IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(L) No. 2199 of 2021

TML Drivelines Limited (Now Tata Motors Limited) a Company registered under the Companies Act, having its office at P.O. & P.S.- Telco, Town- Jamshedpur, District- East Singhbhum (Jharkhand) through its General Manage (Legal Services) Sri Rajesh Kumar Das, aged about 56 years, son of Late P.N. Das, resident of C/15, Vivekanand Road, P.O.-Baridih, P.S-Sidhgora, Town Jamshedpur, District-East Singhbhum (Jharkhand). **… … Petitioner**

-Versus-

1. The State of Jharkhand
2. Principal Secretary, Department of Labour, Employment & Training, Government of Jharkhand, Nepal House, P.O.- Doranda, P.S.- Doranda, District-Ranchi (Jharkhand)
3. Employees' State Insurance Corporation, through the Regional Director, Regional Office, Employees' State Insurance Corporation, Panchdeep Bhawan, P.O. & P.S.- Namkum, District-Ranchi (Jharkhand)
4. Assistant Director (Ins.I) Employees' State Insurance Corporation, through the Regional Director, Regional Office, Employees' State Insurance Corporation, Panchdeep Bhawan, P.O. & P.S. Namkum, District-Ranchi (Jharkhand) **… … Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Amit Kumar Das, Sr. Advocate
: Mr. Shivam Utkarsh Sahay, Advocate
: Mr. Kanishka Deo, Advocate
For the Respondents : Mr. Ashutosh Anand, Advocate

Reserved on 30.06.2026 ***Pronounced On:18.11.2026***

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

For issuance of appropriate writ(s)/order(s)/direction(s) quashing the order dated 12.03.2021 ***(Annexure 7)*** *as contained in Memo No. 352 issued by the Principal Secretary, Department of Labour, Employment & Training, Government of Jharkhand (respondent No.2), whereby and whereunder he has been pleased to reject the application for grant of exemption sought under Section 87, 88 read with 91A of the Employees' State Insurance Act, 1948 for the period January, 2014 to December, 2014 and January, 2017 to March, 2017.*

2. ***Learned counsel for the petitioner***, while referring to the impugned order contained in Annexure-7 of the writ petition, has referred to the 1st reason for rejection of claim for exemption and submitted that it has been mentioned therein that the ESI Hospitals have the facility of tie-up and the patient can be treated at Secondary/Super Specialty Hospital at any place all over India, but the employees of the petitioner, on the other hand, are availing the facilities of the hospital of Tata Motors Limited and the employees can also avail the facility of further treatment by way of referral arrangement which can be referred to only certain prescribed places. The learned counsel has submitted that the respondent-ESIC is playing with the words and has referred to Regulation 96C of Employees State Insurance (Central) Regulation 1950 and that even as per Regulation 96C a reference has to be made for treatment in higher or Super Specialty Hospital and a reference is to be made by the corporation or the State Government subject to satisfaction of certain conditions mentioned therein. He has submitted that doctor does not have complete say in the matter of reference, the reference has to be done by the corporation or the State Government and such a situation may consume much more time as compared to the reference being made by the doctor with respect to the facilities being provided to the employees of the petitioner company through the facilities available to the employees of Tata Motors Limited at their hospital.

3. Learned counsel for the petitioner while referring to the ***2nd reason*** for rejection of their claim has submitted that the impugned order wrongly mentions that total number of leave available for the purposes of sickness benefit is only 47 days and for that he has referred to internal page No. 48 of the writ petition which gives the list of leaves which are available for and on account of sickness benefit. He has submitted that Casual Leave for 7 days; Privilege Leave on account of ill-health is 30 days, which is subject to accumulation up to 240 days; Sick Leave is 10 days, subject to accumulation up to 150 days; Maternity Leave is 180 days; Miscarriage Leave is 42 days;

Special Leave is 60 days and leave for Family Planning Operation is 4 days. He has submitted that the authorities have not considered the sickness benefits which have been provided to employees of the petitioner in totality and therefore, the 2nd reason for refusal of extending the benefit of exemption to the petitioner is perverse.

