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ZUARI CEMENT LTD.

v.

REGIONAL DIRECTOR E.S.I.C. HYDERABAD & ORS.

(Criminal Appeal Nos .5138-40 OF 2007)

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JULY 02, 2015

[T.S. THAKUR AND R. BANUMATHI, JJ.]

Employees State Insurance Act, 1948 – ss. 75(1)(g) and 87 – Power to grant exemption from applicability of the Act – Whether lies u/s. 87 with appropriate government or u/s. 75(1)(g) with ESI Court – Held: In terms of s.87, appropriate Government alone has power to grant or refuse exemption – ESI Court u/s.75, has power to decide disputes between employer and the Corporation – Grant or refusal of exemption cannot be said to be a dispute between employer and the Corporation – In the present case, order of the ESI Court granting exemption was without jurisdiction and hence non-est –Jurisdiction.

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Jurisdiction – Conferment of – Held: The parties, by consent, cannot agree to vest jurisdiction in the court to try the dispute, when the court does not have the jurisdiction.

Practice and Procedure – Objection as to want of jurisdiction – Held: Such objection can be raised at any stage.

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Interpretation of Statutes – Where the statute prescribes the procedure, it should be done in the manner prescribed and in no other way.

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Dismissing the appeals, the Court

HELD: 1. In terms of Section 87 of the Act, only the appropriate Government has the power to grant exemption to a factory or establishment or class of

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factories or establishments from the operation of the Act. In fact, the appellant-factory itself has obtained exemption from the appropriate Government-State Government under Section 87 of the Employees State Insurance Act, 1948, for the period from 1986 to 1993. Likewise, the rejection of exemption was also under Section 87 of the Act. While so, seeking the relief of declaration from the ESI Court that the appellant is entitled to exemption from the operation of the Act is misconceived. Contrary to the scheme of the statute, the High Court cannot confer jurisdiction upon the ESI Court to determine the issue of exemption. [Para 12] [484-E-G]

2. The Employees Insurance Court is a tribunal specially constituted for the purpose of deciding any controversy that may arise on the matters enumerated in Section 75 of the Act. A reading of Section 75 of the Act would show that the ESI Court has full jurisdiction to decide all the matters arising between the employer and the Corporation under the Act. The expression "any other matter" occurring in Section 75(1) (g) only means any other dispute between an employer and corporation or a person and Corporation pertaining to the contribution or benefit or other dues payable under the Act or any other matter required to be decided by ESI Court under the provisions of the Act. Grant or refusal of exemption by the appropriate government cannot be said to be a dispute between the employer and the Corporation. For grant or refusal of exemption, a specific provision is prescribed under the Act, it cannot be brought within the ambit of "any other matter" required to be decided by the Employees' Insurance Court under this Act. [Para 13] [484-H; 485-A-B, D-E]

A **3. Where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. As per the scheme of the Act, appropriate government alone could grant or refuse exemption. When the statute B prescribed the procedure for grant or refusal of exemption from the operation of the Act, it is to be done in that manner and not in any other manner. [Para 14] [486-A-B; 485-G-H]**

C *State of Jharkhand and Others vs. Ambay Cements and Another* **2004 (6) Suppl. SCR 125: (2005) 1 SCC 368;** *Babu Verghese and Others vs. Bar Council of Kerala and Others* **1999 (1) SCR 1121: (1999) 3 SCC 422 – relied on.**

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4. It is correct that the High Court directed the appellant to approach the ESI Court constituted under Section 74 of the Act for the relief which the appellant had claimed in the writ petitions. Both, the appellant E as well as the ESI Corporation did not challenge the order of the High Court but subjected themselves to the jurisdiction of the ESI Court. Neither the order of the High Court nor the act of Corporation, subjecting itself to the jurisdiction of ESI Court would confer F jurisdiction upon ESI Court to determine the question of exemption from the operation of the Act. By consent, parties cannot agree to vest jurisdiction in the Court to try the dispute when the Court does not have the jurisdiction. The objection, as to want of G jurisdiction, can be raised at any stage, when the Court lacks jurisdiction, the fact that the parties earlier acquiesced in the proceedings is of no consequence. [Paras 11 and 12] [484-A-D, G-H]

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5. Where there is want of jurisdiction, the order passed by the court/tribunal is a nullity or *non-est*. ESI Court did not have the jurisdiction to consider the question of grant of exemption, order passed by the ESI Court granting exemption and consequently setting aside the demand notices is *non-est*. [Para 15] [486-G-H; 487-A] A B

Case Law Reference

2004 (6) Suppl. SCR 125	**relied on.**	**Para 14**
1999 (1) SCR 1121	**relied on.**	**Para 14**

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5138-40 of 2007

From the Judgment and Order dated 21.09.2007 in Appeal Nos. 4045 of 2003, 266 of 2005 and 89 of 2006 of Division Bench of the High Court of Andhra Pradesh D

Debal Kumar Banerji, Rishi Maheshwari, Shally Bhasin for the appellant E

M.N. Krishnamani, Mahesh M. Srivastava, Vaibav M. Srivastava, P. N .Puri for the respondents.

