employees State Insurance Corporation
Rep. by its Assistant Director,
Regional Office (Tamil Nadu)
143, Sterling Road,
Chennai – 600 034. …Respondents

Prayer in WP:

To issue a Writ of Certiorarified Mandamus or any other Order, Direction in the nature of a Writ to call for the records of the 1st Respondent culminating in G.O.(D) No.284 Labour and Employment [1] Department dated 03.06.2020 and quash the same and consequently direct the 1st Respondent herein to accord the Petitioner, renewal of the exemption from the provisions of the ESI Act, 1948 for the period between 10.01.2019 and 09.01.2020 and pass such further or other order or orders as may be deemed fit and proper in the circumstances of the case.

Prayer in WMP

To stay the operation of the G.O.(D) No.284 Labour and Employment [L1] Department dated 03.06.2020 pending disposal of this Writ Petition and for such further or other order or orders as may be deemed fit and proper in the circumstances of the case.

Appearance of Parties:

For Petitioner: Mr.K.M.Aasim Shehzad, Advocate
For BFS Legal

For Respondent 1: Mr.P.Muthukumar, AAG XI
assisted by Mr.R.Kumaravel, AGP
For Respondent 2: Mr.K.Prabakar, Advocate

JUDGEMENT

Heard.

2. The writ petition has been filed by a Beedi manufacturing unit

challenging the order of the State Government issued in G.O.(D) No. 284, Labour and Employment Department, dated 03.06.2020, whereby the Government rejected the petitioner's request for exemption from the provisions of the Employees' State Insurance Act, 1948, under Sections 87, 88, and 91-A for the periods from 10.01.2019 to 09.01.2020 and from 10.01.2020 to 09.01.2021. It may be noted that the impugned order erroneously refers to the first period as ending on 09.01.2012, which is a typographical error.

3. When the writ petition was listed on 25.06.2020, the learned Additional Government Pleader took notice on behalf of the State Government, and notice was ordered to the Employees' State Insurance Corporation. Thereafter, the first respondent filed a counter affidavit, dated Nil of 2021. The Employees' State Insurance Corporation is represented by its panel counsel.

4. The principal contention of the petitioner is that the first respondent has, as a matter of consistent administrative practice, been granting periodical exemptions to Beedi manufacturers from the operation of the ESI Act, and that such exemptions were routinely extended from time to time. In support of this claim, the petitioner refers to a series of Government Orders granting exemptions covering the period from 01.01.2000 to 09.01.2019. It is submitted

that the impugned G.O. represents a mechanical and non-application of mind in rejecting the petitioner's request.

5. The petitioner further relies on the orders passed by this Court dated 07.01.2020 in W.P. Nos. 18314 and 18316 of 2019, wherein, in view of the exemption having been granted during the pendency of those writ petitions, the same were dismissed as infructuous. The petitioner also refers to an earlier instance when it was compelled to approach this Court in W.P. No. 5123 of 2017. That writ petition was disposed of by order dated 27.04.2017, directing the Government to consider the petitioner's representation. Pursuant to that direction, the Government granted exemption by issuing G.O.(D) No.365, Labour and Employment Department, dated 01.06.2018.

6. It was further contended that the workers engaged in the beedi industry, along with their trade unions, have accepted the welfare schemes and measures specifically tailored for the industry, which is governed by the provisions of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966.

7. In this regard, specific reference is made to Ground No. (ix) of the writ petition, which reads as follows:

"The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, The Beedi Workers Welfare Fund Act, 1976 and The Beedi Workers Welfare Cess Act, 1976 address the specific requirements of the beedi workers / rollers as the said legislations have been enacted keeping in mind their requirements and how the beedi industry functions whereas the ESI Act is a general welfare mechanism and is not suitable to address the requirements and protect the interest and welfare of the beedi workers / rollers. It is also relevant to state here that the present welfare and benefit schemes have been drawn up only after long discussions and deliberations with the labour unions and the workers are also agreeable to the welfare schemes that have been put in place by the establishment at present. The 1st Respondent ought to have seen the fact that the 'Beedi Employees' will be governed under the Beedi and Cigar Workers (Conditions of Employment) Act and their best interests will be protected therein for which 'cess' is levied for the 'Beedi Employees' under the said Act. While so, warranting the 'Beedi Employer' to pay ESI contribution is nothing but Double Taxation and for the said reason this Impugned Order is liable to be set aside."

