

(1997) 02 MAD CK 0116

In the Madras High Court

Case No : W.M.P. No. 2016 of 1997 in Writ Petition No. 1200 of 1997

Seshasayee Paper Mills and Others

APPELLANT

Vs

Seshasayee Paper and Boards Ltd.

RESPONDENT

Date of Decision : 10-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Employees State Insurance Act, 1948 — Section 72, 75

Citation : (2000) 3 LLJ 617

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Judgement

P. Sathasivam, J.—Four labour unions of the Seshasayee Paper Mill have approached this Court by way of the present writ petition for mandamus directing the respondent-management not to discontinue the medical allowance extended to them which has been a part of their service conditions in terms of Section 72 of the Employees' State Insurance Act, 1948 (hereinafter referred to as "the Act").

2. The facts leading to the filing of the above writ petition are briefly stated thereunder:

The respondent-management is engaged in the manufacture of paper and boards. According to the petitioners' union, about 1200 workmen and 600 staff are employed in the respondent-management. Their monthly salary exceeds Rs. 3,000. Hence, they were not covered under the provisions of the Act. It is also averred that the respondent-management were extending to them medical allowance which has become a part of their salary. Each workman was extended a sum of Rs. 200 to Rs. 400 depending upon their basic salary. This has become the part of their service conditions.

3. It is further averred in the affidavit that while such is the position, the Central Government had issued a notification on December 16, 1996, extending the coverage of the Act to such of those employees who have been drawing up to Rs.

6,500. In other words, the Government have enhanced the ceiling limit of the employees who are covered under the Act from Rs. 3,000 to Rs. 6,500. As a result of this, all the employees who were hitherto not covered under the Act are now covered under the Act. It is also averred that the petitioners labour Unions are intending to move the appropriate authority for exemption u/s 87 of the Act, as the employees are enjoying better benefits than those provided under the Act. The respondent-management have informed all the workers that since the Employees' State Insurance Act, 1948, had become applicable to them, in view of the latest notification enhancing the ceiling limit of the employees from Rs. 3,000 to Rs. 6,500, they are going to withdraw the medical allowance extended to them. It is further averred that the respondent-management cannot do this because u/s 72 of the Act, the respondent-management cannot discontinue or reduce the benefits to the workmen by reason only of their liability to pay any contributions payable under the Act. The medical allowance extended to the workmen has become part of their service conditions as per Item 3 of the Fourth Schedule to the Industrial Disputes Act, 1947. The respondent-management cannot unilaterally withdraw the allowance without a notice u/s 9-A of the Industrial Disputes Act, 1947. The medical allowance has become a part of the workmen salary which is their property. It is also averred that the Writ petition for enforcement of a statutory right is maintainable even against the private body. The petitioners prayed for an order of injunction restraining the respondent -management from withdrawing medical allowance extended to the workmen pending disposal of the writ petition.

4. By order dated January 30, 1997, this Court has admitted the writ petition and ordered notice to the respondent-management. On the very same day, in W.M.P. No. 2016 of 1997, this Court has granted Interim Injunction till February 3, 1997. The respondent took notice through their counsel on the very same day.

5. The respondent-management has filed a counter-affidavit disputing various averments made by the petitioners in the counter, it is averred that the respondent is a public limited company and the writ petition is not maintainable. No mandamus can be issued for enforcing personal rights. For the alleged violation of Section 72 of the Act, effective alternative remedy is available under Sections 74 and 75 of the Act. Likewise for the violation of the Industrial Disputes Act, the workmen have got the effective alternative remedy u/s 10 of the Industrial Disputes Act. In those circumstances, the present writ petition as framed is not maintainable and liable to be dismissed.

6. It is further contended in the counter-affidavit that as per Section 2(9)(b) of the Employees' State Insurance Act read with Rule 50 of the Employees' State Insurance (Central) Rules, 1950, in the year 1972, the ceiling wage limit for coverage of an employee was Rs. 1,000 per month. The employees who were drawing more than Rs. 1,000 per month were not covered under the provisions of the Employees' State Insurance Act. The said employees made representations that one set of employees were extended Employees' State