The Judgment of the Court was delivered by F

R. BANUMATHI, J. These appeals are preferred against the judgment dated 21.09.2007 passed by the High Court of Andhra Pradesh allowing Civil Miscellaneous Appeals and thereby setting aside the order of ESI Court granting exemption to the appellant from the operation of Employees State Insurance Act, 1948 (for short 'the Act'). G

2. Brief facts which led to the filing of these appeals are as under:- The appellant is engaged in the business of H

A manufacture and sale of cement situated at Yerraguntla in Cuddapah District. The said area was brought under the purview of ESI Scheme with effect from 1.03.1986. The Government of Andhra Pradesh granted exemption to the appellant-cement factory from the operation of the Act by B various orders for the period from 1.03.1986 to 31.03.1993. The State Government rejected appellant's application for exemption for the period from 1.04.1993 to 31.03.2001. Following rejection of claim for exemption, the Regional Director, ESI Corporation, issued various demand notices C cumulatively demanding a sum of Rs. 65,38,537/- towards contributions for the period from 1.04.1993 to 31.03.1999. Challenging the order of appropriate government rejecting its claim for exemption and also challenging the demand D notices, the appellant filed number of writ petitions before the High Court.The High Court disposed of those writ petitions with direction to the appellant to approach the ESI Court constituted under Section 74 of the Act. The appellant filed the review petition before the High Court, *interalia,* E praying to remit the matter back to the government to rehear the representation of the appellant-company pertaining to its exemption of ESI Scheme under Section 87 of the Act for the period from 01.04.1993 to 31.03.1999 by affording personal hearing to the appellant. The review petition was F dismissed observing that the appellant has an alternative remedy before the ESI Court constituted under Section 74 of the Act and therefore the question of remanding the matter back to the State Government does not arise.

G 3. The appellant again filed number of writ petitions before the High Court expressing apprehension that ESI Court may not have the power to grant the relief of exemption from the scheme of the Act and therefore prayed that the appropriate government be directed to consider the issue of H exemption by personal hearing to the appellant and by

conducting an inquiry. However, vide order dated 11.10.2001 A
those writ petitions were disposed of holding that ESI Court has jurisdiction to decide the issue and all questions including the applicability of the Act can be raised before the ESI Court. The appellant then approached the ESI Court, Hyderabad under Section 75(1)(g) of the Act challenging the demand B
notice. The ESI Court appointed an Advocate Commissioner to submit a report as to the medical benefits made available to the workmen in the industry. An affirmative report was filed by the Court Commissioner stating that appellant is providing all the due benefits. On the basis of the report, C
vide Order dated 18.10.2004, the petitions filed by the appellant as well as by the workmen union were allowed and the ESI Court granted future exemption to the appellant from the coverage of the ESI Scheme and the ESI Court also set aside the impugned demand notices for the period D
between 1993 to 2001 and the interest thereon. Assailing the said order, the ESI Corporation filed appeal before the High Court contending that ESI Court does not have power under Section 75 of the Act and it is only the appropriate E
government which has got the power under Section 87 of the Act to exempt anyone from the application of the Act. By the impugned judgment dated 21.09.2007, the High Court allowed the appeals of the Corporation holding that ESI Court does not have the power to grant exemption under Section F
75(1)(g) of the Act. In these appeals, the appellant assails the correctness of the above judgment.

4. Mr. Debal Kumar Banerji, learned Senior Counsel for the appellant contended that the appellant approached G
the ESI Court pursuant to the directions of the High Court issued in different writ petitions that the ESI Court has the jurisdiction to decide the issue of exemption and in the second round of litigation, the High Court was not right in saying that ESI Court has no jurisdiction. Learned Senior H

A Counsel for the appellant further contended that Section 75(1)(g) of the Act specifically empowers the ESI Court to decide the matter which is in dispute between the principal employer and the Corporation in respect of any contribution or benefit or other dues payable or recoverable under the B Act and thus ESI Court has been conferred wide jurisdiction under Section 75(1)(g) of the Act to adjudicate any dispute under the Act and while so, the High Court erred in observing that ESI Court has no jurisdiction. It was *interalia* urged that the appellant has a full-fledged hospital with medical C officers and para medical staffs and has spent around 4.09 crores towards establishment of hospital and the appellant is providing better medical and other benefits to the workers than available under the Act and considering those aspects, D ESI Court rightly directed grant of exemption and set aside the demand notices and the High Court erred in reversing the order of the ESI Court.

