(2021) 10 KL CK 0049

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22608 OF 2016

Mayin Beedi Company APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 12-10-2021

Acts Referred:
Employees' State Insurance Act, 1948 — Section 87, 88, 89

Citation : (2021) 10 KL CK 0049

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : C.Anil Kumar, K.M.Faisal, P.Sankarankutty Nair, Adarsh Kumar, Sasank Devan

Final Decision : Allowed

Judgement

Murali Purushothaman, J

1. The petitioner is a firm engaged in packing and distribution of Beedis. Pursuant to application made by the petitioner, the Government, in consultation with the Employees' State Insurance Corporation (hereinafter referred to as 'ESI Corporation') and in exercise of powers under section 87 of the Employees' State Insurance Act, 1948 (for short, 'the Act') exempted the firm from the operation of the provisions of the Act for the period from 1998-'99 to 2001-'02 by Exts.P1 to P3 orders.

2.Though the petitioner applied for exemption under the Act for the period from 1.7.2002 onwards, the application was rejected by the Government by Ext.P3 stating that the facilities provided by the petitioner's establishment are not similar or superior to the facilities provided under the ESI scheme.

3. Contending that Ext.P3 order has been passed without taking into account the relevant facts, the petitioner made Ext.P4 petition before the Government seeking reconsideration and review of Ext.P3 order. Since Ext.P4 was not considered by the Government, the petitioner approached this Court by filing W.P.

(C) No.30948/2015 seeking direction to the Government to consider Ext.P4 petition and this Court, by Ext.P5 judgment, directed the Government to consider Ext.P4 petition with notice to the petitioner and the ESI Corporation.

4. Pursuant thereto, the Government passed Ext.P6 order which is impugned herein. The relevant portion of Ext.P6 runs as hereunder:

"2. As per the report of Employees State Insurance Corporation read as 2nd paper above, the benefits given by the organisation is neither similar nor superior to the benefits provided under Employees State Insurance Scheme.

3. The application for Employees State Insurance exemption for the period from 01.07.2002 to 30.06.2006 submitted by the petitioner has been considered by the sub committee meeting of the Regional Board of Employees State Insurance Corporation held on 3. 3.2016 and the committee rejected the request on the ground that the information in respect of the period is not available either in Government or in Labour Commissionerate. In this circumstances the request of the Mayin Beedi Company, Calicut to exempt the organisation from Employees State Insurance Scheme for the period from 01.07.2002 to 30.06.2006 is rejected."

5. The petitioner contends that while passing Exts.P3 and P6 orders, the Government have not applied their mind and have not considered relevant materials. It is pointed out that Ext.P3 is a cryptic and non-speaking order and Ext.P6 was passed without notice to the petitioner which is in defiance of the specific direction of this Court in Ext.P5 judgment. It is further contended that the decision in Ext. P6 was taken by the Government on the basis of the report of the sub committee of the Regional Board of the ESI Corporation which rejected the request of the petitioner for exemption on the ground that the information in respect of the period for which exemption is sought is not available with them or with the Government. According to the petitioner, the Government have not taken an independent decision in the matter as required by section 87 of the Act.

6. The petitioner also points out that after 2006, exemption was granted to the firm for the period from 1.7.2006 to 1.7.2016 and that it is only for the period from 1.7.2002 to 30.6.2006 that exemption has been rejected. The petitioner submits that since granting of exemption is on the basis of better benefits enjoyed by the employees under various schemes available to them, there is no rhyme or reason in denying exemption for the period from 1.7.2002 to 30.6.2006. Therefore, it is prayed to quash Exts.P3 and P6 and to declare that the petitioner is entitled for exemption from the purview of the Act for the period from 1.7.2002 to 30.6.2006.

7. A counter affidavit is filed by the ESI Corporation as well the Government contending that the exemption granted for some periods to the petitioner would not attribute a vested right upon the petitioner to claim exemption for further periods. It is further contended that the petitioner could not prove that they are providing superior or substantially similar benefits than those benefits under the

ESI Scheme.

8. Heard Sri. C.Anil Kumar, the learned counsel for the petitioner, Sri.Faisal K.M, the learned Government Pleader and Sri. Sasank Devan for the second respondent Corporation.

9. Sri.Sasank Devan contends that a review petition is not maintainable against Ext. P3 order as the Act does not provide for any specific power of review of orders passed under section 87 of the Act. Further, Ext.P4 petition is belated. It is also contended that sections 87, 88, 89 of the Act do not contemplate hearing of the employer. The petitioner has not made any of the employees as party to the Writ Petition. He also contended that for the reason that exemption was granted for some earlier periods would not entitle the petitioner to claim exemption for subsequent periods. The learned Government Pleader also argued in line with the arguments made by the learned counsel for the ESI Corporation. It is true that the Act does not confer power on the Government to review an order passed under section 87 of the Act. When this Court in Ext.P5 judgment directed the Government to consider Ext.P4 and pass orders, it appears that no objection whatsoever was taken by the Government or the Corporation to such direction. No intra court appeal is seen filed against Ext.P5 judgment. The Government acted pursuant to Ext.P5 judgment and passed Ext.P6 order rejecting Ext.P4. Now, it will not be open for the Corporation to object to the maintainability of Ext.P4 petition or to contend that the said petition is belated. I also find force in the contention of the petitioner that the Government did not apply its mind while rejecting the request of the petitioner to grant exemption. A perusal of Ext.P6 would show that the Government rejected Ext.P4 solely relying on the report of the sub committee of the Regional Board of the ESI Corporation. Further, it is pertinent to note that the sub committee rejected the request for exemption on the ground that the information in respect of the period is not available either in the Government or in Labour Commissionerate. All the more, in Ext. P5, this Court specifically directed the Government to consider Ext.P4 petition with notice to the petitioner and the ESI Corporation. It is not in dispute that no notice was issued by the Government to the petitioner before passing Ext.P6 order. Ext.P6 is passed not in accordance with the directions in Ext. P5 judgment.

The counsel for the Corporation contends that section 87 does not contemplate a hearing before rejecting an application for exemption. Since Ext.P5 judgment directed the Government to issue notice to the petitioner and consider Ext.P4 petition and the judgment having become final, the respondents cannot, now, contend that there is no need to issue notice to the petitioner or to hear the petitioner. Accordingly, I set aside Ext.P6 order and direct the first respondent to consider Ext.P4 afresh in terms of the directions of this Court in Ext.P5 judgment. Fresh order as above shall be passed within a period of three months from the date of receipt of a copy of this judgment. Till such time, the petitioner shall not be proceeded with for recovery of any amount pursuant to Ext.P3.

The writ petition is allowed. No order as to costs.

