

(1985) 10 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3544/84

All India ITDC Employees Union

APPELLANT

Vs

The India Tourism Dev. Corporation

RESPONDENT

Date of Decision : 01-10-1985

Acts Referred:

Employees State Insurance Act, 1948 — Section 1(3), 44, 45, 72, 76
Industrial Disputes Act, 1947 — Section 1, 2, 9A

Citation : (1985) WLN 570

Hon'ble Judges : Ashok Kumar Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Kumar Mathur, J.—Petitioner has filed the present writ petition challenging the order dated 20-11-84 (Ex.4) whereby the provisions of the Employees, Insurance Act, 1948 (here in after referred to as "the Act") has been made applicable to the petitioner.

2. Petitioner is unit of the All India ITDC Employee's Union affiliated to AITUC which is a registered body under the Trade Union Act and it has units at the various places of India running hostels, transport units and entertainments etc. Petitioner is the representative body of the employees of ITDC which foster for the interests, co-operation and betterment of its members so as to protect their service conditions.

3. The employees of this Union are working in one of the hostel of the Corporation known as Laxmi Vilas Palace Hotel, Udaipur. Out of the total strength of 51 employees working in this hotel, 31 employees hail from places out side and therefore free medical aid to all the employees and their dependents was given to them in accordance with the ITDC Medical Attendance Rules, 1978. In 1980 when the ESI Scheme was sought to be applied and the petitioner Union protested against it and as such the free medical aid was continued to be given under the ITDC Medical Attendance Rules, 1978. It is now by virtue of order

dated 20-11-84 it has been held out for all concerns that while cancelling the present medical aid policy the Manager Laxmi Vilas Palace Hotel ITDC Udaipur applied the Employees' State Insurance Act, 1948 (here in after referred Act of 1948) with effect from 12-15 84.

4. Aggrieved against this action of the Management this writ petition has been filed by the Union stating that the facility given to them under the 1978 Rules is more beneficial than they are being given under the Act.

5. Mr. Calla learned counsel for the petitioner has submitted that since hotel is an Industry and all the employees working are workmen, therefore, the service conditions of the incumbent should have been changed after complying with Section 9A of the Industrial Disputes Act, 1947 (here in after referred to "Act of 1947"). Secondly it has been submitted that the Act of 1948 is not applicable to hotel because it is not factory within Section 2(12) of the Act of 1948. Thirdly it is submitted that the existing rules i.e. Rules of 1978 are more beneficial than the medical benefits under this Act of 1948. Lastly the counsel submit that this scheme can only be made applicable as required u/s 2(1) of the Act by the appropriate Government and State of Rajasthan is not the appropriate Government so far as Hotel is concerned, therefore, the provisions of the said Act of 1948 cannot be made applicable.

6. As against this the reply has been filed on behalf of the respondents No. 1 and 2 by Mr. Mathur and by Mr. Soni on behalf of respondent No. 3. No reply on behalf of the State has been filed.

7. Mr. Mathur appearing for respondents Nos. 1 and 2 submitted that the Act of 1948 is applicable and the hotel industry comes within the definition of factory, therefore the Act stands applicable and it is not necessary to comply with Section 9A of the Industrial Disputes Act nor it is necessary to make any declaration for making this Act of 1948 applicable. Mr. Soni appearing for respondent No. 3 has adopted the argument of Mr. Mathur and has also produced a chart showing the medical facilities which were given to the employees under the 1978 Rules and which are being given under the Insurance Act.

8. The Employees State Insurance Act came into force in 1948. This is Central legislation for providing benefit to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto. Section 1 says that it shall come into force on, such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, Sub-section (4) says, it is applicable to all factories including factories belonging to the Government other than seasonal factories. Sub-section (5) says that the appropriate Government may, in consultation with the Corporation and after giving six months notice of its intention of so doing by notification in the Official Gazette, extend the provisions of the Act or any of them, to any other establishment or class of establishments industrial, commercial, agricultural

otherwise.

9. Factory has been defined in Section 2 which reads as under:

12. "factory" means any premises including the precincts thereof where on twenty or more persons (are employed or were employed for wages) on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so varied on but does not include a mine subject to the operation of the Mines Act, 1952.

10. So far as the first contention of the learned counsel for the petitioner is concerned that Section 9A of the Industrial Disputes Act has not been complied with. It may be stated that the same is not applicable. This is a specific legislation extending medical benefits to the employees of such class of employments. Whereas Section 9A of the Industrial Disputes Act is general provision, therefore, specific provision over ride general provisions. Thus, the Act. of 1948 shall over ride the provisions contained in the Industrial Disputes Act.