4. Learned counsel has further submitted that as per the provision of ESI, the total wages payable is only to the extent of 70% of average daily wages, but as per internal page No. 49 of the writ petition, all the leaves are to be availed with full wages. The entire provision with respect to payment of wages relating to sickness benefit as provided in page No. 49 is quoted as under:-

> *"All the leave are with full wages.*
> *Sick Leave along with Special Leave given for illness far exceeding the benefits as provided in the ESI Act.*
> *In case of sickness the employee is allowed Sick leave to the extent of his/her accumulation of Sick Leave. If the Sick leave is exhausted he/she is allowed PL for the period of sickness to the accumulated extent.*
> *"All the above mentioned leave with wages". There are no eligibility criteria for being entitled for Sick Leave and like under ESI employees are not required to pay any contribution for availing the quantum of leave with wages. The above leave is At Full Rate of the salary and not on average rate as under ESI."*

5. Learned counsel for the petitioner has then referred to the ***3rd reason*** for rejection of the claim for exemption and has submitted that the same deals with the extended sickness benefit and has referred to page No. 49 of the writ petition. He has submitted that it has been mentioned therein that in the impugned order as per ESI, the maximum benefit is for 730 days with average daily wage to the extent of 80 % and it has been mentioned that so far as the petitioner company is concerned, the leave up to 60 days has been provided and so far as further extension of leave is concerned, the same is subject to confirmation by the higher authority, but the petitioner has not made any clarification as to for how many days it can be extended. The learned counsel for the petitioner has submitted that as per the service

rule, the extension can be for unlimited period and there is no upper limit fixed and certainly that it depends upon the need of the employee concerned.

6. The learned counsel has submitted that the benefit, which has been provided to the employees of the petitioner, is much better than whatever has been prescribed under the ESI. Learned counsel has then referred to Regulation 44 onwards.

7. Learned counsel has referred to Chapter III of the Regulation of 1950 and has submitted that a huge number of formalities and even the satisfaction of the employer is contemplated in order to avail the benefits. He has submitted that merely because some approval is required from the higher authority, the same does not mean that there is any impediment in availing the benefit with respect to the person who is in need of such benefit and there has to be some scrutiny for even extended period.

8. He has also referred to Regulation 52(A) to submit that some scrutiny has also been provided under Regulation of 1950 and then some certification is required in terms of Regulation 51 subject to Regulation 53.

9. Learned counsel for the petitioner, while referring to ***4th reason*** for refusal to extend the benefit of exemption, has submitted that the only reason which has been mentioned therein that the employees of the company are entitled to benefit under Workmen's Compensation Act and as per the provisions of the ESI Act 1948, an employee is entitled for benefit either under Employees State Insurance Act 1948 or under Workman Compensation Act 1923.

10. He has referred to the benefit which is extendable to the employees of the petitioner company at page No.50 of the writ petition and has submitted that at the top, it is mentioned that all the employees of the company are covered under the Employees Compensation Act, 1923 and further benefits have been provided therein. The compensation under Workman's Compensation Act is also payable whenever applicable, this is over and above the further

facilities which have been mentioned in the column. He has submitted that the impugned order completely ignores the further benefits which are available over and above the compensation under the Employees Compensation Act of 1923 and therefore, the reason assigned is apparently perverse.

11. Learned counsel for the petitioner has, in addition to the aforesaid submission, referred to the impugned order rejecting the claim of exemption of the petitioner for the year 2014 and 2017 has submitted that it is not in dispute that for the same service condition and for similar benefits, the petitioner has been extended the benefit of exemption for the year 2015 and 2016 and there is no change of circumstance and the claim for exemption cannot be left to the whims and fancies of the concerned authority as to who is dealing with the claim for exemption. He has submitted that once the exemption has been granted with respect to the year 2015 and 2016, there can be no reason to take a different view for the period involved in this case i.e. 2014 and 2017.

12. Learned counsel, at the end, has further submitted that the requirement of law is similar benefit and there is no such requirement to have the same/identical benefit. He has further submitted that on many aspects, the benefit being extended by the petitioner company is better than the benefit offered by ESIC.

13. Without prejudiced to the aforesaid submissions, learned counsel for the petitioner has referred to the preamble of the Act of ESI 1948 and has submitted that the whole purpose of the Act is to provide certain benefits to employees in case of sickness, maternity and ‘employment injury’ and to make provision for certain other matters in relation thereto. The learned counsel has submitted that all the employees have been availing the benefit provided to them by the employer and the employer has certainly incurred expenses for that purpose and now after so many years, it is not equitable to enable the respondents to collect amount for the period involved in this case for

which the claim for exemption has been rejected without actually providing any medical and other benefits under the Act of 1948.