5. Mr. M.N. Krishnamai, learned Senior Counsel appearing for the respondent-Corporation contended that E as per Section 87 of the Act, only the appropriate government can grant exemption under the Act and under Section 75 of the Act, ESI Court has no jurisdiction to grant exemption and since ESI Court has acted beyond its jurisdiction, High F Court rightly reversed the said order of ESI Court. It was contended that the jurisdiction can be conferred only in accordance with the statute and neither the order of the High Court nor the consent of the parties can confer the jurisdiction in the ESI Court.

G 6. We have carefully considered the rival contentions and perused the impugned judgment and also the order passed by the ESI Court and the material placed on record. The appellant actually is paying the ESI contribution from H 1.04.1999. The dispute in these appeals, therefore, pertains only to the period from 1.04.1993 to 31.03.1999.

7. Before adverting to the contention put forth by the learned counsel appearing for the parties, it would be appropriate to refer to Section 87 and Section 75(1)(g) of the Act which are relevant for considering the various contentious points urged. The power to grant exemption is specifically dealt with under Section 87 of the Act. Section 87 of the Act reads as follows:-

> **"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 establishment 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."**

A close perusal of Chapter VIII of the ESI Act i.e. Sections 87 to 91A of the Act will show that only the appropriate government has been empowered to exempt any factory or establishment or class of factories or establishments in any specified area from the operation of the Act for a period not exceeding one year and may from time to time renew such exemption for a period not exceeding one year at a time. Under Section 89, the appropriate Government shall not grant exemption under Section 87 or Section 88 unless a reasonable opportunity has been given to the Corporation to make any representation it may wish to make in this regard. A combined reading of Sections 87, 88 and 89 would go to show that it is a two tier consideration, namely, a factory or establishment as the case may be, submits an application seeking exemption and the appropriate government would scrutinize the application and

A afford an opportunity to the Corporation and then grant an order of exemption or reject the same as the case may be.

8. Section 75 of the Act deals with the matters to be decided by the ESI Court constituted under Section 74 and B the relevant provision of Section 75(1)(g) of the Act reads as under:-

> ***"75. Matters to be decided by the Employees' Insurance Court.*** **– (1) If any question or dispute C arises as to –**
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> **(a) to (ee).....**
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> **g) any other matter which is in dispute between a principal employer and the Corporation, or between D 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, E 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 (2A) shall be decided by F the Employees' Insurance Court in accordance with the provisions of this Act."**

A reading of the above would show that the question or dispute can be adjudicated as is provided for in clauses (a) to (ee) of sub-section (1) of Section 75. Section 75(1) G (g) of the Act essentially deals with any other matter/dispute between the employer and the Corporation or in respect of any contribution or benefit payable or recoverable under the Act in respect of an establishment covered by it. Section 75(1)(g) of the Act does not speak of a dispute between the H employer and the appropriate government which only has

got the plenary power to consider the question of grant of exemption. A

9. As per the scheme of the Act, the power to grant exemption is a plenary power given to an appropriate government. It follows that the ESI Court constituted under Section 74 of the Act has no jurisdiction to take up the question of grant of exemption. The Court constituted under Section 74 of the Act cannot decide such matters including the validity of an exemption notification. The order granting or denying exemption is certainly open to judicial review under Article 226 of the Constitution of India. But the question of exemption under Section 87 cannot be raised under Section 75 of the Act and the ESI Court constituted under Section 74 of the Act, cannot decide the legality or otherwise of an order relating to exemption passed by the appropriate government. B C D

10. Learned Senior Counsel for the appellant vehemently contended that grant of exemption to a factory or establishment from the operation of the Act falls within the jurisdiction of ESI Court under Section 75(1)(g) of the Act which specifically empowers the ESI Court to decide any matter which is in dispute between a principal employer and the Corporation in respect of any contribution or benefit or other dues payable or recoverable under the Act. It was submitted that only pursuant to the orders of the High Court, the appellant approached the ESI Court and the ESI Court has exercised its power to grant exemption on the basis of the orders of the Division Bench of the High Court. It was submitted that ESI Corporation submitted itself to the jurisdiction of ESI Court and while so, it cannot turn round and raise objection as to its jurisdiction to consider the issue of exemption and in support of his contention, learned Senior Counsel for the appellant placed reliance upon the decision of this Court in *Sohan Singh* & Ors. vs. *G.M. Ordnance* E F G H

A *Factory & Ors.*, (1984) Supp. SCC 661.

