(2012) 02 KL CK 0195

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25639 of 2009

Kancor Ingredients Ltd. APPELLANT

Vs

E.S.I. Corporation RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Employees State Insurance Act, 1948 — Section 74, 75, 75(1)(g), 87, 91A

Citation : (2012) 133 FLR 439

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : Jospeh Kodianthara, Terry V. James and B.J. John Prakash, for the Appellant; Asok M. Cherian, Sandesh Raja, K.P. Sankarankutty Nair and Government Pleader (Rose Michael), for the Respondent

Final Decision : Allowed

Judgement

V. Chitambaresh, J.—Can the issue of exemption from the operation of the Employees'' State Insurance Act, 1948 (the ''Act'' for short) be raked up in a dispute u/s 75 thereof? This is the interesting question that arises for consideration in this writ petition. The petitioner is a Public Limited Company operating an Oleoresin factory which had earlier enjoyed exemption from the provisions of the Act. Ext. P3 is the order passed by the State Government granting exemption from the operation of the Act for the period from 1.1.1998 to 31.12.1998. Such exemption was granted to the permanent employees of the factory u/s 87 of the Act which is extracted hereunder:

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.

2. The factory has since been covered by the Act and the dispute in this case relates to the denial of exemption for the period from 1.1.1997 to 31.10.1997 and 1.1.2001 to 31.12.2001. Ext. P20 is the order passed by the State Government as late as on 3.6.2008 denying the exemption sought for by the petitioner and it inter alia reads as follows:

Government have examined the matter in detail and found that the benefits under E.S.I. Scheme are far superior and beneficial to the workers when compared with the benefits provided by the KANCOR Ingredients to their employees.

It is contended that the order is laconic and that the petitioner had a legitimate expectation of securing exemption especially when it enjoyed the same during the previous period.

3. The Employees'' State Insurance Corporation contended that the writ petition is not maintainable since a dispute can as well be raised u/s 75 of the Act. My attention was drawn to section 75 (1)(g) of the Act and the relevant portion thereof is as follows:

75. Matters to be decided by Employees'' Insurance Court.--(1) If any question or dispute arises as to--

(a) ------

(b) ------

(c) ------

(d) -------

(e) -------

(f) -------.

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, (or any other matter required to be or which may be decided by the Employees'' Insurance Court under this Act)

Such question or dispute (subject to the provisions of sub-section (2-A) shall be decided by the Employees'' Insurance Court in accordance with the provisions of this Act.

4. The contention of the Employees'' State Insurance Corporation in short is that the denial of exemption could be questioned only before the Employees'' Insurance Court under the Act.

5. I have heard Mr. Joseph Kodianthara, Senior Advocate on behalf of the petitioner, Government Pleader on behalf of the State and Mr. Sandesh Raja. K., Advocate on behalf of the Employees'' State Insurance Corporation.

6. It may at once be noticed that section 75(1)(g) of the Act essentially deals with the dispute between the employer and the Employees'' State Insurance Corporation. The dispute is also in respect of any contribution or benefit payable under the Act in respect of an establishment covered by it. Section 75(1) (g) of the Act does not speak of a dispute with the Government which only has got the plenary power to grant exemption. The order granting or denying exemption is certainly open to judicial review under Article 226 of the Constitution of India. I am fortified in this view by the judgment in Employees'' State Insurance Corporation Vs. Pondicherry Agro Service and Industries Corporation Limited and The Government of Puducherry, Labour Department, . The following excerpt from the judgment is apposite:

--------The E.S.I. Court constituted u/s 75 has no jurisdiction to take up or sit over the decision given u/s 87 of the Act granting an exemption. On the contrary, the power to grant exemption is a plenary power given to an appropriate Government. The Court constituted u/s 75 cannot decide such matters including the validity of an exemption notification or that it should provide the basis for grant of an exemption.

(Emphasis supplied)

The High Court of Madras had followed the judgment of the High Court of Andhra Pradesh in Chaturbhuj Vs. Sita Bai, , wherein it is held as follows:

There is no power specifically conferred thereunder to provide any sort of remedy like appeal, revision or review to fall well within the powers of jurisdiction u/s 75 of the Act to consider, go into or sit over any decision or order which has been taken u/s 87 of the Act..........Therefore any order passed therein becomes final unless taken in appropriate proceedings under Article 226 of the Constitution of India by way of writ. .... It is not for the Employees'' Insurance Court acting u/s 75 of the Act to assail or set aside the same. The said order granting or rejecting exemption u/s 87 of the Act is very much binding and conclusive on the Employees'' Insurance Court as constituted u/s 74 of the Act.

(Emphasis supplied)

7. A reading of Ext. P20 order denying exemption in the instant case would reveal that no reasons have been assigned to justify the conclusion arrived at. It would not be sufficient to merely state mechanically that the benefits under the E.S.I. Scheme are far more superior and beneficial. The various benefits extended by the petitioner and the Employees'' State Insurance Corporation have to be analysed item wise. A detailed order is warranted while granting or disallowing exemption u/s 87 of the Act. This is especially so since the interest of a large section of workers are involved whose representative also deserves to be

heard in the exercise. The principal beneficiary of the Act is the employees who have a right to be heard as held in Fertilizer and Chemicals Travancore Ltd. v. ESI Corporation 2009 (123) FLR 491 (SC). It needs no mention that exemption u/s 87 of the Act could be granted either prospectively or retrospectively u/s 91A of the Act.

8. The petitioner would contend that it had a legitimate expectation of getting exemption for the period in question since it enjoyed exemption earlier. There is no case for anybody that the employees of the petitioner had availed of the benefits under the Employees'' State Insurance Scheme during the relevant period for which exemption was sought. The petitioner also points out that there is no justification at all to deny exemption after the lapse of several years. The Employees'' State Insurance Corporation would on the other hand contend that the delay is attributable to the pendency of other litigations relating to this factory. I am of the firm view that the question of exemption u/s 87 cannot be raked up in a dispute u/s 75 of the Act. The Employees'' State Insurance Court constituted u/s 74 of the Act cannot decide the legality or otherwise of an order relating to exemption passed by the State Government. I also find that the order denying exemption u/s 87 of the Act is bereft of reasons revealing a total non-application of mind.

9. I therefore quash Ext. P20 order passed by the State Government and direct the third respondent to reconsider the issue in the light of the observations supra. The same shall be done with notice to the petitioner, the Employees'' State Insurance Corporation as also the representative of workers. It goes without saying that recovery proceedings initiated pursuant to Ext. P20 order would also stand invalidated. The third respondent shall pass fresh orders on the question of exemption u/s 87 of the Act within a period of three months from the receipt of this judgment. The writ petition is allowed as above. No costs.

