

(2005) 05 AHC CK 0222

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4021 of 1997

All India Trade Union Congress Unit Hotel Agra Ashok

APPELLANT

Vs

Director General, Employees State Insurance Corporation,
The Regional Director, Employees State Insurance
Corporation and The General Manager, Hotel Agra Ashok

RESPONDENT

Date of Decision : 06-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Employees State Insurance (General) Regulations, 1950 — Regulation 97
Employees State Insurance Act, 1948 — Section 1(4), 72, 75(1), 78, 82

Citation : (2005) 6 AWC 6134 : (2005) 3 ESC 2050 : (2005) 105 FLR 1028 :
(2005) 3 LLJ 116

Hon'ble Judges : R.P. Misra, J;A.P. Sahi, J

Bench : Division Bench

Advocate : V.K. Upadhyay, for the Appellant; Namwar Singh, P.K. Pandey, P.K. Srivastava, Sanjiv Singh, Sudhir Singh, V.P. Upadhyay and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.P. Misra and A.P. Sahi, JJ.—The present writ petition has been filed by the Unit of the petitioner Union" looking after the welfare of the Employees of the Hotel Agra, Ashok Agra, praying for Mandamus commanding the respondents not to implement the notification dated 23.12.1996 as well as the other (notifications issued in this regard, under the Employees State Insurance Act 1948 and the Rules framed thereunder, primarily on the ground that the Employees of the petitioner's union are enjoying comparatively more advantageous benefit than under 1978 Rules made applicable to the petitioner by the respondent employer and that the applicability of the E.S.I. Act and the notifications made thereunder would seriously prejudice the rights of the petitioner.

2. We have heard Sri V.K. Upadhyay, learned counsel for the petitioner, Sri P.K. Pandey, learned counsel for the respondents No. 1 and 2 and Sri Namwar Singh,

learned counsel for the respondent No. 3. who has also appeared for the petitioner (Employers) in writ petition No. 50056 of 2002 and writ petition 26579 of 2005. The facts in brief for deciding the present controversy are that the petitioner upon a comparison between the medical facilities admissible under the Rules of 1978 enforced by the respondents employers and that of the notifications under the E.S.I. Act have urged that there is absolutely no justification for applying and implementing the notification under the E.S.I. Act; This Court entertained] this writ petition and passed the following interim order on 3.2.1997:

"Until further order, the members of the petitioners Union who are the employees of Hotel Agra Ashok shall continue getting the medical benefits and facilities to which they were entitled under the Medical Rules, 1978."

3. The aforesaid stay order, however, did not stay the implementation of the notifications issued under the E.S.I. Act. The respondents No. 1 and 2 i.e. E.S.I. Corporation filed stay vacation application and a counter affidavit disputing the aforesaid claim of the petitioners and also bringing on record the decisions of the Apex Court in the case of E.S.I Corporation v. K.S.H. Development Corporation dated 11.10.1993 and have urged that since the validity of the notification have been upheld the same does not require to be interfered with. Another judgement of this Court dated 21.1.1997 rendered by the Division Bench has also been relied upon to urge that the present writ petition deserves to be dismissed. In the counter affidavit, the details of medical benefits which are to be extended under the Act have been enumerated in detail in paragraph of the counter affidavit On the basis thereof, it is contended that the benefits being offered to the petitioner are more better and advantageous than that being given by the respondent No. 3, employer.

4. The respondent No. 3 has also filed a counter affidavit wherein they have very categorically stated that the respondent No. 3 is bound by the notification dated 27.3.1992 and the subsequent amendment and as such the said respondent has no option but to enforce the said notification. In view of this, it has been further stated in the counter affidavit that they have to withdraw the medical facilities that have already been extended to the petitioner under Rules, 1978 and to start deducting the employees contribution under the notification of the E.S.I. Act. During the course of the arguments Sri Namwar Singh, learned counsel for the respondent No. 3, urged that he will be governed by the orders of this Court and since under the order dated 3.2.1997 the respondent No.3 has been extending the benefits under 1976 Rules therefore, they should not be further saddled by making deductions and contributions under the E.S.I. Act. He has further urged that there was no fault on the part of the employer in deducting any amount and also contributing) towards the E.S.I. funds inasmuch as this Court vide interim order dated 3.2.1997 had desired that the benefits admissible under 1978 Rules would continue to be applicable and as a natural consequence thereof, Sri Namwar Singh urged, that the respondent No. 3 was not required to deduct any

amount from the pay of the employees or to render any contribution of its own in the matter.

