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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8015/2019

BSES YAMUNA POWER LIMITED ..... Petitioner

Through: Mr.Sandeep Prabhakar with Mr.Vikas Mehta, Mr.Ishaan Lamba, Advs.

versus

EMPLOYEES STATE INSURANCE CORPORATION AND ORS. ..... Respondent

Through: Mr.V.K.Singh with Ms.Prachi Singh, Mr.Sourav Kumar, Advs & Mr.Arvind Bansal, SSO for R-1 to 3.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

O R D E R

% **01.03.2023**

1. The petitioner has approached this Court assailing the assessment order dated 15.05.2019 passed by the Employees State Insurance Corporation (hereinafter referred to as 'ESIC') directing the petitioner to deposit a sum of Rs.3,23,40,488/- for the period between April, 2014 to March, 2019 towards the contribution for medical benefits.
2. Learned counsel for the petitioner submits that taking into account that the petitioner had already been providing much better facilities including medical facilities to its employees at par with those being extended to them when they were employees of the erstwhile Delhi Vidyut Board (DVB), the petitioner had on 03.12.2002, applied for exemption under Section 88 of the ESIC Act from the appropriate government, which was the Govt. of NCT of Delhi (GNCTD) as per

the then prevailing situation. However, before the said application could be decided, the respondent raised a demand against the petitioner compelling it to approach this Court by way of W.P.(C) 3013/2005. The said writ petition came to be allowed by this Court vide judgment dated 01.03.2006, wherein a direction was issued to the GNCTD to decide the petitioner's exemption application in a time-bound manner. It was further directed that the demand notices raised by the ESIC would be kept in abeyance till a final decision on the petitioner's application seeking exemption was taken by the ESIC.

3. The said application has, however, remained undecided till date and the respondents have now again raised a further demand for the period between April, 2014 to March, 2019, once again on the same premise on which the earlier demand notices were being raised. He, therefore, contends that the impugned notices are in the teeth of the directions issued by this Court on 01.03.2006 as the ESIC was precluded from raising any demand till the petitioner's exemption application was decided.

4. On the other hand, learned counsel for the respondent/ESIC seeks to defend the impugned demand notices by contending that on account of the amendment in the ESIC Act in the year 2010, it is the Central Government, which is the appropriate government for granting exemption and, therefore, it was for the petitioner to now approach the Central Government instead of pressing its earlier application. In support of his plea, he draws my attention to the letter dated 31.07.2017 issued by the Office of the GNCTD from which it transpires that it is now the Central Government, which is competent

to grant any exemption under the ESIC Act.

5. A perusal of the letter dated 31.07.2017, copy whereof has been filed with the counter affidavit, shows that vide the said letter, the GNCTD had, while explaining that after 2010, it was the Central Government which was competent to consider the petitioner's request for exemption, had directed the ESIC to forward the petitioner's pending application to the Central Government. The said application has admittedly not been forwarded to the Central Government till date.
6. Learned counsel for the respondent/ESIC is unable to give any justification as to why the petitioner's application seeking exemption was not forwarded in terms of the directions issued by the GNCTD. He is also not in a position to answer as to how a fresh demand has been raised on the petitioner despite its exemption application having still not been decided.
7. In my view, once this Court had on 03.12.2006, specifically directed that till the petitioner's exemption application dated 03.12.2002 was decided, no action would be taken on the basis of the demand notices issued by the respondent, the ESIC has, on the same premise, proceeded to issue the impugned demand notices even though they pertained to the subsequent period. This action of the ESIC appears to be *prima facie* in blatant violation of the orders passed by this Court. Furthermore, as already noted, there is no explanation whatsoever on the part of the ESIC for not forwarding the petitioner's exemption application to the Central Government despite specific directions issued by the GNCTD. However, before any action against the officers of the ESIC is initiated on this count, ten days time is granted

to the ESIC to forward the petitioner's pending exemption application to the Central Government for appropriate orders. An affidavit in this regard be filed within two weeks.

8. It is expected that, in case, the petitioner's application is forwarded to the Central Government as directed hereinabove, the same will be considered expeditiously by the Central Government in accordance with law after following due laid down procedure.

9. List on 09.05.2023.

REKHA PALLI, J

MARCH 1, 2023
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