IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 6330 of 2015

M/s. Bharat Caterers, through one of its Partners, Abdul Mattalib Khan, Son of Late Abdul Khalil Khan, resident of 25, Dhatkidih Market, P.O.& P.S. Bistupur, Town Jamshedpur, District East Singhbhum, (Jharkhand)

… … Petitioner

Versus

1. The State of Jharkhand, through the Secretary, Department of Labour, Employment and Training, Government of Jharkhand, Project Bhawan, P.O.- Dhurwa, P.S.-Jagarnathpur, District- Ranchi (Jharkhand).
2. Employees State Insurance Corporation, through the Regional Director, Regional Office, Employees State Insurance Corporation, P.O. & P.S.- Namkum, District-Ranchi (Jharkhand).
3. Deputy Director, Employees State Insurance Corporation, Regional Office, Employees State Insurance Corporation, P.O. & P.S.- Namkum, District-Ranchi (Jharkhand).
4. Assistant Director, Employees State Insurance Corporation, Regional Office, Employees State Insurance Corporation, P.O.& P.S.-Namkum, District-Ranchi (Jharkhand). **… … Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Ms. Rashmi Kumar, Advocate
For the Opp. Party : Mr. Ashutosh Anand, AAG-III
: Ms. Rishi Bharti, AC to AAG-III

C.A.V. on 18.06.2026 **Pronounced on 26.10.2026**

1. This writ petition has been filed for the following reliefs: -

"(a) For issuance of appropriate writ(s)/order(s)/, direction(s) quashing the office order as contained in Memo No. 2446 date 12.11.2015 (Annexure 26) issued by the respondent No. I whereby and whereunder the application filed by the petitioner seeking exemption under Section 88 read with 91A of the Employees' State Insurance Act, 1948 for the period November, 2014 to October, 2015 has been rejected.

b) For issuance of a writ of mandamus or in nature thereof commanding/ directing the respondents to allow the application of the petitioner filed under Section 88 read with Section 91A of the Employees' State Insurance Act,

1948 for exemption from applicability of the provisions of the Act of 1948;

c) For issuance of an appropriate writ(s)/order(s)/ direction(s) declaring that the provisions of the ESI Act, 1948 is not applicable to the Establishment of the petitioner- canteen; and

d) For issuance of any other relief or reliefs as Your Lordships may deem fit and proper for which the petitioner is very much entitled under the facts and circumstances of the case and in the interest of justice."

2. The learned counsel for the petitioner has submitted that the impugned order at Annexure-26 is relating to the period November, 2014 to October, 2015 and each of the grounds for rejecting the application for exemption from contribution to ESIC is incorrect. A reference has been made to paragraph 47 of the writ petition wherein grounds have been raised to challenge each of the reasons.

3. The learned counsel submits that the petitioner is a partnership firm and a licensed contractor for the purpose of cooking and serving diets, Nasta, meals and tea etc. to the indoor patients of Telco Hospital and Nurses Home and to the employees of the hospital and for the allied work at Jamshedpur. The petitioner is not a factory which may be an establishment.

4. A reference has been made to the provision of section 1(5) of the ***Employees State Insurance Act, 1948 (hereinafter referred to as ESI Act, 1948)*** to submit that no notification has been issued in terms of that section to extend the provision of ESI Act, 1948 to the petitioner and therefore entire action of the respondent ESIC is ex-facie without jurisdiction.

5. The learned counsel has submitted that the petitioner has been filing petition seeking exemption before the authority from time to time and when the petition seeking exemption was pending, one writ petition was filed being W.P. (C) No. 351 of 2007 which was disposed of on 02.03.2007 stating that the petitioner's application was still pending before the authority and the matter was remitted to the

Secretary, Department of Labour, Employment and Training, Government of Jharkhand, to consider the application for exemption. Pursuant thereto, an order rejecting the application seeking exemption was passed vide memo no. 364 dated 31.03.2009 (Annexure-15) which was challenged before this court in W.P. (C) No. 2213 of 2009 which was disposed of vide order dated 24.11.2011 (Annexure-16) and the matter was remitted back to the authority for passing fresh order in accordance with law. She submits that it has been mentioned in the writ petition that no fresh order was passed. However, the petition seeking exemption for the period involved in this case i.e., November, 2014 till October, 2015 has been rejected by the impugned order.

6. The learned counsel submits that the employees under the petitioner are enjoying all the facilities which are available to the employees of Tata Motors i.e., Telco Ltd. The learned counsel has further submitted that the principal employer of the petitioner is Telco Ltd. and since the employees are enjoying all the facilities, therefore, exemption granted in favour of Telco Ltd. is also applicable to the present petitioner. She has submitted that this aspect of the matter if taken into consideration would show that the impugned order is ex-facie perverse and cannot be sustained in the eyes of law.