8. In response to the petitioner's claims and opposing the relief sought, the first respondent, in paragraphs 9 and 10 of the counter affidavit, has made the following averments:

"9....The Employees State Insurance Scheme covers both economic and physical distresses under all foreseeable contingencies, through full medical care not only to the insured person but also to their eligible family members and adequate cash compensations with the aid of its own massive infrastructure established across the country. The first respondent has exercised the authority vested as per section 91-A of the Employees State Insurance Act, 1948.

10.It is submitted that the Government have examined the benefits provided to the employees as claimed in the applications with that of the benefits given by the Employees' State Insurance

Corporation. From the comparative study, it is found that most of the benefits provided by the Employees State Insurance Corporation are superior to the benefits provided by the Management viz., the Sickness benefit, Extended Sickness benefit, Disablement benefit, Dependant benefit, Maternity benefit, Funeral expenses and Vocational / Rehabilitation Allowance. The benefits provided by Employees' State Insurance Corporation viz Unemployment allowance, Medical bonus and coverage of disabled person drawing wages up to Rs.25,000/- are not given by the management. As per section 87 of the ESI Act, 1948 exemption may be granted only if the employees in factories of establishments are otherwise in receipt of benefits substantially similar or superior to the benefits provided under the ESI Act, 1948. On inspection of the factory by the Labour department officials, it has been observed that no medical facilities are being provided by the management to the workers and the Commissioner of Labour has recommended for the rejection of the applications seeking exemptions from the ESI Act, 1948. It has therefore been concluded that the workers will get more benefit if enrolled under ESI Corporation and the request made by M/s. Ninety Nine Beedi Factory for exemption has been rejected as per the provisions under sections 87, 88 read with 91-A of the ESI Act, 1948."

9. In support of the averments made in the counter affidavit, the learned Additional Advocate General appearing for the State produced the original file pertaining to the impugned Government Order. Considering the frequent risk of original files being misplaced during circulation, a photocopy of the relevant file was also furnished to the Court.

10. A perusal of the file clearly substantiates the stand taken by the State in

the counter affidavit. It reveals that due consideration was given to the petitioner's request, and the decision was taken after due application of mind. The file also discloses that the matter was placed before and approved by the Hon'ble Minister for Labour. In such circumstances, the allegation that the impugned order is mechanical or suffers from non-application of mind is without merit and unsustainable.

11. The learned counsel for the petitioner placed reliance on the decision of the Division Bench of this Court in **Tamil Nadu State Marketing Corporation Ltd. v. Employees State Insurance Corporation (W.A. No. 1906 of 2010, dated 18.10.2014),** wherein the Court held that the Government had failed to consider relevant materials while rejecting the request for exemption. However, it is submitted that the said decision is distinguishable on facts, as in the present case, the Government has duly considered all relevant materials before passing the impugned order.

12. On the other hand, the learned counsel appearing for the second respondent placed reliance on the following three decisions:

a. **Seyadu Beedi Company, Tirunelveli Dist. Vs. Regional Director, ESIC, Madras reported in 1995 (1) CTC 261**

b. Muruga Home Industries Vs. Employees State Insurance Corporation reported in 2002 (2) LLJ 590

c. M/s. A.Habeebur Rahman Sons 'S'Beedi Manufacturers Vs. M/s.V.Abdul Jabber & Sons and ors. in W.A.No.279 of 2023 dt. 18.6.2024 (Division bench)

13. In the first two decisions relied upon, the Courts held that the welfare benefits extended through the cess collected from beedi manufacturers cannot be equated with the comprehensive medical benefits available under the ESI Act.

14. In the third decision rendered by a Division Bench, it was observed that the learned Single Judge had erred in comparing the benefits offered by the management with those under the ESI Act, and that such benefits were in no way superior to or on par with the statutory entitlements provided under the Act.

15. It is noticed that there is yet another lacunae in the writ petition filed by the management. In seeking exemption under a welfare legislation, it was incumbent upon the petitioner to implead the workmen or their trade union as parties to the proceedings. In the absence of such necessary parties, effective adjudication of the issue is not permissible in law.