14. The learned counsel has relied upon the judgment passed by the Hon'ble Supreme Court in the case of ***Employees' State Insurance Corporation and Others vs. Jardine Henderson Staff Association and Others*** reported in ***(2006) 6 SCC 581*** and has referred paragraph 58 of the aforesaid judgment, which is quoted as under:-

> *"**58.** In our view, passing of the final order by the High Court directing the payment of the ESI contribution from the date of the said judgment does not amount to postponing the enforcement of notification and the same is also not in violation of the principles laid down by this Court in various judgments referred to above. There has been no postponing of the enforcement of the notification in view of the peculiar circumstances of the case, namely, the non-availability of the facilities, non-deduction of contribution from the members of the union for several years and provision of medical relief by the management. The High Court's direction for deduction of contribution w.e.f. the date of the judgment in our view, is perfectly justified. This apart, the members of the union included casual, temporary, contractual workers and it will be practically impossible to find each and every member of the union to recover their contribution for the past several years and in fact some of the workmen who would have been the employees during all these years would have left, expired, etc. and on account thereof also their contribution cannot be recovered. The order passed by the High Court, in our opinion, is perfectly justified in view of the peculiar facts and circumstances of the case.*

15. He has then referred to the judgment passed by this Court in ***W.P(L) No. 4766 of 2022 and other analogous cases*** in the case of ***M/s JEMCO Ltd. (A Division of I.S.W.P.), Jamshedpur vs. The State of Jharkhand and Others*** and has submitted that in the said case, it has been held that over all the facilities provided by the petitioner of that case were at par and in certain aspects better than those available under ESI. He has referred to paragraph 70 to 73 of the said judgment which is quoted as under:-

> *"**70.** From the comparative chart (Annexure-5), It is further evident that apart from giving treatment in the hospital of the Petitioners-Company as well as Tata Main Hospital, the Petitioners-Company can refer the cases of injured workmen or his family members to Christian Medical College, Vellore, Apollo Hospital Groups, Peerless Hospital, Kolkata, Shankar Netralaya, Chennai, Tata Cancer Hospital, Mumbai, All India Institute of Medical Sciences, New Delhi, Rabindranath Tagore International Institute of Cardiac Sciences, Meharbai Tata Memorial Hospital, Jamshedpur etc. and this facility does not appear to be available in ESI and the employees or his dependents and his family members may have to move out in other States on their own by reference and not in the care of their employer.*
>
> ***71.** Moreover, in case of any untoward incident the Management is more accountable with respect to treatment of the Workman compared to E.S.I., as the latter will not be held accountable by the Workman or his family members.*
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> ***72.** Thus, it is also seen that regarding some other facilities, the benefits provided by the Petitioners- Company is atleast at par with the E.S.I. if not better than the E.S.I. Hospitals, but in many areas the facilities of the Hospitals of the Petitioners-Company are at par with the E.S.I. Hospitals.*
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> ***73.** Accordingly, in view of the discussions made above, the impugned Orders dated 26.05.2022, 05.05.2022, 26.05.2022 and 05.05.2022, challenged in W.P.(L) No. 4766 of 2022, W.P.(L) No. 4767 of 2022, W.P.(L) No. 4769 of 2022 and W.P.(L) No. 4770 of 2022 respectively are set aside and the Petitioners-Company are exempted from making contribution under Section 87 of the Act, 1948 for the period, from 01.04.2021 to 31.03.2022, from 01.04.2020 to 31.03.2021, from 01.04.2022 to 31.03.2023 and from 01.04.2021 to 31.03.2022.*
> *However, it will be open to the Workmen or its Union to enrol with Employees State Insurance Corporation, if they so desire."*

16. During the course of argument, it transpired that the aforesaid writ petition being ***W.P.(L) No. 4766 of 2022 and other analogous cases*** were not relatable to the medical benefits which are available in the TELCO Hospital rather the batch of cases were relatable to the

medical benefit provided through Tata Main Hospital maintained by Tata Steel Limited.

17. Learned counsel has submitted that the other judgments which he is relying upon have already been mentioned in the written submissions filed on behalf of the petitioner.

18. ***Learned counsel for the respondents*** has submitted that Regulation 96C has no applicability in the present case, inasmuch as, the same has been inserted with effect from 15.04.2019 and Regulation 96B has been inserted with effect from 30.10.2018. The learned counsel has further submitted that in order to streamline the mode and method of reference to Super Specialty Hospitals, the regulations have been amended and such provision has been introduced. At the same time, the learned counsel has submitted that under ESI also, there is a concept of reference, so that only the needy patient may have better treatment.

19. The learned counsel has referred to the counter-affidavit and has submitted that a comparative chart has been given at page nos. 18 and 19 and the four reasons, which have been assigned in the impugned order to reject the exemption as claimed by the petitioner, are at serial nos. 1, 2, 3 and 6 of the comparative chart. The learned counsel has submitted that the comparative chart itself reveals that the ESIC is providing better medical facilities as compared to that of the petitioner.

20. The learned counsel has referred to Chapter-III of the Regulations of 1950 and has submitted that the required scrutiny is provided under the regulations also and so far as the scrutiny is concerned, the petitioner and the respondent stand at par with each other and no benefit can be extended without scrutiny by either of the party.

