

(1990) 12 KAR CK 0029
In the Karnataka High Court
Case No : Writ Petition No. 18249 of 1986

Gaffar Jahangir Beedi Works

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-12-1990

Acts Referred:

Beedi and Cigar Workers (Condition of Employment) Act, 1966 — Section 37, 4
Employees State Insurance Act, 1948 — Section 46, 49, 51

Citation : (1991) 62 FLR 611 : (1991) ILR (Kar) 876

Hon'ble Judges : Rama Jois, Acting C.J.; Mirdhe, J

Bench : Division Bench

Advocate : K. Jagadeesh Alva, for the Appellant; M. Papanna, for R-2 and K. Subba Rao, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, Ag. C.J.

1. The petitioner, who is a Beedi factory, has presented this Writ Petition praying for quashing the notice issued by the Regional Office of the Employees State Insurance, calling upon the petitioner to comply with the provisions of the E.S.I. Act and the Schemes and Regulations framed thereunder.

2. The material averments in the Writ Petition are these:- The petitioner is a partnership firm engaged in the manufacture of beedies, which manufactures about 3.5 lakh beedies every day. Out of this 1.25 to 1.5 lakh beedies are being manufactured within the factory premises and the rest of the beedies are being manufactured through contractors. For the benefit of the workers employed in the beedi Industries, the Parliament has enacted Beedi and Cigar Workers (Conditions of Employment) Act, 1966; Beedi Workers Welfare Cess Act, 1976 and Beedi Workers' Welfare Fund Act, 1976. Rules have also been framed under these enactments. Under the provisions of the aforesaid enactments, every manufacturer of beedies is under, a duty to provide medical and other benefits meant for the welfare of the employees including dispensary and hospital

services and that under these enactments, the petitioner is required to pay at the rate of 30 paise per 1,000 beedies and this being the position there was no justification for the E.S.I. Corporation to compel the petitioner to give effect to the provisions of the Act.

3. It is not disputed that the petitioner beedi factory comes within the expression "establishment" as defined under the Employees State Insurance Act. There is also no dispute that the provisions of the E.S.I. Act in respect of this industry has been brought in the City of Mysore, where the factory of the petitioner is situate and consequently the provisions of the E.S.I. Act are applicable to the petitioner's factory. But the case of the petitioner, however, is that when special legislations have been enacted by the Parliament for the benefit of the beedi and cigar workers and the benefits required to be extended to the persons employed in the beedi manufacturing industry covers substantially the benefits which the establishment is required to extend under the provisions of the Employees State Insurance Act there was no justification for the respondents to call upon the petitioner to give effect to the provisions of the E.S.I. Act.

4. The learned Counsel for the petitioner contended that there is no specific provision in the E.S.I. Act which provides for the applicability of the said Act to the petitioner's factory. The learned Counsel contended that on the principle of special excludes the general, it should be held that the provisions of the E.S.I. Act are inapplicable to the petitioner's factory as there are special legislations providing for the benefits to the employees engaged in beedi industries which are similar to those benefits which an establishment is required to extend to its employees under the E.S.I. Act. In support of this contention, the learned Counsel relied on a decision reported in Life Insurance Corporation of India Vs. D.J. Bahadur and Others,

5. In view of the submission made by the learned Counsel for the petitioner, in order to find out as to whether the benefits conferred on the beedi workers under different enactments, cover all the benefits which are required to be extended under the provisions of the E.S.I. Act, we had called upon the learned Counsel for the petitioner to file a statement setting out the various benefits extended under Beedi and Cigar Workers (Conditions of Employment) Act and other enactments as also the benefits under the E.S.I. Act. Accordingly, the learned Counsel has filed a comparative statement. It reads:

Benefits under the ESI Act

1. Beedi and Cigar Workers (Conditions of Employment) Act
2. Beedi Workers Welfare Cess Act
3. The Beedi Workers Welfare Fund Act and the Rules made thereunder.
 1. Section 46- Periodical payment for sickness to the insured person.
 - b. Periodical payment to an insured woman in case of confinement or miscarriage

or sickness of pregnancy.