5. Having heard learned counsel for the parties, we found that there is a serious dispute with regard to the nature of benefits which are being extended to the employees. The employees on the one hand claim that they are satisfied with the benefits under the 1978 Rules, whereas, on the other hand the E.S.I. Corporation contends that the benefits extended under the Rules of the Corporation are superior to that being availed of by the employees of the petitioner's unit. Therefore, Sri V.K. Upadhyay has further urged that the benefits which are being given to the employees are in the nature of a part of the conditions of service and as such relying on the decision in the case of Bareilly Holdings Ltd. Vs. Their Workmen, has contended that in view of Section 72 of the E.S.I. Act read with Regulation 97, of the E.S.I. (General) Regulations, 1950 the employers do not have the authority or right to discontinue the benefits which have been made available to the employees on the grounds referred to therein. In this regard what is to be noted is that in order to ascertain the nature of the benefits and their qualitative advantage the E.S.I. Act has made a provision for the settlement and adjudication of such questions by the E.S.I. Court, Section 75(1)(g) is quoted herein below:

"any other matter which is in dispute between a principal employer and the Corporation or between 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, [or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act]."

6. In view of the aforesaid provision under the Act, the dispute sought to be raised by the petitioner in the present writ petition has to be gone into by the E.S.I. Court whereafter an appeal is provided to the High Court u/s 82 of the E.S.I. Act. and u/s 78 the E.S.I. Courts have all powers for collecting the evidence in order to arrive at a just conclusion in respect of a claim of the nature, which is sought to be adjudicated upon in the present proceedings. In view of this position we are of the opinion that in case the petitioner is aggrieved by the action of the employers or the E.S.I. Corporation, then the petitioner has to necessarily approach the E.S.I. Court for the redressal of their grievances and not the High Court directing. As a matter of fact, the E.S.I. Court is a more appropriate forum to decide all such issues including the questions of facts as are sought to be raised in the present writ petition.

7. Sri V.K. Upadhyay has further invited the attention of this Court to Section 1(4) of the Act to urge that the Act will not apply in the case of the petitioner inasmuch as the employees' according to the petitioner are in receipt of benefits substantially similar and superior to the benefits provided under the Act. In this regard it would be relevant to mention that the aforesaid question as to whether the benefits are substantially similar or superior or not is yet to be seen and as

has already been pointed out by us herein above it is the E.S.I. Court which has to adjudicate the controversy first inasmuch as these questions of fact can not be directly gone into by this Court in the exercise of powers under Article 226 of the Constitution of India. The question as to whether the benefits received by the employees" under 1978 Rules, is part of the conditions of service or not, can also be gone into by the E.S.I. Court. Sri V.K. Upadhyay has relied upon a decision in Calcutta Electricity Supply Corporation Ltd. v. Calcutta Electricity Supply Workers" Union and Ors. reported in 1994 (8) SCC 548 to urge that the Court therein found that facilities of private nursing home is not extended under the E.S.I. Act and therefore on the facts of that case it was found that the E.S.I Act does not compel the withdrawal of the benefits that had already been availed of by the" employees. It is noteworthy that the said case travelled up to the Supreme Court from award made by the Industrial Tribunal under the Industrial Dispute Act. Thus, the Apex Court did not directly dealt with the issue and it was done after adjudication by the Industrial Tribunal. In the present case, the exercise by the appropriate Court as pointed out by us herein above has not yet taken place and that is required to be done in view of the facts relating to the benefits available which have been seriously disputed before us.

8. In view of the aforesaid position, we do not find it to be a fit case for interference by this Court at this stage and as such the writ petition is accordingly dismissed with liberty to the petitioner to approach the E.S.I Court for a declaration of the nature as sought by them in the present proceedings. The writ petition is therefore, dismissed and the interim order is discharged.

9. There will be no order as to costs.