21. Learned counsel has then referred to paragraph 10 of the writ petition to submit that the application for exemption for the period 2014 and 2017 was made when the period had already commenced. As per the provision of law, the application was required to be made

three months prior to the period. He has further referred to paragraph 6 of the writ petition to submit that the petitioner's company merged with Tata Motors Limited with effect from 01.05.2018.

22. The learned counsel, while referring to the judgment passed by the Hon'ble Supreme court in the case reported in ***(2006) 6 SCC 581 (Supra),*** has referred to paragraph 55 of the said judgment to submit that an interim order was granted by the High Court and therefore the interim order was required to be taken to a logical end and in such circumstances the final order was passed by the Hon'ble Supreme Court. In the present case, there is no such interim order.

23. The learned counsel has then referred to the judgment passed by this Court in ***W.P. (L) No. 4766 of 2022 and other analogous cases*** and has referred paragraph 53 onwards to submit that the Hon'ble Court came to a finding that the benefits extended by the Tata Main Hospital and ESI Hospital were at par with each other. He has also referred to paragraph 72 of the aforesaid judgment.

24. The learned counsel has then referred to the judgment passed by the Hon'ble Supreme Court reported in ***(1985) 2 SCC 68 [Gasket Radiators Pvt. Ltd. vs. Employees' State Insurance Corporation and Another]***, paragraph 2 to 7, to refer to the scheme of the Act of 1948.

25. The learned counsel has then referred to the judgment passed by the Hon'ble Delhi High Court reported in ***2019 SCC OnLine Del. 8751 [Uttar Pradesh Rajkiya Nirman Nigam vs. Employees State Insurance Corporation and Others]***, paragraph 9 to 12, to submit that the scope of judicial review is very limited. On the same point, he has referred to the judgment passed by the Hon'ble Bombay High Court reported in ***2018 SCC OnLine Bom. 3948 [Indian Coffee Workers' Co-op. Society Ld. Vs. Secretary, Industries, Energy and Labour Department Mumbai and Another]***, paragraph 9 to 12.

26. The learned counsel has then referred to the judgment passed by the Hon'ble Kerala High Court reported in ***2016 SCC OnLine Ker. 39471 [Chavara Block Khadi Producers Industrial Co-operative Society Ltd. vs. State of Kerala and others]***, paragraph 3 to 6. He has

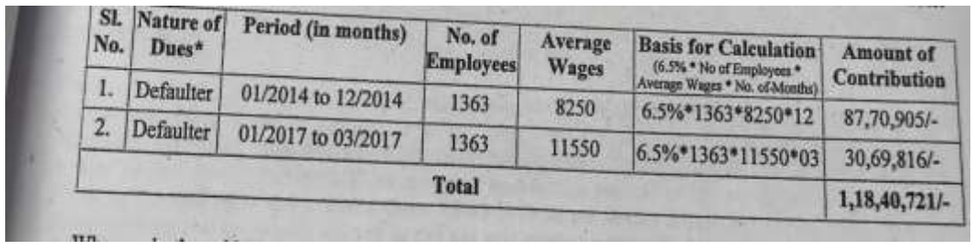
also referred to the judgment passed by the Hon'ble Kerala High Court reported in ***2015 SCC OnLine Ker. 33841 [Calicut University Co-Operative Stores Ltd. No. 24 vs. State of Kerala and Others]***, paragraph 5 and then he has lastly referred to the judgment passed by the Hon'ble Calcutta High Court reported in ***2014 SCC OnLine Cal. 10128 [M/s Karam Chand Thapar & Bros. (C.S.) Ltd. & Another vs. Employees State Insurance Corporation & Others]*** to submit that after analyzing the comparative benefits, the judgment has been given.

27. The learned counsel has submitted that in the present case, the comparative benefit would reveal that the benefit extended by the ESI Hospital is much better than that what is extended by the petitioner.

28. The learned counsel has also referred to Section 59B and has submitted that one of the objects of the statute is to provide other benefits in terms of infrastructure with respect to the medical colleges etc. and the provision itself does not speak of classification or exclusion of beneficiaries so far as the extension of benefits is concerned. It is submitted that the Act of 1948 is a beneficial piece of legislation.