7. The learned counsel for the petitioner upon a query of this court has not been able to refer to any paragraph of this writ petition to show that even Telco Ltd. was exempted for the period involved in the present case.

8. The learned counsel appearing on behalf of the petitioner has further referred to an affidavit dated 30.01.2015 as contained in Annexure-20 and has submitted that this affidavit would show that all the facilities are available which have been shown to be not available to the employees of the petitioner in the impugned order.

9. The learned counsel then referred to the application filed by the Telco Workers Union to the Principal Secretary, Department of Labour, Employment and Training wherein they have also filed application to grant exemption to the employees under Section 88 of

the ESI Act for the period from 1st of November, 2014 to 31st October, 2015 which is a letter dated 29.01.2015. The learned counsel submits that the application filed by the Telco workers Union was rejected without giving any hearing, however, the Telco Workers Union is neither a party before this court nor the order of rejection in the application filed by Telco Workers Union has been placed on record.

10. The learned counsel refers to Annexuure-22 which is document relating to settlement arrived at between the management of the petitioner and their workman engaged in the canteen located in Telco Hospital represented by Telco Workers Union. She has submitted that Telco Workers Union having represented before the authority with respect to the employees of the petitioner seeking exemption for the petitioner, the parties should have been noticed and then the order could have been passed.

11. However, during the course of argument, the learned counsel for the petitioner could not point out any clause in the settlement relating to any kind of medical facilities which are prime concern of the respondent ESIC in the present case.

12. ***The learned counsel appearing on behalf of the ESIC*** has submitted that there is nothing on record and not even a statement that the employees of the petitioner are the employees of Telco Ltd. and therefore exemption, if any, granted to Telco Ltd. has no bearing in this case. The learned counsel has referred to the counter affidavit and has submitted that each of the grounds mentioned in paragraph 47 of the writ petition has been specifically dealt with in the counter affidavit in paragraph 20, 28 to 35 and have been denied and such statements made in the writ petition is neither based on any materials placed on record nor any such material was placed before the authority. It is not the case of the petitioner that such materials were placed before the authority and the same has not been considered. The learned counsel has then referred to paragraph 8 of the counter affidavit to submit that the petitioner is covered by Factories Act as they are using power and under such circumstances, there is no need for issuance of a separate notification under Section 1(5) of the ESI

Act. He submits that the argument of the petitioner on that basis that the entire proceeding is without jurisdiction is not sustainable in the eyes of law. The learned counsel has also submitted that the petitioner is now paying contribution to the ESIC with respect to those persons who are covered under the Act.

13. The learned counsel for the petitioner does not dispute this fact that as of now the petitioner is paying contribution to ESIC with respect to those who are otherwise covered under the Act.

Findings of this Court

14. The impugned order dated 12.11.2015 (Annexure-26) reveals that the application filed by the petitioner seeking exemption under section 88 read with section 91-A of the ESI Act, 1948 for the period November, 2014 to October, 2015 has been rejected by citing as many as 6 reasons. Apart from challenging the impugned order on merits, the petitioner has also sought a declaration that the provision of ESI Act, 1948 is not applicable to the establishment of the petitioner canteen by submitting that the petitioner is not a factory, but it is a canteen and therefore, the provision of ESI Act, 1948 is not automatically applicable without there being notification issued under section 1(5) of the ESI Act, 1948. It is also their case that the compliance of the provisions of the acts and the rules and regulations framed thereunder at the first instance is mandatory for the factories under section 1(4) of the ESI Act, 1948 and not for other establishment without there being any notification under section 1(5) of the ESI Act, 1948.

15. ***So far as the prayer seeking a declaration that the provision of ESI Act, 1948 is not applicable to the petitioner*** is concerned, the respondent, in their counter-affidavit, have specifically stated that it is an admitted position that the petitioner canteen is associated with TELCO hospital and is carrying out business of canteen for the purposes of cooking and serving diets, Nasta, meals and tea etc. to the indoor patients of Telco Hospital. The petitioner is using electricity and therefore, it is covered within the definition of 'factory' under the

Factories Act, 1948. Paragraphs 17 and 18 of the counter-affidavit filed by the respondent nos. 2 to 4 are quoted as under:

> *"**17.** That the statements made in para 4 is misleading and hence denied. It is stated that the petitioner establishment carries on manufacturing activities with the aid of power and hence is covered under the purview of the Employees State Insurance Act, 1948.*
>
> ***18.** That the statements made in para 7 to 13 is denied and disputed. It is stated that the petitioner establishment carries on manufacturing activities with the aid of power and hence is covered under the purview of the Employees State Insurance Act, 1948 and there is no separate requirement of notification u/s 1(5) of the ESI Act as being indicated by the petitioner."*

16. Sub-section (4) of section 1 of the ESI Act, 1948 is as under:

> *"1. Short title, extent, commencement and application. –*
> *(1)…*
> *(2)…*
> *(3)…*
> *(4) It shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories:*
>
> *Provided that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act."*

17. Definition of 'factory' as mentioned in section 2(12) of the ESI Act, 1948 is as under:

> *"(12) "factory" means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a railway running shed;"*

18. Section 14-AA of the ESI Act, 1948 defines 'Manufacturing process' to be the same as defined under Factories Act, 1948.

