

(2014) 05 CAL CK 0005
In the Calcutta High Court
Case No : W.P. 129 of 2011 and 646 of 2013

M/s. Karam Chand Thapar and Bros. (C.S.) Ltd. and Another	APPELLANT
Vs	
Employees State Insurance Corporation and Others	RESPONDENT

Date of Decision : 08-05-2014

Acts Referred:

Employees State Insurance Act, 1948 — Section 87, 88

Citation : (2014) 3 CHN 596 : (2014) 142 FLR 576 : (2014) LabIC 2565 :
(2014) 3 LLJ 18 : (2014) 3 LLN 74 : (2015) 1 WBLR 237

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : D.N. Ray and Mr. B. Das, Advocate for the Appellant; Soumitra Banerjee for Respondent Nos. 1, 2 and 3 and Mr. Pronab Kr. Dutta for Respondent No. 4, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Soumen Sen, J.—The hearing of both the writ petitions are taken up together.

2. The writ petitioner has filed W.P. 129 of 2011 for canceling and/or revoking and/or rescinding the order dated December 23, 2010, passed by the Officer on special duty Additional Chief Secretary, Labour Department, Govt. of West Bengal in declining to extend exemption u/s 87 and/or 88 of the Employees' State Insurance Act, 1948 (hereinafter referred to as "E.S.I. Act" as it appeared to the said authority that the medical benefits provided by the writ petitioner to its employees is far inferior compared to those available under the E.S.I. Scheme.

3. The second writ petition being W.P. 646 of 2013 was filed challenging the demand notice dated 14th June, 2013 issued by the E.S.I. Corporation towards the contribution to be paid by the writ petitioner from September 2010 to March, 2013.

4. Since the success or failure of the first writ petition would decide the fate of the second writ petition, both the writ petitions are heard together.

5. The principal grievance of the petitioners is that the petitioners were enjoying exemption under the E.S.I. Act since 1994 to 2002 u/s 88 of the said Act. The Labour Department of the E.S.I. Corporation on extraneous considerations did not extend the period of exemption beyond the aforesaid period and thereby saddled the petitioners with liabilities which are otherwise not legally payable by the writ petitioners. The writ petitioners contend that the employees of the Head-Office of the Company have been getting benefits which are far superior to the benefits available under the E.S.I. Act and the authorities concerned are required and obliged to consider such benefits objectively in deciding the application for renewal of exemption period.

6. Mr. D.N. Ray, the learned Counsel appearing on behalf of the petitioner submits that initially the Labour Department, Govt. of West Bengal did not grant exemption for the period from 1st September, 2003 to 31st August, 2005 for which the writ petitioners approached this Hon''ble Court and in terms of a direction passed by this Hon''ble Court while disposing of the writ application on 9th November, 2011, it was incumbent upon the authorities concerned to consider the representation made by the petitioner for exemption objectively and not mechanically. The learned Counsel has referred to the observation made by Justice Tapen Sen in disposing of the earlier writ petition being W.P. 12545 of 2006 on 9th November, 2011 which records that while passing the earlier impugned order on 7th August, 2006, the petitioners were not given any opportunity to satisfy the authorities as to whether the medical benefits were superior or not and the said authorities could not have passed such order declining exemption without giving such an opportunity to the petitioners and forming an opinion that the facilities extended to the employees of the petitioners'' establishment is superior to the E.S.I. Scheme. It is argued that Section 87 of the E.S.I. Act contemplates renewal and not a fresh exemption and, accordingly, the authorities concerned are required only to examine whether on the basis of the available record, the petitioner No. 1 is entitled to the renewal of exemption that was earlier granted to the petitioner No. 1. Pursuant to a direction passed by this Hon''ble Court for reconsideration of the matter for cancellation of exemption for the period 1st September, 2001 to 31st August, 2002 the principal Secretary on consideration of the documents produced by the petitioner company observed that the employees posted at the headquarters were already covered by a comprehensive medical assistance scheme and they were insured under the Medi-Claim Insurance Scheme for both outdoor and indoor treatments. The relevant observation of the Principal Secretary as recorded in the said order dated 12th November, 2002 and relied upon by the learned Advocate is reproduced hereinbelow:-