Findings of this Court

29. ***After hearing the learned counsel for the parties and upon going through the records of this case*** , this Court finds that earlier an order dated 31.05.2019 (Annexure-3) was passed wherein it has been recorded that the establishment of the petitioner is covered under the aforesaid Act of 1948 with effect from 01.11.2004 with the number of employees employed as 1810. The ESIC Code was also provided and it was also recorded therein that the decision on application of exemption submitted before appropriate authority, that is, Government of Jharkhand was still pending. In the order dated 31.05.2019, following demand has been made: -



Sl. No.	Nature of Dues*	Period (in months)	No. of Employees	Average Wages	Basis for Calculation (6.5% * No of Employees * Average Wages * No. of Months)	Amount of Contribution
1.	Defaulter	01/2014 to 12/2014	1363	8250	6.5%*1363*8250*12	87,70,905/-
2.	Defaulter	01/2017 to 03/2017	1363	11550	6.5%*1363*11550*03	30,69,816/-
Total						1,18,40,721/-

Further, in the said order itself, the following observations have been made on the basis of materials which was available with the department: -

> *"Whereas in such a situation, the undersigned is left with no other option but to decide the case on the basis of records available and accordingly the undersigned have perused the available records in the file and applied his mind to all the facts of the case and his findings are as under:*
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> 1. ***M/s. TML Drivelines Limited*** *Code No.* ***60000156430000606*** *situated at C/o. Tata Motors Ltd., Telco, Jamshedpur is an establishment/factory covered under the Employees State Insurance Act, 1948 with effect from 01-11-2004 with the number of employees employed as 1810 the basis of Form 01 submitted by employer himself. The allotment of ESIC Code number was intimated to the employer vide C-11 dated 02-05-2005 which has never been disputed by the employer. Accordingly, the applicability of the provisions of the ESI Act, 1948 to the aforesaid unit is undisputed.*
> 2. ***The decision on application of exemption submitted before the Appropriate Authority i.e. Govt. of Jharkhand is still pending.***
> 3. *As per the provision of Sec 91A of ESI Act, 1948 (as amended), the provision of exemption which may be issued so as to take effect prospectively. Hence, contribution has been assessed accordingly."*

30. The said order dated 31.05.2019 was challenged by the petitioner in W.P. (C) No. 3262 of 2019 (Annexure-4) wherein it was recorded that the then Principal Secretary of Department of Labour, Employment and Training, Jharkhand was present in the court, who assured that the decision will be taken regarding the exemption for the year 2014 and 2017 within two weeks and therefore the case was disposed of and the order impugned dated 31.05.2019 in the said writ petition being W.P. (C) No. 3262 of 2019 was also stayed for a period of two weeks.

31. The impugned order dated 12.03.2021 (Annexure-7) has been passed by the respondent no. 2 pursuant to order passed in W.P. (C) No. 3262 of 2019 (Annexure-4) relating to the period ***January 2014 to December 2014 and January 2017 to March 2017***, whereby the applications of the petitioner seeking exemption from the payment under Employees' State Insurance Act, 1948 under Section 87/88 read with Section 91A has been rejected by citing as many as four grounds.

32. It is the case of the petitioner that TML Drivelines Limited was initially a part of Tata Motors Limited and pursuant to the order passed by the National Company Law Tribunal dated 5th April 2018, it was merged with Tata Motors Limited with effect from 1st May 2018 and it was a unit of Tata Motors Limited. ***The impugned order reveals that TML Drivelines Limited was availing the benefits from the Hospital run by Tata Motors Limited.***

33. It is the case of the petitioner that they applied for exemption from application of the aforesaid Act of 1948 under Section 87 of the Act and for certain periods, the respondents had granted exemption and for that purpose, they have annexed two notifications; one is dated 14.03.2016 relating to the period 01.01.2015 to 31.12.2015 and another vide notification dated 30.05.2017 for the period from 01.01.2016 to 31.12.2016.

34. It is further case of the petitioner that they had also filed applications seeking exemption for the period from 01.01.2014 to 31.12.2014 vide application dated 17.01.2014 and also sought exemption for the period from 01.01.2017 to 31.12.2017 vide application dated 02.01.2017. These applications have been annexed as Annexure-2 and 2/1 respectively to the writ petition.

35. It is their specific case that during the pendency of the exemption applications, the respondents raised aforesaid demand vide notice dated 31.05.2019 under Section 45A of the aforesaid Act of 1948 and it was this notice dated 31.05.2019, which was challenged in the earlier round of litigation being W.P. (C) No. 3262/2019, which was disposed of vide order dated 23.07.2019 as mentioned above.

36. The petitioner has tried to project that M/s TML Drivelines Limited was initially a part of Tata Motors Limited and subsequently it was reorganized and became a second subsidiary company and continued to be so till 5th April 2018 when again they became a unit of M/s Tata Motors Limited. It is also the case of the petitioner that they were availing all the medical facilities which were available to the employees of M/s Tata Motors Limited and this aspect of the matter has also been accepted by the authority in the impugned order. Therefore, the petitioner has relied upon the exemption granted to Tata Motors Limited during the period from 01.11.2004 to 30.04.2008; 01.04.2011 to 31.03.2012; 01.04.2015 to 31.03.2016; and 01.04.2016 to 31.03.2017 as contained in annexure-5 series. The petitioner has also placed on record the comparative chart stating that the employees of TML Driveline Ltd., as it then was, were entitled to superior benefits as compared to ESI benefits.

