

(1992) 10 KL CK 0017

In the High Court Of Kerala

Case No : O.P. No's. 5176, 5323 etc. of 1992

Tata Employees Union

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-10-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 14
Employees State Insurance (Central) Rules, 1950 — Rule 50, 51, 54
Employees State Insurance Act, 1948 — Section 95
Industrial Disputes Act, 1947 — Section 9

Citation : (1993) 1 LLJ 580

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : M. Ramachandran and Thampan Thomas, for the Appellant; C.S. Rajan and C.M. Devan, for the Respondent

Judgement

K.A. Nayar, J.—In these batch of Original Petitions, the points raised for consideration are the same. The grievances voiced in the petitions are also identical. All the petitioners are aggrieved by the amendment made to the Employees State Insurance (Central) Rules, 1950 amending Rules 50, 51 and 54 with effect from April 1, 1992 by notification dated March 27, 1992, by which the wage ceiling for coverage under the Employees State Insurance Act (for short "the Act") is enhanced from Rs. 1,600/- per month to Rs. 3,000/- per month and the rate of employers contribution with effect from April 1, 1992 is reduced at 4% of the wages payable to the employees instead of 5% and the employees' contribution is fixed at 1-1/2% of the wages payable instead of 2-1/4%. This amendment was given effect to from April 1, 1992. The Act and coverage were admittedly there even before the amendment was made. The effect of the amendment is, persons who were getting wages, excluding remuneration for overtime work, in the region of Rs. 1,600/- and above upto Rs. 3,000/- per month were also required to be covered. It is on behalf of these employees, who were receiving remuneration between Rs. 1,600/- and Rs. 3,000.- per month,

these writ petitions were filed. Admittedly, persons who were getting wages upto Rs. 1,600/- were covered under the Act even before April 1, 1992 unless exemption was given to establishments in individual cases. The main ground for challenge in the writ petition is that these employees are getting better medical treatment and enjoying better medical facilities in the employer's establishments and, therefore, it is apprehended that those facilities will be lost to them if the Employees State Insurance Scheme is extended to them. Their further case is that they have to pay 1.5% of their salary by way of contribution. Admittedly, no such recoveries were made earlier as they were not covered under the Act. In an attempt to see that the coverage under the Act is not extended to the employees coming under the wage bracket of Rs. 1,600/- to Rs. 3,000/-, counsel representing the petitioners, the employees or their unions, advanced all possible arguments. It is contended that the notification amending R. 50 enhancing the wage ceiling for coverage under the Act from Rs. 1,600/- to Rs. 3,000/- per month and reducing the employer's contribution from 5% to 4% and employees contribution from 2-1/4% to 1-1/2% etc. are illegal as there is no quid pro quo for the levy and collection of contribution. It is contended that the petitioners are getting better facilities under negotiated settlements from their employers and those benefits will be lost to them by the amendment and consequential coverage. This, it is contended, will amount to change of service conditions violating Section 9A of the Industrial Disputes Act. It was also contended that the rule is made in violation of Section 95 without complying with the formalities. The Rule, it is stated, has not been placed before the Parliament. Petitioners contended that many of them have submitted representations before the State Insurance Corporation and the Regional Director for granting exemption from the coverage. But the rule is brought into force without disposing of their representations. The further contention is, if the rule is enforced, there will be two classes of employees under each management, one getting coverage under the Employees State Insurance Act and the other getting better facilities provided by the management, which, it is stated, will constitute violation of Article 14 of the Constitution of India. The action of the respondent in bringing the petitioners within the coverage was also claimed to be arbitrary. It is submitted that the Act itself is not applicable to the petitioners as they are enjoying substantially similar or superior benefits than the facilities provided under the Act. The benefits such as sickness, medical, maternity, disablement and dependant benefits received by the petitioners under the respective management are detailed in the petition in an attempt to say that they are enjoying benefits superior to those given under the Act. It is also contended that the Corporation cannot, by arbitrary action, deny the benefits enjoyed by them and thrust upon them the so called benefits under the Act and the Scheme. Some of the petitioners contended that bringing the employees compulsorily under the Act would be violative of Article 21 of the Constitution. These contentions were urged by counsel in an attempt to show that the amendment to Rules 50, 51 and 54 by notification dated March 27, 1992 enhancing the wage ceiling of employees for coverage under the Act from Rs. 1,600/- to Rs. 3,000/-

with effect from April 1, 1992 is illegal and inoperative.