Insurance medical benefits and another set of employees were not extended with any medical benefits. It is also averred that by virtue of the representation made, a scheme was introduced by the management in lieu of benefits under the Employees' State Insurance Act and for persons who were not covered by the aforesaid Act and the benefits of the scheme will automatically cease to apply when once they were covered by the Employees' State Insurance Act. The Central Government issued notification dated March 27, 1992, amending Rules 50, 51 and 54 of the Employees' State Insurance (Central) Rules, 1950. By that amendment, the wage ceiling for coverage under the Employees' State Insurance Act had been enhanced from Rs. 1,600 per month to Rs. 3,000 per month. The said amendment came into force with effect from April 1, 1992. In view of the enhancement of wage ceiling on April 1, 1992, nearly 1,882 employees were covered under the Employees' State Insurance Act and, therefore, ceased to get with effect from April 1, 1992, the benefits under the medical benefits scheme framed by the respondent. Medical allowance given to these 1,882 employees was stopped from April 1, 1992, and Employees' State Insurance benefit was extended to them from April 1, 1992. The employees and the unions rightly accepted this. The Central Government issued another notification dated December 23, 1996, amending Rules 50 and 51 of the Employees' State Insurance (Central) Rules, 1950, once again. By that amendment, the wage ceiling for coverage under the Employees' State Insurance Act had been enhanced from Rs. 3,000 per month to Rs. 6,500 per month. The said amendment came into force with effect from January 1, 1997. In view of the enhancement of wage ceiling, nearly 1,759 employees out of 1,815 employees are covered under the Employees' State Insurance Act and 57 employees are not covered. In view of the amendment, the respondent informed all the employees, by their circular dated January 29, 1997, that payment of medical allowance in lieu of the Employees' State Insurance Scheme to employees drawing salary up to a ceiling as per the Employees' State Insurance Act of Rs. 6,500 per mensem does not arise as hitherto this scheme will continue to cover those employees who are not covered by the Employees' State Insurance Act. In view of the application of the Employees' State Insurance Act, the medical reimbursement cannot be claimed by the employees who are benefited under the said provisions. It is also submitted that Section 72 of the Act is not attracted. Likewise, Section 9-A of the Industrial Disputes Act is not attracted. With these averments, the respondent prays for vacation of the injunction order.

7. In the light of the above pleadings, I have heard Mr, N.G.R. Prasad, Ms. Vaigafor the petitioners and Mr. A.L. Somayaji, learned senior counsel for the respondent-management. As requested by both the sides, now I am disposing of the injunction application only, hence I am not traversing the issues relating to the main writ petition at this juncture.

8. Learned Counsel for the petitioners' Union submitted that consequent to the enhancement of the ceiling limit, that is, Rs. 6,500, a number of employees will

be covered under the Employees' State Insurance Act. The petitioners are intending to move appropriate authority for exemption u/s 57 of the Employees' State Insurance Act, since the employees are enjoying better benefits than those provided under the Act. It is also the contention of learned counsel for the petitioners that the respondent-management were extending to the employees of the petitioners' unions medical allowance which has been a part of their salary. Each workman was extended a sum of Rs. 200 to Rs. 400 depending upon his basic salary. This has become the part of their service conditions. In view of the latest notification under the Act, the respondent-management is going to withdraw medical allowance extended to them and as a matter of fact, they have already informed their decision in this regard. The respondent-management cannot do this because u/s 72 of the Act, the respondent-management cannot discontinue or reduce the benefits payable to the workmen by reason only of their liability to pay any contributions payable under the Act. Since Mr. N.G.R. Prasad very much relied on Section 72 of the Act, the same is extracted for proper understanding of the case:

"72. Employer not to reduce wages, etc. -No employer by reason only of his liability for any contributions 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 conditions of his service which are similar to the benefits conferred by this Act."

9. By a reading of the above Section clearly shows that no employer by reason of his liability for any contribution payable under the Act, reduce the wages of any employee or discontinue or reduce benefits payable to him under the conditions of his service. Since the medical allowance was extended to the members of the petitioners' unions, it has become part of their service condition, as per item 3 of the Fourth Schedule to the Industrial Disputes Act. In support of the above stand, learned counsel for the petitioners relied on a decision of the Supreme Court in Bareilly Holdings Ltd. Vs. Their Workmen, . In a similar circumstance, relying on Section 72 of the Act and Regulation 97 of the Regulations framed u/s 97(1) of the Employees' State Insurance Act, the Supreme Court has held thus:

"The general purpose and effect of Section 72 is to deny to the employers the right or power to reduce or discontinue the benefits payable to the workmen under their conditions of service on the ground that the benefits available under the conditions of service and under the Employees' State Insurance Act, being similar, the workmen would not be entitled to a double benefit. Section 72 provides in terms that the mere circumstance that an employer is liable to make a contribution under the Employees' State Insurance Act will not entitle him, directly or indirectly, to reduce the wages of an employee or, in so far as the Regulation permits, discontinue or reduce the benefits payable to him under the conditions of his service even if those benefits are similar to the benefits conferred by the Employees' State Insurance Act. The case of the appellant before the Industrial Tribunal was that it was making a contribution to the