37. This Court is of the considered view that TML Drivelines having been granted a separate ESI Code under the Act of 1948 with effect from 01.11.2004 itself reveals that it has to be treated as a separate unit. This is further in view of the fact that the TML Drivelines merged with Tata Motors Limited by the orders of National Company Law Tribunal with effect from 01.05.2018 and there is no material on record to show that TML Drivelines was ever a part of Tata Motors Limited prior to 01.05.2018. However, it is the case of the petitioner that they have been availing the benefits granted to the employees of Tata Motors Limited from their hospital and this position is also accepted in the impugned order.

38. Further, the fact remains that TML Drivelines was itself granted exemption on 14.03.2016 for the period from 01.01.2015 to 31.12.2015 and thereafter on 30.05.2017 for the period from 01.01.2016 to 31.12.2016 and these orders granting exemption has been placed on record and these exemptions have been granted under Section 88 read with Section 91A of the Act of 1948.

39. The applications seeking exemption, as placed in Annexure-2 and 2/1, reveal that their employees and their eligible dependents were provided medical benefits in Tata Motors Hospitals and Dispensaries besides need referral for specialized treatment. However, no such agreement or document or arrangement has been placed on record and even the authority has not called upon TML Drivelines Limited to place on record the nature of arrangement between TML Drivelines and Tata Motors Hospitals for the period in question and it has been held in the impugned order that TML Drivelines Limited is entitled for referral benefits only for some selected places. The authority ought to have given an opportunity to the petitioner to explain as to how the referral facilities available to employees of TML Drivelines Limited, who were availing the medical facilities from the hospital maintained by M/s Tata Motors Limited, were comparable or better than the facilities available through ESIC. This assumes importance in view of the fact that the petitioner has also taken a specific stand that on the basis of same facilities, M/s Tata Motors Limited was granted exemption under the aforesaid Act of 1948 for the period from 01.01.2004 to 30.04.2008 and further for the period from 01.04.2015 to 31.03.2017 and also including the period involved in this case and they have also taken a stand that the petitioner did not avail any facility from the respondents.

40. So far as the facilities are concerned, the petitioner has placed on record a comparative chart for each period along with their application seeking exemption.

41. This Court also finds that the order passed on the petition seeking exemption for the period from January 2014 to December 2014 and January 2017 to March 2017 has been passed on 12.03.2021 primarily on the basis of service condition of the employees and on the basis of same service condition, the exemption was granted to TML Drivelines Limited for 01.01.2015 to 31.12.2015 and from 01.01.2016 to 31.12.2016. When the exemption was granted for the entire period of 2016, how the situation changed during the period

from January 2017 to March 2017 and it is also not clear as to whether there were any different set of service conditions of the employees during the period from January 2014 to December 2014 and January 2017 to March 2017.

42. ***A counter-affidavit*** has been filed by the respondent nos. 3 and 4, wherein they have referred to Section 91A of the Act of 1948 as introduced vide Employees' State Insurance (Amendment) Act 2010, whereby exemptions could be granted prospectively and the exemption has to be given only prospective effect and they have heavily relied upon the provision that an application for renewal of exemption shall be made three months before the expiry of the exemption period and the decision on it required to be taken within two months of the receipt of such application. However, the records reveal that the application seeking exemption for the period from 01.01.2016 to 31.12.2016 was allowed vide order dated 30.05.2017, then the question arises as to how an application for renewal could have been made as per the timeline mentioned in the counter-affidavit. The records reveal that the respondents themselves have been keeping the applications seeking exemption pending from time to time and have not been following the mandate of law. Under such circumstances, it is not open to the respondents to say that the time line provided under the Act of 1948 has not been followed, which is not even a ground for rejection in the impugned order refusing to grant exemption for the periods involved in this case.

43. The respondents have also taken a specific stand that there is nothing on record to suggest that the employees of the petitioner were considered as employees of Tata Motors Limited and enjoy the same benefits as regular employees of Tata Motors Limited and consequently they had put the petitioner to strict proof of the same. However, the impugned order itself reveals that the employees of TML Drivelines Limited were enjoying the medical benefits from the hospital maintained by Tata Motors Limited including referral benefits.

