
(2007) 01 JH CK 0032
In the Jharkhand High Court

H.N. Pareek and Co.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Citation : (2007) 2 JCR 72

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Judgement

N.N. Tiwari, J.—In this writ application the petitioner has prayed for a direction on the respondent Nos. 2-4 to grant the petitioner an independent and separate code number under the provisions of Employees State Insurance Act, 1948 (hereinafter referred to as the "said Act") and also for quashing the order dated 17.10.2006 (An-nexure-7) whereby the petitioner has been directed to pay the employees' contribution to the tune of Rs. 31,92,750.00 for the period from November 2004. The petitioner has further prayed for a direction on the State Government to consider the petitioner's claim for exemption from application of the provisions of the Act and to pass appropriate order under the provisions of the said Act.

2. It has been stated that the petitioner is a registered contractor and has been running a canteen in the premises of M/s. Tata Motors Ltd. at Jamshedpur. The provisions of the said Act have been made applicable w.e.f. 1.11.2004. On coming to know about the applicability of the said Act, the petitioner applied for registration and allotment of independent code number, before the respondent No. 2. The petitioner also filed an application before the respondent No. 1 praying exemption from the application of the provisions of the said Act. The grievance of the petitioner is that though it fulfills the required condition of the provisions of law, yet independent code number has not been allotted to the petitioner, rather a sub-code has been given to the petitioner under the code of M/s. Tata Motors Ltd. The State Government has also not passed any order either rejecting or allowing the petitioner's claim for exemption from application of the

provisions of the said Act.

3. When the case is taken-up for hearing, learned JC to GP-I submitted that in spite of the letter sent to the concerned authorities, no instruction has been received by him till date and as such he has not been able to file any counter affidavit.

4. A counter affidavit has been filed on behalf of the respondent Nos. 2-5 (Employees State Insurance Corporation). It has been stated, inter alia, that the petitioner is a contractor under M/s. Tata Motors Ltd, Jamshedpur and as such a sub-code has been allotted and no independent code number has been allotted to the petitioner. It has been stated that the petitioner is liable to pay the employees' contribution to them, but the petitioner failed to pay the same and as such the demand has been made in accordance with law and there is no arbitrariness or illegality in issuing the impugned order of demand. It has been further stated that the petitioner was liable to pay the employees' contribution from the very beginning, but the petitioner has been avoiding to pay the same and comply with the provisions of the said Act.

5. Mr. V.P. Singh, learned senior counsel appearing on behalf of the petitioner, submitted that there is no denial that the provisions of the said Act are applicable, yet the petitioner can seek exemption from the application of the provisions of the said Act in view of the nature of benefits given to its employees. The petitioner had filed representation before the Secretary, Department of Labour Employment and Training, Government of Jharkhand as far back as on 31.10.2006 stating, inter alia that the employees of the said establishment have been getting much superior benefits to the benefits provided under the ESI Act and considering the same, the petitioner may be exempted from application of the provisions of the said Act. The said respondent neither passed an order allowing the exemption nor refusing the petitioner's said request. It has been submitted that though there is no legal impediment in allotting an independent/separate code number to the petitioner, the concerned respondents have arbitrarily confounded the matter by granting only a sub-code under the code of M/s. Tata Motor Ltd., Jamshedpur. It has been submitted that the petitioner had applied for independent registration of the establishment, but the concerned respondents of the Employees State Insurance Corporation have arbitrarily ignored the said prayer and have granted only a sub-code to the petitioner.

6. Mr. S.N. Das, learned Counsel appearing on behalf of the respondent No. 2-5. on the other hand, submitted that though there is no legal impediment in granting independent code to the petitioner, subcode has been granted for the sake of convenience as the petitioner has been working as a contractor under M/s. Tata Motors Ltd,. It has been submitted that the petitioner can deposit the employees' contribution under that sub-code and there is no inconvenience or any impediment in depositing the contribution even If an independent code has not been allotted to the petitioner.

7. After hearing learned Counsel for the parties and perusing the materials on record, I find that the petitioner has prayed for exemption from the application of the provisions of the Employees State Insurance Act, 1948 by filing a representation (Annexure-8) before the concerned Secretary of the Government of Jharkhand as far back as on 31.10.2006, but till date no order has been passed by the said authority. Learned JC to GP-I is not in a position to convey the reason for the said pending of the matter in absence of any Instruction from the respondent No. 1 which has not been received despite his efforts. In *Tata Iron and Steel Co. Ltd. v. State of Bihar and Ors.* WP (C) No. 2857/01, a bench of this Court has held that during the pendency of an application for exemption, any demand of employees' contribution is unjustified. But the respondents have not waited for the decision on the representation of the petitioner claiming the exemption from the application of the provisions of the said Act. No legal justification can be shown by learned Counsel for the respondents for not allotting an independent code number to the petitioner. Mr. Das learned Counsel appearing on behalf of the respondent Nos. 2-5, defended the respondents' action of allotting only sub-code to the petitioner contending the same as a matter of convenience. The respondents' denial of allotment of an independent code number to the petitioner is not based on any cogent and just reason. If there is no legal impediment, there is no reason why the petitioner be not allotted a separate and independent registration number and an independent code number for which the petitioner has applied. For the said reasons, the respondents-Corporation is directed to reconsider the petitioner's prayer for allotment of independent registration and code number to the petitioner and to pass appropriate reasoned order in accordance with law. The respondent No. 1 is also directed to consider the petitioner's application for exemption from the application of the provisions of the said Act and pass speaking order in accordance with law within a period of six weeks from the date of receipt/production of a copy of this order. Until the final order is passed on the petitioner's said representation by the respondent No. 1, no coercive action shall be taken against the petitioner for realisation of the amount as contained in the impugned Annexure-7.

8. With the above observations/ directions this writ application is disposed of.