19. 'Manufacturing process' as defined in section 2(k) of the Factories Act, 1948 is as under:

> *"(k) "manufacturing process" means any process for—*
> *(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or*
> *(ii) pumping oil, water, sewage or any other substance; or*
> *(iii) generating, transforming or transmitting power; or*
> *(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or*
> *(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or*
> *(vi) preserving or storing any article in cold storage;"*

20. The conjoint reading of the aforesaid provision reveals that the establishment of the petitioner would be covered under the definition of 'Factory' as defined under the ESI Act of 1948. No rejoinder has been filed to the counter-affidavit. In view of the admitted fact that the petitioner establishment carries on manufacturing activity with the aid of power, it is a factory within the meaning of Factories Act, 1948 and hence no separate notification under section 1(5) of ESI Act, 1948 is required to make the Factories Act applicable to the petitioner establishment.

21. Further, the fact remains that the petitioner themselves had applied for exemption, which has been rejected by the impugned order (Annexure- 26). Further, as per supplementary affidavit dated 20.07.2022 filed by the petitioner, the petitioner is depositing its contribution under the ESI Act, 1948 since 2017.

22. In the aforesaid discussions and the circumstances, the prayer of the petitioner seeking a declaration that the establishment of the petitioner is not covered by the ESI Act, 1948, is devoid of any merits and such contention raised on behalf of the petitioner is hereby rejected.

23. ***So far as the point regarding non-issuance of notice to the employees through their union while considering the application seeking exemption is concerned***, this Court is of the view that the concerned authority has considered the case of the petitioner as put

forth before the authority to claim exemption and no adverse order has been passed against the employees. Rather, the petition seeking exemption has been rejected.

24. ***So far as the merits of challenge to the impugned order*** (Annexure-26) is concerned, there are altogether 6 grounds mentioned in the impugned order for rejection of the application seeking exemption. The 1st ground is that the petitioner is getting the medical facility only through Tata Motors hospital and they do not have any medical infrastructure of their own nor they have any tie-ups with other famous hospitals. It has also been mentioned in the 1st ground of rejection itself that the petitioner is running a canteen in Tata Motors hospital but the same is not a part of Tata Motors hospital and under such circumstances, upon completion of contract of the petitioner with Tata Motors hospital, the future of its employees will be completely insecure/uncertain.

25. With respect to the aforesaid ground, the stand of the petitioner, as pointed out by the learned counsel appearing on behalf of the petitioner, is mentioned in paragraph 47(b) of the writ petition wherein it is stated that the petitioner has been running the canteen since 1969 and further, in paragraph 47(c) of the writ petition, it has been stated that the Act does not require the establishment to have their own hospital and medical infrastructure. It has been asserted that the authority has failed to appreciate that Tata Motors hospital has been recognized to ESI Corporation as an important and credible medical institution and the ESI Corporation itself has recognized Tata Motors hospital as a good hospital and the petitioner is in the process of tie-up arrangement with the said Tata Motors Hospital and has also made arrangement with about 10/12 other big and important hospitals for treatment of insured persons. It has further been stated by the petitioner that the authority is more concerned of providing security of service to the employees of the petitioner rather than looking into the standard of medical benefits provided to them as long as they are in service. With respect to termination of contract between the petitioner and Tata Motors Hospital resulting in uncertainty of the future of

employees is concerned, it has been asserted by the petitioner that in the circumstances where the establishment is closed down, the employment will automatically come to an end.

The respondents have filed counter affidavit and have stated that the ESI Code was allotted to the petitioner on 24.02.2005 itself and have rightly taken a stand that admittedly the petitioner does not have a hospital and further, no tie up document has been brought on record to substantiate the averments in the writ petition. It has also been asserted that ESI Act is a Social Security legislation and caters during and post-employment too.

The petitioner has not filed any rejoinder to the counter affidavit.

26. This Court is not satisfied with the grounds of challenge with respect to 1st reason mentioned the impugned order, inasmuch as, there is no dispute that the petitioner is a separate establishment having a separate ESI code and no material is available on record to show that the petitioner has any tie-up arrangement with Tata Motors hospital, rather the petitioner has taken a specific stand that the petitioner is in the process of tie-up arrangement with the said Tata Motors hospital. Further, the records do not reflect as to whether Tata Motors hospital by itself has been extended any exemption for the period involved in this case so as to extend such benefit of exemption to the petitioner who claims to be availing the medical facilities from Tata Motors hospital. As per the provisions of ESI Act, 1948, the employees stand protected and are entitled to medical benefits even after their superannuation and therefore, in the impugned order, it has been rightly observed that once the contract of canteen work between the petitioner and Tata Motors hospital is over, the future of the employees of the petitioner would be completely uncertain. The reference to uncertain future is essentially not in relation to service security, rather it is in relation to the medical facility post-retirement or post termination of contract for canteen between the petitioner and Tata Motors hospital.