44. The respondents have also brought on record the reply filed by them vide letter dated 10.03.2014 and have also annexed therewith a comparative chart. Sl. Nos. 1, 2, 3 and 6 of the comparative chart , as pointed out by the learned counsel for the respondents, are as under: -

Sl. No.	**Name of Benefits**	**Details of benefits Available under the E.S.I. Scheme**	**Details of Benefit under the Employers' Scheme**	**Remarks**
1	Medical Benefit	Comprehensive Medical Benefit is provided to the Insured Persons and their family members, which comprises preventive, promotive, curative and rehabilitation services through its own network or through tie-up arrangements with reputed institutions in the Government and Private Sectors. An Insured Person and his family members become entitled to medical care from the date he enters into insurable employment. It is noteworthy that no minimum contributory conditions have been prescribed for availing medical care under the ESI Scheme. Medical Benefit to Persons, who go out of coverage during the period of treatment, is not discontinued until the end of the spell of sickness. Specialists Service like Heart Surgery, Neurosurgery, Bone Marrow Transplant, Dialysis, Cancer and Kidney Transplants, M.R.I., Angiography/Angioplasty etc. is provided. Generally, the allopathic system of medicines is used for providing Medical Benefit. However, ESIC is also promoting Indian System of Medicine & Homoeopathy (ISM&H). Various ISM&H Systems of treatment in vogue are Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy. ESI Scheme extends all the three levels of medical care to its beneficiaries ie. Primary Care, Secondary Care and Tertiary Care (Super Specialty Care). Primary Care	Employee and their eligible dependents are provided medical benefits in Tata Motors Hospital and Dispensaries.	Superior Benefit is provided by ESI.

		is provided through dispensaries and panel clinics. Secondary Care is provided through ESI Diagnostic centers and Hospitals. Tertiary Care is provided by entering into tie-up arrangement with specialized private and government diagnostic facilities and hospitals. State Medical Commissioner, ESI Corporation, Ranchi has entered into tie-up arrangements with following private medical institution for providing different cashless medical facilities to the beneficiaries at Jamshedpur. The same are mentioned as under: - (i) **Primary & Secondary Care** - (A) Mercy Hospital, Baridih, Jamshedpur (B) Arogyam, Adityapur (C) Kantilal Gandhi Eye Hospital, Bistupur, Jamshedpur (D) Apex Hospital, 166, New Baradwari, Sakchi, Jamshedpur (E) Purnima Netralaya, Brahamananda Nagar, Tamolia, Jamshedpur. (ii) **Super Speciality Treatment:** - (A) Brahmanada Narayana Hrudayalaya, Near Pardhi Chowk (B) Dr.'s Diagnostic, Sakchi. Apart from this the retired Insured Persons (and their spouses) with the minimum of 5 years' service and disabled Insured Persons (due to E.I.) and their spouses till the age of superannuation are also eligible for Medical Benefit against a nominal contribution of Rs. 120/- per annum.		
2	Sickness Benefit	It represents periodical payments made to an Insured Person during the period of certified sickness occurring in a Benefit Period when the Insured Person requires medical treatment and attendance with abstention from work on medical grounds. The Maximum duration of Sickness benefit is 91 days in two consecutive Benefits periods. The Sickness Benefit rate is 70% of average daily wages of Insured Person.	Privilege Leave 30 days for one year. Sick Leave 10 days for one year. Casual leave 7 days for one year. Sick leave payment is made.	Substantially better benefit provided by ESI

3		Even after exhausting the Sickness Benefit payable up to 91 days, if an Insured Person is still suffering from some specified 34 long term/chronic disease, Extended Sickness Benefit is admissible to the Insured Person initially for 309 days @ 80% of average daily. However, this case further be extended up to a period of 2 years. Obviously, ESI Corporation cares for Insured Persons almost till they recovered from such chronic diseases.	Not provided by the company.	This is major benefit which is not at all provided by the Employer.
4	Disablement Benefit	In case of temporary disability arising out of employment injury, Disablement Benefit is admissible to an Insured Person for the entire period, so certified by the Insurance Medical Officer/Insurance Medical Practitioner, for which the Insured Person does not work for wages. This Benefit is not subject to contributory conditions and is payable at 90% of the average daily wages. Where the disablement due to an employment injury result is permanent, partial or total loss of earning capacity, periodical cash payments are made to the Insured Persons for life depending on the loss of earning capacity as may be certified by a dully constituted Medical Board. However, commutation of periodical payment is permissible where the permanent disablement stands assessed as final and the daily rate of benefit does not exceed Rs. 5 per day, and where benefit rate exceeds Rs. 5/- per day but commuted value does not exceed Rs. 30,000/- at the time of the commencement of final award of his permanent disability. The Amount of Permanent Disablement Benefit is periodically enhanced as per price increase. The ESI Corporation has also included the Commuting Accident as Employment Injury w.e.f. 01.6.2010 vide amendment in the ESI Act, 1948 where the Accident occurring while commuting from his residence to the place of employment for duty or from the place of employment to his residence has been covered as employment injury.	Full wages to the employee for the period during which he/she remains unfit, limited to his/her date of superannuation, if injury sustained in course of employment. Payment permanent total/partial disability compensation, if any caused. Under Bhavishya Kalyan Yojna a sum equal to 50% of the last pay i.e. last Basic & D.S. is paid monthly to the employee till the normal date of the superannuation in case of permanent total disability. All the workmen of the company are covered under Workmen's Compensation Act, 1923.	Superior Benefit is provided by the ESI.

