
(2006) 07 JH CK 0101

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 2853 of 2001

Tata Iron and Steel Co. Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-07-2006

Acts Referred:

Employees State Insurance Act, 1948 — Section 87, 89

Citation : (2007) 2 LLJ 37 : (2006) 111 FLR 1140 : (2008) 1 JCR 280

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Rajeev Ranjan and Tapas Kabiraj, for the Appellant; Shamim Akhtar, S.C. - I, R.N. Roy and S.N. Das, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—Though this writ petition was tagged with W.P (C) No. 2857 of 2001 for hearing, but on perusal of the records, it appears that the point in issue in both the writ applications are not the same and similar and therefore, this writ application is being heard and disposed of separately.

2. In this writ application, the petitioner has prayed for quashing of the Order dated 26.09.2000 as contained in Annexure - 6 to the writ application issued by the Government of Bihar, whereby, the prayer of the petitioner for grant of exemption as provided under 87 of the Employees' State Insurance Act for the period 01.10.1996 to 30.09.1997 and 01.10.1997 to 30.09.1998 has been rejected.

3. The facts which are not in dispute are as follows:

The petitioner M/s. Tata Iron & Steel Co. Ltd. (hereinafter referred to as TISCO in short) has its principal office at Jamshedpur and one of its work is situated at Adityapur. Employees State Insurance Act, 1948, a Central Act, was enacted for providing certain benefits to the employees in case of sickness, maternity and employment injuries and for certain other matters in relation thereto.

4. Section 87 of the Employees' State Insurance Act provides that the appropriate Government may by Notification in the official gazette exempt any factory or establishment or class of factories or establishment in any special area or 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 a period not exceeding one year at a time.

5. By issuance of letter dated 09.01.1985 (Annexure-3), the Central Government, Ministry of Labour, informed the General Manager (Operations) of TISCO that since there was no intention of the Government to apply the provisions of the Employees State Insurance Act to the Units of petitioner Company and as such, the Employees State Insurance Corporation, vide letter dated 02.08.1982 has advised the Government of Bihar to grant exemption from operation of the provisions of the Act to the Units of the TISCO located in the area of Adityapur up to 30.09.1984 and the Corporation was also advised to recommend the continuation of exemption beyond 30.09.1984 on year to year basis.

6. There is no dispute that the petitioner's Unit was being given exemption from the application of the Act as provided u/s 87 of the said Act from 1982 to 1996. For subsequent years i.e. for the period 01.10.1996 to 30.09.1997 and 01.10.1997 to 30.09.1998, the applications were made by the petitioner to the State of Bihar for renewal of the aforesaid exemption u/s 87 of the Act. The said application for renewal of the exemption was rejected by issue of order as contained in Annexure-6 to the writ application which has been challenged in this writ application.

7. Mr. Rajiv Ranjan, learned counsel appearing for the petitioner has submitted that the impugned order as contained in Annexure - 6 to the writ application has been passed in complete violation of the principles of natural justice since before issuing such order, no notice to show-cause or a chance of being heard was given to the petitioner and, as it appears from the said impugned order that only on the basis of a letter issued by the Employees' State Insurance Corporation, without application of mind, the State of Bihar has rejected the claim for exemption u/s 87 of the Act, which is illegal.

8. In support of his submission, learned counsel for the petitioner has relied upon the decision of Orissa High Court in the case of R.K. Dubey Vs. M.P. State Agro Industries Development Corporation and Others, and the decision of the Division Bench of the Allahabad High Court in the case of Lohiya Machine (L.M.L.) Karmachari Sangh, Kanpur Vs. State of U.P. and others, . The Orissa High Court in the aforementioned case has held that though Section 89 of the Act does not speak about giving a hearing to the employer but it does not mean that no hearing is to be given to the employer under the circumstances. It was further held that since a valuable right of the employer is involved and therefore before any decision is taken in the matter of exemption, the employer should be heard. The same view has been taken by the Allahabad High Court in case of Lohiya

Machines (Supra).

9. Mr. S.N. Das, learned counsel appearing for the Employees' State Corporation has submitted that since the petitioner was not providing several benefits e.g. as mentioned in Annexure - 6 to its employees and therefore, the Corporation recommended the State Government to refuse the renewal of exemption u/s 87 of the Act to the petitioner and accordingly, Annexure - 6 has been issued by the Government of Bihar. It was further submitted that there is no provision under the Act to give a personal hearing to the petitioner before any order is passed.

10. Mr. S.P. Roy, learned counsel appearing for the State of Bihar submits that the impugned Annexure-6 was issued by the Government of Bihar on the recommendations of the Employees' State Insurance Corporation.

11. From perusal of Impugned order (Annexure-6), issued by the State of Bihar, it appears that Employees' State Insurance Corporation had reported to the Government of Bihar that certain benefits were not being provided by the petitioner to its employees. It appears that only on the said basis, the application for renewal of exemption u/s 87 of the Employees' State Insurance Act was rejected by State of Bihar. It does not appear from the impugned order that before issuance of impugned order (Annexure-6) any notice to show cause or chance of being heard was given to the petitioner at any time.

12. Considering the facts and circumstances of the case, rival contention of the parties as well as the impugned order, I find that since the petitioner was being extended the benefits of exemption u/s 87 of the Act right since 1982 to 1996 and now the said benefit was being withdrawn/cancelled by the State Government and therefore, it was incumbent upon the respondents including the State of Bihar to comply the principles of natural justice by issue of notice to show-cause and the petitioner should have been given a chance of being heard. By not doing so, the principles of natural justice has certainly been violated, A valuable right of the petitioner for exemption u/s 87 of the Act has been taken away without giving a chance to show-cause or a chance of being heard. Therefore, relying on the decision of the Orissa High Court in the case of Orissa Industries Ltd. and Anr. (Supra) as well as the decision of the Division Bench of the Allahabad High Court in the case of Lohiya Machines (L.M.L.) Karmachari Snagh, Kanpur (Supra) wherein it has been held that before any decision is taken in the matter of exemption, the employer should be heard, this application is allowed. The order dated 26.09.2000 as contained in Annexure - 6 is hereby quashed.

13. As submitted by the learned counsel for the petitioner that the matter with regard to renewal of exemption u/s 87 of the Employees' State Insurance Act after the period 15th November, 2000 is pending consideration before the State of Jharkhand. After bifurcation of the State now it is State of Jharkhand which has to consider the request of the petitioner for exemption u/s 87 of the Employees' State Insurance Act and therefore, I direct that for grant of

exemption u/s 87 of the Act for the period 01.10.1996 to 30.09.1997 and 01.10.1997 to 30.09.1998 shall also be considered by the State of Jharkhand. Accordingly, the petitioner is directed to file a fresh application for grant of exemption u/s 87 of the Employees' State Insurance Act before the State of Jharkhand for the aforesaid period of two years within a period of two weeks from today. If such an application for grant of such exemption is filed by the petitioner within the said period, the State of Jharkhand shall consider the claim of the petitioner in its right perspective and shall dispose of the same by a reasoned and speaking order after giving a chance of hearing to the petitioner within a period of three months from the date of filing of such application by the petitioner.

14. With the aforesaid observations and direction, this writ application is allowed.