

(2009) 05 AHC CK 0439
In the Allahabad High Court

Raj Chandra Hospital and Research Center and another	APPELLANT
Vs	
Director, Employees" State Insurance Corporation and others	RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0439

Hon'ble Judges : Bala Krishna Narayana, J

Final Decision : Dismissed

Judgement

B. K. Narayana, J.

Heard learned counsel for the petitioners and Sri Pankaj Kumar Tiwari, learned counsel for the opposite parties, who prays for and is allowed four weeks" time for for filing counter affidavit.

Rejoinder affidavit may be filed within two weeks thereafter.

List immediately after expiry of aforesaid period.

It has been stated by the learned counsel for the petitioners that the petitioner No.2 is the proprietor of hospital known as Raj Chandra Hospital and Research Center, 4 & 8, Damodar Nagar, VIP Road, Alambagh, Lucknow. It is a small nursing home for the treatment and benefit of poor persons and public at large. On an inspection made by the Insurance Inspector, Employees" State Insurance Corporation, an order dated 15.12.2008 was issued. Thereafter, on 18.03.2009 the opposite party No.4 has passed an order, to which the petitioners preferred a representation on 08.05.2009 specifically mentioning that the provisions of the Act are not applied in the case of the hospital, but no heed has been paid to it. Without considering the representation preferred by the petitioners, the opposite parties issued a letter/order dated 18.03.2009 regarding inspection of the hospital.

Learned counsel for the petitioners contends that the petitioners are not carrying out any "manufacturing" activity defined under Section 2(k) of the Factories Act,

1948 and is not covered under Section 2(12) of the Employees' State Insurance Act, 1948 [hereinafter referred to as the Act]. He further submits that the petitioners are also not covered by any notification, by which it can be said that the nursing homes and medical clinics are covered under the shops and commercial establishment and submits that the objections raised by Sri Pankaj Kumar, with regard to the fact that the petitioners are providing medical services are covered by the Act, are not supported by any notification issued under the Act. He has relied upon the judgments in "Duncan Glenengles Hospital Ltd. Vs. Employees State Insurance Corporation (DB Cal. High Court) (2004) 101 FLR 1134 and Employees State Insurance Corporation Vs. Duncan Gleneagles Hospital Ltd. (2005) 106 FLR 1029 (Cal).

Sri Pankaj Kumar Tiwari states that in some petitions filed by nursing homes, orders were made that they must avail alternative remedy under Section 75 (1) (G) of the Act.

Prima facie, I find substance in the objections raised by the learned counsel for the petitioner that matters to be decided by ESI Court under Section 75, are the disputes, which arise under the Act. Where the petitioners challenge the applicability of the Act itself, and the jurisdiction of authorities under the Act to give notice for complying with the provisions of the Act, the writ petition under Article 226 of the Constitution of India should not be dismissed on the ground of alternative remedy.

Until further orders, the effect and operation of the order dated 15.12.2008 passed by the opposite party No.2 and the order dated 18.03.2009 passed by the opposite party No.3, contained in Annexure Nos.1 and 2 respectively, shall remain stayed.