Employees" State Insurance Corporation for the benefit of its employees and if any individual employee chose not to avail of the benefits due to him from the Corporation on account of the sickness benefit, it is he who ought to suffer and there would be no justification for obliging the employer to spend for his sickness benefit twice over. It is precisely this type of argument and attitude that the Legislature anticipated and guarded against by incorporating the particular provision in Section 72. The purpose of that provision is evidently to discourage employers from using the benefits provided under the Employees" State Insurance Act as an excuse or 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."

10. It is also relevant to extract another passage from the same judgment and the same is extracted thereunder:

"The decision of this Court in *The Hindustan Times Ltd., New Delhi Vs. Their Workmen*, , is not directly in point but it can be cited in support of our reasoning to the extent which it holds that in providing for periodical payments to an insured worker in case of sickness, the Legislature did not intend to substitute any of those benefits for the workmen's right to get leave on full pay on the ground of sickness."

11. The other decision relied on by learned counsel for the petitioners is *Calcutta Electric Supply Corporation Ltd. Vs. Calcutta Electric Supply Workers" Union and Others*, . In the said decision, two questions arose for consideration before the Tribunal, viz., (1) Whether the change effected by the appellant employer was in contravention of Section 9-A of the Industrial Disputes Act, 1947; and (2) whether the employer was entitled to withdraw the medical benefits which were already given by it to the employees prior to the coming into force of the Employees" State Insurance Act, 1948.

12. On both the questions, the Tribunal held against the appellant employer. Hence, they filed the present appeals to the Supreme Court. The Tribunal in that case has held that the withdrawal of the medical benefits was prejudicial to the workers and, therefore, the notice was necessary and since no such notice was given, the withdrawal of the benefits was illegal. The Supreme Court has agreed with the conclusion reached by the Tribunal in that case. It was also argued in that case before the Supreme Court that notice u/s 9-A of the Act was not necessary since the withdrawal of the said benefits in the context of the availability of the more generous benefits was not prejudicial to the interests of the employees. In this context the Supreme Court has observed thus :

"The medical benefits available to the employees under the employer have been enumerated in an annexure to the appeal-memo. It is not necessary to discuss each of the said benefits. It is suffice to point out that one of the major benefits available to the employees is hospitalisation in a private nursing home in case of illness and reimbursement of the medical expenses incurred for such

hospitalisation. There is no such benefit available under the Employees' State Insurance Act. A reference of the patient to a private nursing home is possible only if no facility for the treatment of the ailment is available at the hospitals run by the Employees' State Insurance Corporation and the Medical Officer concerned certifies to that effect. We have taken this instance only to point out that Dr. Ghosh's contention that the benefits under the Employees' State Insurance Act are more generous or beneficial, is not borne out by facts.

This is apart from the question whether the availability of medical benefits as a part of the service conditions of the employees is liable to be withdrawn unilaterally by the employer merely because the employees in question are also covered by the Employees' State Insurance Act. That question has to be answered in the negative for various reasons. In the first instance, there is nothing in the Employees' State Insurance Act which enables the employer to withdraw such benefits merely because the employees come to be covered by that Act. On the other hand, the provisions of Section 72 of that Act prohibits withdrawal of the benefits."

13. The further conclusion of the apex Court is very useful and the same is extracted hereunder:

"Dr. Ghosh, however, contended that Section 72 of the Employees' State Insurance Act prohibits discontinuance or reduction only of the monetary benefits except as provided by the Regulations made under that Act. It does not prohibit discontinuance or reduction of the other benefits. We are afraid the contention begs the question. The correct reading of the provisions of Section 72 will show that the discontinuance or reduction of benefits permitted by the said Section is only of the monetary benefits and no other benefit. There is no provision in that Act which permits tampering with the service conditions on account of the operation of the Act. Unless that Act or any other law permits the employer to effect a change in the service conditions of the employees, any change effected has to be held as illegal. To construe the provisions of the Employees' State Insurance Act, and in particular of Section 72 of that Act as permitting discontinuance or reduction of the other benefits is to construe the absence of the provisions in the Act enabling such discontinuance or reduction as a positive permission or licensed to effect such discontinuance or reduction. Such construction of the statute to say the least, is unwarranted. What is further necessary to remember in this connection is that the payment of contribution by and on behalf of the employee does not compel the employee to avail of the benefits under the Act. It is up to the employee to avail of the benefits available to him under the service conditions or under the Act. The view which we are taking, viz., that the benefits which have become a part of the service conditions are not intended to be affected by the provisions of the Employees' State Insurance Act and its scheme except to the extent permitted by Regulation 97 and on the conditions mentioned therein, is supported by a decision of this Court in *Bareilly Electricity Supply Co. Ltd v. Their Workmen* (supra)".

