

**(2009) 11 MAD CK 0154**

**Madras High Court**

**Case No:** Writ Petition No. 15573 of 2009 and M.P. No. 1 of 2009

Tamil Nadu Co-operative  
Marketing Federation Ltd.

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

**Date of Decision:** Nov. 26, 2009

**Acts Referred:**

- Employees State Insurance Act, 1948 - Section 90

**Hon'ble Judges:** K. Chandru, J

**Bench:** Single Bench

**Advocate:** R. Subramanian for S. Hemalatha, for the Appellant; R. Neelakandan, G.A. for R1 and R3 and Jayakumari, for R2, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

@JUDGMENTTAG-ORDER

K. Chandru, J.

The petitioner is a Co-operative Marketing Federation Limited. The petitioner Federation has come forward to file the present writ petition seeking to challenge the letter dated 25.05.2009 of the first respondent in rejecting their request for the grant of exemption from the provisions of Employees State Insurance Corporation Act (for short ESI Act).

2. In the said order, it was stated that the petitioner's request for grant of exemption from 01.08.1985 cannot be considered since the benefits given by the petitioner Establishment to their workers were neither similar nor superior to the benefits provided by the ESI Corporation (for short ESI(C)).

3. The petitioner has challenged the same on the ground that the said order came to be passed without giving a personal hearing to them. The Government did not examine the benefits given by them to their workers which was either substantially

similar or superior. It was also stated that Section 90 of the ESI Act makes it mandatory to consult the petitioner. It was also stated that as per the decision taken and advised by respondents 1 and 2 in the meeting held on 21.05.1985, the petitioner Federation was asked to seek for exemption. Having given such advise, it is not open for the respondents to refuse the grant of exemption.

4. Mr. R. Subramanian, learned Senior Counsel appearing for Ms. Hemalatha contended that by the proceedings dated 15.03.2004, the Recovery Officer of ESI(C) had issued a notice to show cause as to why a warrant of arrest should not be issued against the petitioner. The petitioner Federation had sent a representation to the Government and even when the same was pending, attachment proceedings were initiated by the Corporation. This necessitated the petitioner Federation to approach this Court to renew their claim for exemption.

5. It is seen from the records produced by the petitioner Federation that along with a letter dated 21.04.1988, they have enclosed an application for Exemption from the Provisions of the ESI Act. In the application for exemption, they have set out the benefits granted by the Federation in lieu of the benefits available under the Act. With reference to the benefits of cash for prolonged illness, it was stated that an employee can get maximum cash benefit of Rs. 13,600/-. In the comparative statement, excepting for one or two items, it cannot be said that the benefits given by them are superior to the benefits given under the ESI Act. In any event, the petitioner Federation's request arise out of a statutory exemption provided under Chapter VIII of the ESI Act.

6. The learned Senior Counsel for the petitioner had relied upon the judgment of this Court as well as the judgment of the Orissa High Court in support of his contentions. A Division Bench of the Orissa High Court in the case of Orissa Industries Ltd. and Another Vs. Union of India (UOI) and Others, held that the Corporation must give a hearing to the applicant and merely because the statutory provisions is silent, the principles of natural justice will not stand excluded. However, in that case, the application for exemption was filed jointly by the employer and the workman. It was in that context, the Orissa High Court had directed a personal hearing to be given to an employer.

7. The petitioner also relied upon an unreported decision of this Court in W.P. No. 804 of 2003 dated 25.08.2009 National Cement Workers Union v. Secretary to Government and Ors. In that case, the learned Judge had referred to the decision of the Orissa High Court and set aside the impugned order on the ground of want of personal hearing. It is unfortunate that the earlier decision of this Court on the same issue was not brought to the notice of the learned judge made in Madras Race Club Vs. The Secretary to Government, Labour and Employment Department, The Employees State Insurance Corporation, Madras Race Club Staff Union and Tamil Nadu Race Club General Employees" Union .

8. In paragraphs 10 to 13 of the said judgment, it was observed as follows:

10. submitted that the order of the State Government is bereft of any reason and no opportunity was given to the petitioner Club before passing the orders. In this context, he relied upon a judgment of the Allahabad High Court in Lohiya Machine (L.M.L.) Karmachari Sangh, Kanpur Vs. State of U.P. and others . This is for the purpose to show that the Government must examine the benefits provided by the employer whether they are similar or superior to the benefits provided under the Act and hearing of the employer and union must be afforded.

11. In that case, the State Government on a policy consideration refused to grant exemption, which was found fault with by the Allahabad High Court. But, in the present case, it is not as if on any policy consideration the State Government had refused. But, on the contrary, it was found that the medical and cash benefits provided by the petitioner Club were neither comparable nor superior to the benefits provided under the ESI Act. Further, as stated in the counter affidavit, the petitioner Club is not providing the various benefits given under one umbrella under the ESI Act. It includes, Sickness Benefits, Maternity Benefits, Disablement Benefits, Death Benefit and Funeral Benefit. Such benefits are not provided by the Club. Even in the application sent by the petitioner club dated 06.04.1997 the Annexure appended shows that many of the benefits covered by the ESI Act were not extended.

12. In any event, Courts have repeatedly held that an exemption from the operation of a labour legislation is not automatic and there is no vested right on any employer to seek for an exemption. Only the benefits are superior compared to the ESI Act. The ESI Act is a social welfare legislation and the subscription paid by the employer and employees only covers a fraction of the expenditure involved by the Corporation. In the present case, the first respondent State has categorically held that it was not satisfied that the petitioner Corporation deserves an exemption and it had rejected the same on specific grounds.

13. The Act does not contemplate any personal hearing. Neither in the application nor in the direction given by this Court vide order dated 08.2.1999, any such right of personal hearing was conferred on the petitioner Club. It must also be stated that it was not a joint application made by the employer and employees together. The two employees" unions were subsequently made as party respondents and they have also not come to support the stand of the petitioner management. In any event, the decision relied on by the learned Counsel for the petitioner has not application to the facts of this case.

9. In the present case, the petitioner neither filed any joint application along with their workmen before the Government nor they have impleaded the workman either individually or in representative capacity in the present writ petition. The Supreme Court vide its judgment in Secretary, Housing Department, Madras v. K.

Sabanayagam reported in 1998 (1) LLN 383 has held that in the matter of grant of exemption from labour enactments, the workmen are necessary and proper parties. Since the same has not been done, the writ petition is liable to be rejected on the ground of non-joinder of parties also.

10. It must also be stated that the grant of exemption is not a matter of right and it is not enough that the benefits given by an employer must be substantially similar or superior. On the contrary, the Government must be convinced that such an exemption is in the interest of the workmen. Though the Act is silent with reference to the right of hearing an applicant, in the absence of the petitioner seeking for an opportunity, they cannot come forward to contend that no such opportunity has been granted. Further even before this Court, they have not established *prima facie* that the benefits promised by them are superior to that of the ESI(C).

11. In the light of the above, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.