

(1999) 09 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

AMALENDU KAR

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 21-09-1999

Acts Referred:

Citation : 2000 1 CPJ 250 : 2000 3 CPR 490

Hon'ble Judges : J.N.Sarma , D.Dutta J.

Final Decision : Appeal disposed of

Judgement

1. THIS appeal has been filed against the judgment and order dated 31.5.1996 passed by the District Forum, Sonitpur, Tezpur in C.P. Case No. 28/94. By the aforesaid order, the complaint was dismissed by the learned District Forum.

2. THE complainant is a beneficiary of the Employees' State Insurance Corporation, Tezpur. He claimed for reimbursement of some amount with penal interest alongwith compensation for harassment as well as for litigation expenses. The bone of contention between the parties, is that the ESI Court has no jurisdiction to hear the matter, as the jurisdiction of the other Forums have been ousted by Section 75(3) of the Employees State Insurance Act, 1948. Section 75(3) is quoted below : "No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under, this Act is to be decided by a Medical Board, or by a Medical Appellate Tribunal or by the Employees' Insurance Court."

The question is whether the Consumer Forum has the jurisdiction to entertain this complaint. The Consumer Forum is not a Civil Court, it is a Special Forum created by a Special Act. This aspect of the matter came up for consideration in (1991) C.P.J. page 129 where the National Commission in paragraph 24 of the judgment, pointed out that the Consumer Protection Act has not ousted the jurisdiction on other Forums, but is an addition to the other laws and, therefore, it is not necessary for the consumer to seek redress before the other Forums before coming to the Consumer Forum. Further, Section 75 (3) quoted above is not an absolute ouster of jurisdiction. The learned Advocate for the respondents

relies on the following decisions : "(1). 1998 S.C.C. (L&S) 127, Regional Director, ESI Corporation v. Narayan Chandra Rajkhowa & Ors., wherein the Supreme Court in para 4 of the said judgment held as follows : That the dispute which was raised by the respondent employees which involved adjudication of the dispute whether the benefits which were being availed of by them prior to the application of ESI Scheme to them were more advantageous than thereunder the ESI Scheme. The said dispute could only be adjudicated upon by the ESI Court, especially because the jurisdiction of the Civil Court has been barred under Section 75(3) which prescribes that no Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability by or under this Act by a Medical Board or by a Medical Appellate Tribunal or by the Employees' Insurance Court."

"(2). AIR 1966 S.C. 1931, Maharaja Pratap Singh Bahadur v. Thakur Monmohand Dey & Ors., wherein the Supreme Court in para 8 (Page 1934) of the said judgment held as follows : ...A general later law does not abrogate an earlier special one by mere implication, *generalia, specialibus non derogant*."

3. THESE cases do not help the respondents, they are not authority for the question raised now. Section 75(1) of the Act provides the matters to be decided by the Employees' Insurance Court. The present dispute does not come within any of the provisions of that section. So, from that angle, the jurisdiction of the Consumer Forum cannot be deemed to be ousted.

4. CONSIDERING the matter from all these angles, we quash the order dated 31.5.1996 passed by the learned District Forum, Sonitpur, Tezpur in C.P. Case No. 28/94 and the matter now shall go back to the learned District Forum, Tezpur to decide the complaint on merit without again adverting to the question of ouster of jurisdiction which we have decided once for all. We have heard Mr. A. Goswami, learned Advocate for the appellant and Mr. B.R. Dey, learned Advocate for the respondent-Corporation. Appeal disposed of.