16. In this regard, reference may be made to the judgment of the Hon'ble Supreme Court in ***State of Tamil Nadu v. K. Sabanayagam*, reported in (1998) 1 SCC 318**, wherein it was held that, before granting any exemption under welfare legislation, the Government is duty-bound to hear the affected workmen who have a vital interest in the continued application of such statutory benefits. Although the said decision arose under the Payment of Bonus Act, the principle laid down therein applies with equal force to the present case.

17. The Hon'ble Supreme Court, in **Employees' State Insurance Corporation v. Bhakra Beas Management Board & Another, reported in (2009) 10 SCC 671**, has categorically held that even in proceedings before the ESI Court under Section 75 of the ESI Act, where the question of coverage is in issue, the workmen must be impleaded either in their individual capacity or in a representative capacity.

18. In this context, it is apposite to extract the relevant portion of the said judgment, which read as follows:

> "This Court has recently held in Fertilizer & Chemicals Travancore Ltd. v. ESIC & Ors. 2009 (11) SCALE 766 as under:

> "5. It may be noted that in its petition before the EmployeesInsurance Court, the appellant herein only impleaded the Employees State Insurance Corporation and the District Collectors of Alleppey, Palaghat and Cannanore as the respondents but did not implead even a single workman as a respondent.
>
> 6.Labour statutes are meant for the benefit of the workmen. Hence, ordinarily in all cases under labour statutes the workmen, or at least some of them in a representative capacity, or the trade union representing the workmen concerned must be made a party. Hence, in our opinion the appellant (petitioner before the EmployeesInsurance Court) should have impleaded at least some of the persons concerned, as respondents."

19. The above-mentioned decisions were followed by a learned Single Judge of this Court, who dismissed a writ petition filed by the management seeking exemption from the applicability of the ESI Act, on the ground that the workmen had not been impleaded as parties to the proceedings. This view was taken in **Employees' State Insurance Corporation v. M/s. Pondicherry Agro Service and Industries Corporation Ltd.**, in **W.P. No. 19054 of 2008, dated 23.12.2010**, wherein the Court observed in Paragraphs 9 & 10 as follows:

> "9.It must be remembered that the Act has been enacted for the benefit of the workers to give them medical benefits, which have been mentioned in Section 46 of the Act. Hence, the principal beneficiary of the Act is the workmen and not ESI Corporation. ESI Corporation is only the agency to implement and carry out the object of the Act and it has nothing to lose if the decision of the Employees Insurance Court is given in favour of the employer. It is only the workmen who have to lose if a decision is given in favour of the employer. Hence, the workmen (or at least some of

> them in a representative capacity, or their trade union) have to be necessarily made a party/parties because the Act is a labour legislation made for the benefit of the workmen.
>
> 10.In the present case the workmen concerned were not made parties before the Employees' Insurance Court, nor was notice issued to them by the said court."

20. The matter was carried in appeal before a Division Bench, and the judgment of the learned Single Judge was affirmed in **Writ Appeal No. 1271 of 2011, dated 17.12.2014.** The relevant portion of the judgment reads as follows:

> "In the present case, we are of the considered view that the appellant Corporation has not been in a position to show that the benefits provided by the first respondent to its employees are inferior in nature, as compared to those which are contemplated under the provisions of the Act. Even otherwise, it is not for this Court to conduct a roving enquiry into such contradictory claims, under Article 226 of the Constitution of India, especially, when the employees concerned, who are said to be the beneficiaries, are not before this Court. In such circumstances, we find it appropriate to dismiss the writ appeal, as it is devoid of merits. Accordingly, the writ appeal stands dismissed."

21. In light of the foregoing discussion, this Court finds that the writ petition is devoid of merit and is liable to be dismissed. Accordingly, W.P. No. 8528 of 2020 stands dismissed. Consequently, W.M.P. No. 10301 of 2020 is also dismissed. There shall be no order as to costs.

09.04.2025

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

To
1.The Principal Secretary to Government of Tamil Nadu,
Labour and Employment (L1) Department ,
Fort St. George, Chennai – 600 009.

DR. A.D. MARIA CLETE, J

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2.The Assistant Director,
Employees State Insurance Corporation,
Regional Office (Tamil Nadu),
143, Sterling Road,
Chennai – 600 034.

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