14. For the above submission of learned counsel for the petitioners, Mr. A.L. Somayaji, learned senior counsel appearing for the respondent-management, has submitted that the above referred benefits, namely, medical allowance, is not a condition of service. He also submitted that there are other remedies under the provisions of the Employees' State Insurance Act as well as the Industrial Disputes Act and when such is the position, the present writ petition is not maintainable. He also raised an objection that no writ is maintainable against the respondent which is a private body and not within the term "State" as provided under Article 12 of the Constitution. By relying on Section 75(c) of the Employees' State Insurance Act, 1948, learned senior counsel submitted that the petitioners' unions have to approach only the Employees' Insurance Court and the present writ petition is not maintainable. After contending that the payment of medical allowance hitherto is not a condition of service, hence, according to him, there is no question of application of Section 9-A of the Industrial Disputes Act. Relying on a decision in Madras Labour Union Vs. Binny Ltd. (Buckingham and Carnatic Mills) and others, he submitted that no mandamus can be issued if the rights are private in character and if the question is of private body with no public duty. By relying on the said decision, learned senior counsel vehemently contended that the present writ petition as framed is not maintainable, consequently, this Court has also no power to grant injunction. Regarding maintainability, he also submitted that the decision of the Division Bench of this Court in Indian Tobacco Corporation and Others Vs. The State of Madras, . It is true that in the said decision it is held:

"A writ of mandamus cannot be granted for enforcement of contractual obligations, for which there is remedy by an action at law in the ordinary course. The writ is only granted to compel the performance of duties of a public nature. It will not accordingly issue for a private purpose that is to say, for the enforcement of a mere private right."

15. By highlighting the above submissions, according to learned senior counsel, the writ petition itself is not maintainable, consequently no interim order could be granted.

16. On the other hand, Mr. N.G.R. Prasad submitted that even though the respondent is a private concern, in view of the fact that by the present Act, the respondent is taking away the valuable rights of the members of the petitioners' unions which is specifically prohibited u/s 72 of the Employees' State Insurance Act, the petitioners are entitled to approach this Court by way of writ petition.

In other words, he submitted that if there is a statutory violation or if the proposed action is opposed to statutory provisions, the aggrieved person can approach this Court by way of writ petition. He also relied on many decisions with regard to the maintainability of the writ petition. Since I have already stated by the present order, I am disposing only the Injunction application, I am not referring to all the judgments referred by him, except the order passed by KANGARAJ, J. in W.M. Ps. Nos. 1659 and 2908 of 1993 in W.P. No. 1078 of 1993.

In that case, Mettur Chemicals and Industrial Anna Workers" Union filed the writ petition against the management of the Chemicals and Plastics India Ltd., Mettur Dam, seeking a writ of mandamus directing the respondents therein not to close the lime stone mines in Sowdapuram or to lay off the workmen in the lime stone mines without permission from the authority concerned under Sections 25-N and 25-O and 25-M of the Industrial Disputes Act. Pending disposal of the writ petition, the union sought for an injunction restraining the respondent from retrenching or terminating the services of 76 workers including staff. After referring to some of the decisions of the Apex Court, the learned judge came to the conclusion that in appropriate case and if there is a statutory violation, necessary direction can be issued by this Court exercising writ jurisdiction. Almost similar situation has arisen in our case also, since all along the members of the petitioners" unions were extended medical allowance and it has become a part of their service condition. In view of the recent notification and the Employees" State Insurance Act by the Union of India, the respondent-management decided to apply the said notification and wanted to forego the medical allowances paid all along. As rightly pointed out by Mr. N.G.R. Prasad, in the light of Section 72 of the Act and as construed by the Apex Court in the above two decisions Bareilly Electricity Supply Co. Ltd. v. Their Workmen (supra), and Calcutta Electric Supply Corporation Ltd. v. Workers Union, (supra), I am of the view that they are entitled to approach this Court for appropriate relief.