11. More over Section 9A also says that as and when the management wants to change the service conditions, they will invite objections but in this case it is not the management who wants to change. This part of service condition is changed by parliamentary legislation therefore, Section 9A of the Act 1947 has no applicability. Learned counsel has cited Tata Iron & Steel Co. v. Workmen 1972 SC 1917. This authority lays down that as and when the service conditions are sought to be changed then Section 9A of the Act of 1947 has to be complied with. As I have already mentioned above, that service conditions are not changed by the Management but the same have been changed by virtue of the Act 1948. Thus this submission of the learned counsel has no force and it is rejected.

12. Secondly, it has been contended that the hotel is not a factory and it does not fall within the definition of factory as defined in Section 2. I have already reproduced (he definition of factory. It is an admitted fact that this hotel has employees more than 20 persons and it uses the power for manufacturing food. Thus this hotel falls within the definition of factory. Therefore, this Act is applicable to this industry Mr. N.N. Mathur cited a case of All India ITDC Employees" Union v. Hotel Ashok and Anr. 1984 Kar L J 99 In that case it has been held that the hotel is an industry. Similarly in Poona Industrial Hotel Ltd. v. I.C. Sarin and Anr. 1980 LIC 100 the Bombay High Court has taken a similar view that hotel is a factory. In this case also its employees are more than 20 persons and it also uses the power for manufacturing food, therefore, this hotel falls within the definition of factory and as such the Act is applicable to this hotel. Thus this submission of the learned counsel for the petitioner has no merit and it is rejected.

13. The submission of the learned counsel for the petitioner that so far as this Act is concerned the appropriate Government is the Central Government and it

should be made applicable by the Central Government.

14. As required by Sub-section (3) of Section 1 that this Act shall come into force on the date as notified by the Central Government. The Central Government by notification dated 9-8-1960 have made this Act applicable to whole of the Municipal limits of Udaipur City and some villages of the Revenue Tehsils of Udaipur. The notification dated 9-8-1960 published in the gazette of India dated 14-8-1960 is reproduced as under:

S.O. 2018--In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), Central Govt. hereby appoints the 14th August, 1960, as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) Chapter V and Chapter VI (Except Sub-section 1 of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas of the State of Rajasthan, namely:

I--The areas within the Municipal limits of Udaipur City and the revenue village of Purohiton-ki-Madri in tehsil Girwa, district Udaipur;

II--The areas within the Municipal limits and Kaswa Bharatpur in Bharatpur tehsil, district Bharatpur No. F. HI-13(10)/60.

Thus when the Act has been made applicable for whole of the Udaipur Municipal Limit by the Central Government, it is not necessary for the State Government to issue any notification for making the provisions of the Act applicable. Sub-section (4) of Section 1 is also relevant and it says that it shall cover all factories except seasonal factories. When the Act has been made applicable by the Central Government by virtue of the notification mentioned above and this hotel is a factory therefore, this Act automatically stand made applicable. Thus this argument of the learned counsel is also without any force.

15. Lastly the learned counsel has submitted that the existing Rules of 1978 are more beneficial than the provisions of the Act of 1948. In this connection Mr. Soni has invited my attention to the chart submitted by him wherein he has dealt with facilities which are being provided to the employees of the petitioner under the Act, it is submitted that they are more beneficial than what was sought to be provided under the Rules of 1978. Mr. Mathur has also invited my attention to Section 72 of the Act which says that no employer by reason only of his liability for any contribution payable under this Act shall directly or indirectly, reduce the wages of any employee or except as provided by the regulations, discontinue or reduce benefits payable to him under the condition of his service which are similar to the benefits conferred by this Act.

16. Mr. Mathur has further invited my attention to the case of Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others, and submitted that if the facilities which are being given under the Act are not suited to the petitioner, then the petitioner, should raise an industrial dispute and the competent forum

decide the matter.

17. The question is whether the medical facilities which are being given under the Rules are more beneficial or not. It is a question of fact on which I need not go. But in view of Section 72 of the Act that if the benefits which are being given to the employees are more favourable, than which are given under the Act then the employees can claim the benefit under the proper forum. In this connection reference is made to Bareilly Holdings Ltd. v. Their Workmen 1979 LIC 600 and their Lordships held the object of Section 72 Employees' State Insurance Act is evidently to discourage employers from using the benefits provide under the ESI Act as an excuse of justification for reducing or discontinuing the benefits available to the workmen under their conditions of service on the ground of similarity between the two types of benefits.

18. Thus Section 72 has been interpreted by their Lordships of the Supreme Court and it clearly transpires that the benefits which had been made applicable to them are more advantageous than the same cannot be denied to them under the garb of this Act. Thus I hold that if the benefits which are more advantageous to the petitioner then they will be given to them & the same will not be denied to them under the garb of this Act. Mr. Soni has however tried to show that the benefits given to the petitioner are more beneficial. But is essentially a question of fact and I am not entering into this factual aspect. If petitioner finds that by virtue of the Rules 1978 he is deprived of some more advantageous facilities, then he shall get it adjudicated before competent forum. This writ petition is dismissed without any order as to costs.