It transpired from the documents filed by the petitioner company that its employees posted at the headquarters are already covered by a comprehensive medical assistance scheme. They are insured under the Medi-Claim Insurance Scheme for both outdoor and indoor treatments. The spouses and dependent children are also covered in this scheme. The employees are free to choose the

doctor and nursing home for their treatment. Full costs are reportedly reimbursed to the patients under the said insurance scheme. The employees are also covered under the Group Personal Accident Policy of the United India Insurance Company. It was claimed on behalf of the petitioner company that the present arrangements for rendering medical assistance to the workers and their dependent family members were far superior and efficient compared to the benefits available in the ESI Scheme. In addition a qualified medical officer is available at the head office of the company everyday for immediate medical consultation.

The arguments put forward by the management merit serious considerations. The existing medical facilities appear to be fairly comprehensive and to the liking of the employees. I find that these facilities are certainly comparable to those admissible to ESI members. There is no reason to hold that the ESI Scheme happens to be substantially superior to existing medical assistance scheme of the company. It will not be desirable to discontinue the existing scheme when both the management and the workers seem to be satisfied with its contents and implementation.

In view of what has been stated above the prayer for allowing exemption u/s. 87 & 88 of the ESI Act, 1948, for one year with effect from September, 2001 is allowed. All concerned may please be informed.

7. It was argued that there has been no perceptible change from what was recorded by the Principal Secretary in the aforesaid order and, accordingly, the authorities concerned should have applied their mind and on consideration of the materials on record ought to have granted the exemption for the subsequent periods. On the aspect of consideration, Mr. Ray has relied upon a decision of the Hon'ble Supreme Court reported in Bhikhubhai Vitlabhai Patel and Others Vs. State of Gujarat and Another, to impress upon the Court that there has to be a proper consideration of the materials on record produced by the petitioners in deciding an application for exemption and it cannot be dealt with mechanically. Mr. Ray has referred to the documents annexed to the application for exemption and submitted that such documents would establish that on objective consideration, the petitioner No. 1 is entitled to exemption. Au contraire, Mr. Pronab Kr. Dutta, the learned Counsel appearing on behalf of the Labour Department submitted that there is a fallacy in the argument of Mr. Ray in contending that the application for renewal of exemption is not a fresh grant of exemption. It is submitted that such exemption is from year to year and every time it is the duty and obligation of the petitioner No. 1 claiming exemption to satisfy the authorities concerned that the benefits are substantially similar or superior to the benefits provided under the Act. The learned Counsel has referred to the comparative chart annexed to the Affidavit-in-Opposition to W.P. 129 of 2001 and submitted that the writ petitioners have failed to show and establish that the benefits that are available to the employees of the Head-Office are similar or superior to the benefits provided under the Act. The learned Counsel

submits that the writ petitioners did not deal with the comparative chart annexed to the said Affidavit-in-Opposition although they had the opportunity to do so and the Affidavit-in-reply filed in dealing with the said chart is completely vague. It is submitted that the writ petitioners have completely avoided to deal with the said comparative chart in its affidavit-in-reply. It is argued that even in the writ petition or in the affidavit-in-reply, the writ petitioners have failed to disclose documents to establish their tall claim of substantial and/or superior benefits extended to its employees in comparison to the benefits available under the scheme.

8. To this, Mr. Ray argued that if the employees themselves feel that they are getting better benefits from the management and, therefore, they would like to remain outside coverage under the Act, the Government certainly will have to wake up to the reality.