17. The other contention is existence of Section 75 of the Employees" State Insurance Act. In order to work out the remedy between the parties, I am unable to accept the argument of learned senior counsel for the respondent since the present action of the respondent is directly opposed to Section 72 of the Act. Hence, I do not find any error in approaching Court without exhausting the remedy u/s 75 of the Act. At this juncture, Mr. N .G.R. Prasad has brought to my notice the recent decision of this Court in P.R. Ramachandran and Others Vs. Tamil Nadu Water Supply and Drainage Board and Another, . The said decision of the management is quite contrary to the principles of natural justice or acceptable rules of procedures and in utter violation of statutory provisions, the aggrieved person can straight away approach this Court under Article 226 of the Constitution. In this regard, it is useful to refer the conclusion reached by the learned judge and the same is extracted thereunder:

"in the instant case, the respondents have acted quite contrary to the principles of natural justice and all accepted rules of procedure and when admittedly, the impugned orders were passed in utter violation of the principles of natural justice, this Court should not only come to the aid of the aggrieved party but it has a duty to do so".

In an identical situation RAJU, J. rejected the plea of driving the workman to forums under the Act and held that for noncompliance of Section 25-F of the Act, writremedy is very much available and directed the workman"s reinstatement with back-wages (R. Sadasivan v. O.N.G.C., Madras, W.P. No. 10702 of 1985,

dated January 12, 1993). In paragraph 11 of his judgment, RAJU, J. has held as follows:

"The next submission of learned counsel for the respondent that requires to be considered is that, whether this Court should itself have undertaken the exercise of adjudicating upon the grievance of the petitioner or that the petitioner should be relegated to his remedies under the Industrial Disputes Act. As noticed supra, in the light of the facts beyond controversy, the legal inference which inevitably followed is that it is a case of retrenchment in violation of the provisions contained in Section 25-F of the Act and it would be futile to plead to non-suit the petitioner in these proceedings on the ground of the availability of an alternative remedy, particularly when the writ petition has all along been kept pending all these years in this Court after admission. Even that apart, I am of the view that the existence of the alternative remedy is no bar for entertaining a writ petition, when the merits of the case warrant interference in the exercise of jurisdiction of this Court under Article 226 of the Constitution of India."

The said decision of RAJU, J. was also confirmed by a Division Bench of this Court in W.A. No. 1161 of 1993, dated January 31, 1994, and the SLP filed against the Division Bench judgment (W.A. No. 1161 of 1993) was also dismissed by the Apex Court. Hence, filing a writ petition without resorting to the provisions under the Special Act is not a bar in view of the peculiar circumstances narrated above.

19. Lastly, learned senior counsel has submitted that even after application of the provisions of the Employees' State Insurance Act, medical allowances were extended to the employees, that will bring disparity between different limbs of the Industry, of which the management is one limb and it will bring in industrial chaos rather than industrial peace. For this learned counsel for the petitioners brought to my notice a Division Bench decision of this Court in C. Kuppaswami v. E.L.D. Parry (I) Ltd., 1989 1 LLN 85. In the said case, a very same objection was raised contended by Mr. A.L. Somayaji. After repelling the said contention, the Division Bench has observed as follows:

"Learned counsel for the management would also submit that if this Court should take cognizance of the claims of the employees for pension, that will bring in disparity between different limbs of the industry, of which the management is one limb and it will bring in industrial chaos rather than industrial peace. This argument does not appeal to us. If in fact the employees are entitled to the pensionary benefits, we cannot on the simple ground of others being content with what they got or get shorn of the pensionary benefit, deny those benefits to the conscious employees who have fought a cause over the same."

20. In those circumstances, in the light of the pleadings of the parties and after hearing the elaborate arguments made by both counsel, prima facie I am satisfied that the petitioner can approach this Court and seek appropriate remedy. Having come to the above conclusion, the only question which remains to be considered is whether the balance of convenience is in favour of grant of

injunction. As already stated, nearly 1,760 employees are going to be affected by the present action of the respondent by dispensing with medical allowances which were extended all along. In those circumstances, in the light of Section 72 of the Employees' State Insurance Act, 1948, as interpreted by the Apex Court in the above referred decisions, I am very much satisfied that if an injunction is not granted, the members of the petitioners' unions will be seriously prejudiced and put to heavy loss and hardship which will also affect their livelihood. On the other hand, ultimately, even if the writ petition is dismissed and the respondent-management succeeds, there may not be any difficulty in adjusting the amounts paid under medical allowances from their salaries. In these circumstances, the injunction granted earlier by this Court in W.M.P. No. 2016 of 1997 on January 30, 1997, is made absolute.