45. ***Another counter-affidavit*** has been filed by the respondents, which is dated 21.02.2022, wherein similar stand has been taken.

46. The comparative chart, as pointed out by the learned counsel for the respondents and as quoted above *neither*, deals with the specific stand taken by the petitioner before the authority by presenting their comparative chart wherein they have asserted that they are providing superior benefits *nor* the benefits provided by the petitioner through their service conditions / hospital of Tata Motors Limited have been correctly mentioned in the comparative chart as has been pointed out by the learned counsel appearing on behalf of the petitioner which challenging each ground of rejection of the claim seeking exemption . The impugned order also does not reflect that any opportunity of hearing has been granted to the parties before passing the impugned order so as to enable the parties to clarify the position and also place on record further documents as may be required to substantiate their claim.

47. Section 87 of the ESI Act of 1948 is very clear and there is no doubt that exemption has to be granted from year to year and merely because exemption was granted last year therefore exemption could not be claimed as a matter of right in the following year nor an order passed last year will be res-judicata in the same set of controversy in the following year. Every year is a separate unit and a fresh cause of action. However, at the same time, when the exemption in the present case has been granted till 31.12.2016, there is no clue as to why the exemption has been denied for the period from January 2017 to March 2017 that too by citing terms and conditions of service. It is nobody's case that the terms and conditions of service for the period from January 2017 was changed in any manner.

48. It appears that with respect to same service conditions, the exemption was allowed for some period and has been disallowed for other periods. There is no doubt that each year has to be considered separately and there is no res-judicata, however, at the same time,

there must be some explanation as to why the same service conditions/ arrangement are treated enough for granting exemption for one year and rejecting exemption for another year. For that purpose, the petitioner has rightly relied upon the judgments passed by the Hon'ble Calcutta High Court reported in ***2022 SCC OnLine CaL. 3996 (Development Consultants Pvt. Ltd. Vs. State of W.B.)*** and the judgment passed by the Hon'ble Gujarat High Court reported in ***2024 SCC OnLine Guj. 605 (Mehsana District Cooperative Milk Producers Union Ltd. Vs. State of Gujarat)***.

49. It has been held by this Court in the judgment passed in ***W.P. (L) No. 4766 of 2022*** that the companies, who were previously granted exemption on substantially similar facts and that no material change has been shown to justify denial of exemption for subsequent year, such orders cannot be sustained in law. It has also been held that the aforesaid Act of 1948 does not require that identical or similar benefits are to be provided, rather the Act of 1948 requires that similar benefits are required to be provided.

50. In view of the aforesaid discussions, the impugned order cannot be sustainable in law and is accordingly set-aside and a fresh order is required to be passed by the respondent no.2 after granting an opportunity of hearing to the parties and for that purpose Tata Motors Limited who is now representing TML Drivelines Limited, as TML Drivelines Limited has been taken over by M/s Tata Motors Limited, is also required to produce the document/arrangement between M/s Tata Motors Limited and the then TML Drivelines Limited and also further documents and materials be produced by the parties to substantiate their respective case.

51. The matter is remitted back to the respondent no. 2 for fresh consideration in accordance with law. The petitioner and the authorized officer of the ESIC is directed to appear before the respondent no. 2 on **14.12.2026 at 11.00 a.m**. along with the copy of the writ records and a representation. The said authority shall pass

fresh order (s) on merits after granting an opportunity of hearing to the parties. Parties to co-operate.

52. In order to ensure that there is no gap in the matter of consideration of the claim for exemption, the authority may call for written submissions from both the sides. The needful be done by the authority by passing a reasoned order in accordance with law within a period of three months from the date of their appearance. The final orders so passed be communicated to the parties through e-mail and also through speed post.

53. This writ petition is accordingly ***disposed of***.

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

(Anubha Rawat Choudhary, J.)

Dated: 18.11.2026
Date of Uploading: 21.11.2026
Mukul/-