9. The principle argument for extension of the exemption rests upon the order of the Principal Secretary dated 12th November, 2002 and on an assumption that the employees of the writ petitioner No. 1 are getting better benefits from the management and they would like to remain outside coverage under the Act. In spite of repeated queries, the learned Counsel has failed to refer to any documents which would show that the benefits reported to have been provided by the writ petitioner No. 1 to its Head-Office employees are substantially similar or superior to the benefits provided under the Act. On contrary, it appears from record that repeated opportunities were given to the writ petitioner No. 1 to produce relevant documents in support of their claim of substantially similar or superior benefits. It appears from record that the employer's representative Ms. Kusumita Banerjee before the ESI Corporation on 23rd October, 2010 for personal hearing in connection with the exemption application and she requested the authorities concerned to extend the date of personal hearing and on the basis of the aforesaid request, further opportunities of personal hearing were afforded to employer on 12th February, 2010 and 3rd March, 2010. Even after on 9th November, 2011. The petitioners were afforded opportunity to produce relevant documents but the petitioners could not produce any document to establish their tall claim. Even before this Court, the petitioners have failed to disclose any document which would establish that the so-called benefits extended to its employees in the Head-Office are substantially similar or superior to the benefits provided under the statute. The respondent authorities in their affidavit have elaborately dealt with this matter and have given comparative chart which clearly shows that the benefits under the ESI Act are superior to the benefits provided are extended by the company to its employees. The extract of the said chart is stated below:-

Comparison of the benefits provided to the employees under the provision of E.S.I. Scheme with that of the benefit provisions made by the Employer

10. Moreover, the coverage claim was in respect of 14 Head-Office employees. The picture with regard to the persons ought to be covered under the scheme

has also not been made clear. The comparative chart disclosing the benefits available through the E.S.I. Corporation has not been dealt with at all by the writ petitioners. It appears on scrutiny that the concerned authorities have taken into consideration the representation and thereafter has prepared a comparative chart which unmistakably shows that the benefits available under E.S.I. Act are far superior than the benefits available under the scheme.

11. The exemption u/s 87 of the ESI Act can be granted for a period not exceeding one year and may, from time to time, be renewed any such exemption for periods not exceeding one year at a time. Every time a renewal is granted, it becomes a fresh grant of exemption. Mr. Pronab Kr. Dutta is correct in his submission that renewal of such exemption is not an extension of the earlier exemption and it is, in fact, a fresh exemption. Every time an application is filed, the establishment seeking exemption has to establish its claim for exemption. In this regard he has relied upon a judgment reported in *Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another*, where the Hon'ble Supreme Court has dealt with the distinction between renewal and extension of a lease. In the said decision it was held that:-

To extend means to enlarge, expand, lengthen, prolong, to carry out further than its original limit. Thus extension ordinarily implies the continued existence of something to be extended. The distinction between "extension" and "renewal" is chiefly that in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulated act. In other words, the word "extension" when used in its proper and usual sense in connection with a lease means a prolongation of the lease.

12. The judgment cited by Mr. Dey, namely, *Bhikhubhai Vithlabhai (supra)*, in my view, does not come to the aid of the writ petitioners.

13. In *Bhikhubhai Vithlabhai (supra)* on consideration of the materials, the Hon'ble Supreme Court has come to a finding that Government cannot form an opinion on imaginary grounds and wishful thinking, however, laudable that may be could not be the basis of formation of opinion. It was held that the formation of opinion though subjective must be based on the materials disclosed. In the instant case, it cannot be said that the said formation of opinion is based on any imaginary or wishful thinking. The writ petitioners completely sighed away in dealing with the comparative benefits disclosed in the affidavit-in-opposition. It clearly shows that the writ petitioners have no explanation to offer in relation to the benefits mentioned in the comparative chart which the employees would have received under the Act. Since, the benefits under the scheme is superior, in my view, the decision of the authorities does not suffer from infirmity. The authorities concerned, in my view, was justified in refusing to grant exemption. In view of the aforesaid, the W.P. 129 of 2011 and W.P. 646 of 2013 are dismissed and there shall be no order as to costs.

14. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.