- c. Periodical payment to an insured person suffering from disablement, as a result of an employment injury.
- d. Periodical payment to dependants of an insured person who dies as a result of employment injury.
- e. Medical treatment for an attendance on insured person.
- f. Payment to the eldest surviving member of the family of an insured person who has died towards the funeral expenses (not exceeding Rs. 100/-).

2. Section 49 - Sickness benefit [read along with Regulation 45(a)].

Section 4 Beedi Workers Welfare Fund. Act 1976. (I)(a)(i) - The improvement of public health and sanitation, prevention of disease and the provision and improvement of medical facilities.

3. Section 50 - Maternity benefits [read along with Regulation 45(b)].

Section 37. Beedi and Cigar Workers (Conditions of Employment) Act 1966 Applicability of the maternity benefits, (read along with Rule 32 of Beedi Welfare Fund Rules)

4. Section 51 - Disablement benefit [read along with Regulation 45(3)] 5. Section 52(1) - Occupational disease. 6. Section 56 - Medical benefits to the insured person and his family.

Applicability of Workmen's Compensation Act. The very hospitals set up for Beedi Workers have all the infrastructure for treating occupational diseases and added to that there are facilities for treatment of workers and dependants suffering from T.B. Cancer etc.

7. Section 58 - Provision of medical treatment by State Government (State Government to provide reasonable medical treatment, surgical and obstetric)

Rule 29 of Beedi Welfare Fund Rules -- Dispensary and hospital services. (Facilities provided by Beedi Welfare Fund)

- i. Mobile dispensaries.
- ii. Preservation of vaccine of T.B. Hospitals.
- iii. Re-imbursement of cost of treatment to the worker suffering from cancer.
- iv. Treatment of workers suffering from mental and heart diseases, leprosy relief.
- v. Domiciliary treatment to T.B. patients.
- vi. Free treatment to the workers and to their dependants and other benefits.

8. Section 59 - Establishment and maintenance of hospitals.

The above statement indicates that while in respect of some of the benefits required to be extended under the E.S.I. Act like medical treatment, there is a corresponding provision under Rule 29 of the Beedi Welfare Fund Rules. But in respect of number of benefits extended under Sections 46, 49 and 51 of the E.S.I. Act, there is no corresponding benefit provided under the enactments, on which the learned Counsel for the petitioner relies.

6. If all the benefits which were required to be extended under the E.S.I. Act, are extended under the enactments applicable for the beedi workers, there would have been justification to invoke the principle of "special excludes the general" and hold that by necessary implication the application of the E.S.I. Act to beedi and cigar workers stands excluded. But, as pointed out above, in respect of large number of benefit its required to be provided under the ESI Act, no corresponding benefits are provided for under the enactments applicable to the beedi workers. Therefore, we are unable to agree with the contention of the petitioner that the provision of the E.S.I. Act are inapplicable to the beedi workers.

7. The learned Counsel for the petitioner, however, contended that in order to extend certain benefits to the beedi workers including hospital and dispensary services, the beedi manufacturers are required to make contribution and there was no provision for collecting contribution from the employees and in addition to that the petitioner and others similarly situated would be required to pay employer's contribution under the provisions of the E.S.I. Act and the requirement to make such contribution under both the enactments would be oppressive to the manufacturers of beedies and there will also be duplication of some of the services or benefits under the E.S.I. Act and under the enactments applicable for beedi and cigar workers. The learned Counsel for the Corporation invited our attention to Section 61 of the E.S.I. Act and submitted that if certain categories of employees were entitled to certain benefits under the E.S.I. Act, they would not be entitled to the corresponding benefit under any other enactment. But the contention of the petitioner is that the manufacturers of beedies are required to make contribution both under the E.S.I. Act and the other enactments, which would not only be unreasonable but is also oppressive. We do not express any opinion on this question for the reason such a question is required to be considered only if constitutional validity of any of the enactments is challenged and in this Writ Petition, the petitioner has not challenged the constitutional validity of the law applicable to beedi workers.

8. In the result, we make the following order:

The Writ Petition is dismissed.