11. While disposing the writ petitions, of course, the High Court directed the appellant to approach the ESI Court constituted under Section 74 of the Act for the relief which B the appellant had claimed in the writ petitions. Notably, both the appellant as well as the ESI Corporation did not challenge the order of the High Court but subjected themselves to the jurisdiction of the ESI Court. In our view, neither the order of the High Court nor the act of Corporation subjecting itself to C the jurisdiction of ESI Court would confer jurisdiction upon ESI Court to determine the question of exemption from the operation of the Act. By consent, parties cannot agree to vest jurisdiction in the Court to try the dispute when the Court does not have the jurisdiction.

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12. As discussed earlier, in terms of Section 87 of the Act, only the appropriate government has the power to grant exemption to a factory or establishment or class of factories or establishments from the operation of the Act. In fact, the E appellant-factory itself has obtained exemption from the appropriate Government-State Government under Section 87 of the Act for the period from 1986 to 1993. Likewise, the rejection of exemption was also under Section 87 of the Act. While so, seeking the relief of declaration from the ESI Court F that the appellant is entitled to exemption from the operation of the Act is misconceived. Contrary to the scheme of the statute, the High Court, in our view, cannot confer jurisdiction upon the ESI Court to determine the issue of exemption. ESI Corporation, of course, did not raise any objection and G subjected itself to the jurisdiction of the ESI Court. The objection as to want of jurisdiction can be raised at any stage when the Court lacks jurisdiction, the fact that the parties earlier acquiesced in the proceedings is of no consequence.

H 13. The Employees Insurance Court is a tribunal

specially constituted for the purpose of deciding any controversy that may arise on the matters enumerated in Section 75 of the Act. A reading of Section 75 of the Act would show that the ESI Court has full jurisdiction to decide all the matters arising between the employer and the Corporation under the Act. Section 75 of the Act sets out the matters to be decided by the ESI Court. As per Section 75(1)(g) of the Act, ESI Court is empowered to decide any matter which is in dispute between the employer and the Corporation in respect of any contribution or benefit or other dues payable or recoverable under the Act or any other matter required to be or which may be decided by the ESI Court under the Act and such question or dispute subject to the provisions of sub-section (2-A) shall be decided by the ESI Court in accordance with the provisions of the Act. When considered in the light of clauses (a) to (d) in Section 75 (1) of the Act, the expression "any other matter" occurring in Section 75(1) (g) only means any other dispute between an employer and corporation or a person and Corporation pertaining to the contribution or benefit or other dues payable under the Act or any other matter required to be decided by ESI Court under the provisions of the Act. Grant or refusal of exemption by the appropriate government cannot be said to be a dispute between the employer and the Corporation. For grant or refusal of exemption, a specific provision is prescribed under the Act, it cannot be brought within the ambit of "any other matter" required to be decided by the Employees' Insurance Court under this Act.

14. As per the scheme of the Act, appropriate government alone could grant or refuse exemption. When the statute prescribed the procedure for grant or refusal of exemption from the operation of the Act, it is to be done in that manner and not in any other manner. In *State of Jharkhand and Others vs. Ambay Cements and Another*,

A (2005) 1 SCC 368, it was held that "It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way". In *Babu Verghese and Others vs. Bar Council of Kerala and Others,* (1999) 3 B SCC 422, it was held as under:

> **"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that C manner or not at all. The origin of this rule is traceable to the decision in *Taylor* v. *Taylor, (45 LJCH 373)* which was followed by Lord Roche in *Nazir Ahmad* v. *King Emperor, (AIR 1936 PC 253)* who stated as under:**
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> **"[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."**
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> E **32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh* v. *State of V.P., (AIR 1954 SC 322* and again in *Deep Chand* v. *State of Rajasthan (AIR 1961 SC 1527).* These cases were considered by a three-Judge Bench of this Court F in *State of U.P.* v. *Singhara Singh (AIR 1964 SC 358)* and the rule laid down in *Nazir Ahmad case (AIR 1936 PC 253)* was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary G principle of administrative law."**

15. Where there is want of jurisdiction, the order passed by the court/tribunal is a nullity or *non-est.* What is relevant is whether the Court had the power to grant the H relief asked for. ESI Court did not have the jurisdiction to

consider the question of grant of exemption, order passed by the ESI Court granting exemption and consequently setting aside the demand notices is *non-est.* The High Court, in our view, rightly set aside the order of ESI Court and the impugned judgment does not suffer from any infirmity warranting interference.

16. Since the order passed by the ESI Court is a *non-est,* which was rightly set aside by the High Court, we are not inclined to go into the merits of the appellant's contention that they have a full-fledged hospital and are providing various medical facilities and better health schemes to its employees and their family members.

17. In the result, all the appeals are dismissed. In the facts and circumstances of the case, we make no order as to costs.

Kalpana K. Tripathy Appeals dismissed.