27. So far as the 2nd reason for rejection, as mentioned in the impugned order (Annexure-26) is concerned, it has been mentioned in

the impugned order that the employees of the petitioner are not being given the benefit of cashless facilities. To this, in paragraph 47(e) of the writ petition, it has been mentioned that the treatment either at Tata Motors hospital or in any other hospital, if so required, is made available to the employees on cashless basis and that the employees are not required to make any payment to the hospital providing treatment and the cost of treatment is free to the employees. However, in response to this statement made in paragraph 47(e) of the writ petition, the counter-affidavit reveals that no document has been brought on record to substantiate such averment. During the course of hearing also, no such document could be pointed out by the petitioner with respect to cashless facilities. It has further been stated in the writ petition that Tata Motors hospital was granted exemption in the past with one pre-condition that the benefit of treatment extended to the employees at Tata Motors hospital should be cashless which is being adhered to by Tata Motors hospital in connection with their employees as well as the employees of the petitioner. However, no document with respect to any kind of arrangement between the petitioner and the Tata Motors hospital has been placed on record to substantiate the averments made in the writ petition regarding cashless facilities.

28. With respect to the 3rd ground for rejection of the claim of exemption, the impugned order reveals that the employees of the petitioner company are entitled to only 6 days' medical leave, but the employees covered under the ESI Act, 1948 are entitled to 91 days of medical leave. With respect to the 4th ground in the order of rejection as contained in annexure- 26, it has been mentioned therein that no document was produced with respect to any policy with regard to extended sickness benefit and enhanced sickness benefit, but to the employees covered under the ESI Act, 1948, both the benefits are available and merely because the company has extended certain medical benefit to two of its employees, the same cannot be taken as a matter of policy of the petitioner.

29. It has been stated by the writ petitioner in paragraph 47(g) that whenever required, the employer has provided considerable long

period of leave to the employees on medical grounds and abstention from work on false medical ground, as is prevalent in practice, results in abstention from duty causing bottleneck in production and lowering down productivity and production. The said ground of challenge by the petitioner is also not acceptable. There is no specific provision for medical leave to the employees of the petitioner equivalent to what is provided under the ESI Act, 1948 and merely because one or the other person has been extended long medical leave, the same does not satisfy the requirement of law to say that the employees of the petitioner have similar medical facilities as that of the establishments who avail the medical facilities and medical leave under the ESI Act, 1948. This Court is of the considered view that mere extension of certain sickness benefit to two employees on ad-hoc basis does not satisfy the requirement of law unless the benefit which is available to the employees covered under the ESI Act, 1948 is available to the employees of the petitioner through a policy decision and as a matter of right.

30. The 5th ground which has been assigned while passing the impugned order as contained in annexure- 26 is that the petitioner is not providing maternity benefit to the employees. The petitioner has contended that since there is no female employee working in the establishment of the petitioner, there is no need for providing for maternity benefits. The contention of the petitioner was held to be not acceptable as in case of future employment of a female employee, the terms and conditions of employment would be against her.

In response to this ground for rejection of application seeking exemption, the petitioner has simply stated that as and when a female is employed, the benefit would be extended to female employees.

This court is of the considered view that absence of any female employee is not an acceptable reason for not having any provision for maternity benefits. In absence of provision of maternity benefits as a part of terms and conditions of employment as and when a female employee joins the petitioner, she may not be able to avail maternity benefits as a matter of right.

In absence of any such benefit included in the terms and conditions of employment, it cannot be accepted that in absence of any female employees, there is no need to have any maternity benefit under the terms and conditions of employment.

31. Another ground which has been taken by the authority while passing the order contained in Annexure- 26 is that the petitioner has never been granted any such exemption earlier. The said observation and the ground of rejection is not acceptable in view of the fact that every period seeking exemption has to be considered on its own merits depending upon the facilities which are available for such period.

32. Considering the totality of the facts and circumstances of this case, this Court is of the considered view that the petitioner has not been able to make out a case in their favour calling for any interference in the impugned order rejecting the application seeking exemption under the ESI Act, 1948. Consequently, the present writ petition is hereby ***dismissed***.

33. Pending interlocutory application, if any, is closed.

34. Interim order, if any, is vacated.

(Anubha Rawat Choudhary, J.)

Date of Judgment: 26.10.2026
Pankaj
Date of Uploading: 27.10.2026