2. A counter affidavit has been filed by the Employees State Insurance Corporation in O.P. 4707 of 1992 and it is agreed by all parties that the counter affidavit can be read as counter affidavit in all the cases where counter affidavit has not been filed on behalf of the Corporation.

3. The Corporation contended that for offsetting the erosion of money value and the consequent hike of wages from time to time, the wage ceiling for coverage has been enhanced. The Employees State Insurance Scheme was originally applicable to employees drawing Rs. 400/-. It was, thereafter, enhanced to Rs. 500/- and further to Rs. 1000/- and again to Rs. 1,600/- during the last 35 years. Because of the inflationary tendency of the economy and increase in the wage structure, a large number of employees got out of the coverage of the E.S.I. Scheme and hence, the ceiling had to be increased, to ensure continued coverage of the workmen earlier covered and to be on par or comparable with Employees Provident Fund Scheme. Counsel referred to the tripartite Committee set up to review the work of the E.S.I. Scheme. The review Committee set up by the order of the Government of India dated January 29, 1981 recommended upward revision of the upper income limit for coverage from time to time, to bring the employees under the coverage of the Employees State Insurance Scheme in line with the Employees Provident Fund. The Committee had representation from the central trade unions including INTUC, AITUC, HMS, etc. and also representative of employers and the State Governments. The wage ceiling for the purpose of Employees Provident Fund was increased to Rs. 3,500/- with effect from November 1, 1990. The counter affidavit says that the Standing Committee of the Employees State Insurance Corporation at its meeting held on March 5, 1991, recommended to raise the ceiling to Rs. 3,000/- without making any change in the rate of contribution. But the special meeting of the Corporation held on October 8, 1991 made recommendation for raising the wage ceiling and also reducing contribution rate and consequential matters. The Corporation consisted of representatives of the employees and employers and of Central and State Governments. There are ten members representing the employees appointed in consultation with the recognised trade unions. The Corporation also consists of Members of the Parliament. The decision of the Government of India was taken as a result of the resolution passed by the Employees State Insurance Corporation after discussion. The Government of India, in the Gazette dated December 3, 1991, published a draft notification as required in Section 95(1). It is also stated that the notification was placed before the Lok Sabha on May 6, 1992 and the Rajya Sabha on May 7, 1992. Therefore, the amendment to the rule has not in any way resulted in violation of Section 95 of the Act as contended by the petitioners.

4. The Employees State Insurance Act, 1948 was an Act to provide certain benefits to employees in cases of sickness, maternity, employment injury, etc. and to make provisions for certain other matters in relation thereto. In the

decision reported in *Gasket Radiators Pvt. Ltd. Vs. Employees' State Insurance Corpn. and Another*, the Supreme Court characterised the Act as "a social welfare legislation in tune with the Directive Principles of State Policy contained in Articles 41, 42 and 43 of the Constitution." It is a legislation which comes directly under Entries 23 and 24 of List III of the VIIth Schedule of the Constitution, which are "social security and social insurance; employment and unemployment", and "welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits". Their Lordships further observed as follows (p. 507):

"The Act extends to the whole of India and comes into force on such date or dates as the Central Government may appoint, different dates being permissible for different provisions of the Act and/or different States or for different parts thereof. It applies to all factories including factories belonging to the Government, other than seasonal factories. Chapter II provides for the establishment of the Employees' State Insurance Corporation for administering the scheme of Employees' State Insurance in accordance with the provisions of the Act. The Corporation is to be a body corporate having perpetual succession and a common seal. There are detailed provisions for the constitution of a Standing Committee and a Medical Benefit Council. Chapter III provides for Finance and Audit. Section 26, in particular, provides for the establishment of a Fund called the Employees' State Insurance Fund into which all contributions paid under the Act and all other money received on behalf of the Corporation shall be paid. The Corporation is authorised also to accept grants, donations and gifts from the Central or any State Government, local authority or any individual or body, whether incorporated or not, for all or any of the purposes of the Act. Section 28 lists the purposes for which the Fund may be expended and it includes, among other items,

"(1) payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families, in accordance with the provisions of this Act and defraying the charges and costs in connection therewith; and

(ii) to (iii).....

(iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families."

Chapter IV provides for the manner of insurance of all the employees in factories or establishments to which the Act applies and the payment of contribution for that purpose. The contribution payable in respect of an employee shall comprise contribution payable by the employer called employer's contribution and

contribution payable by the employee called employee's contribution.

The contribution has to be paid at the rates specified in the First Schedule. Detailed provision is made for the method and payment of contribution. Chapter V deals with benefits. Section 46 specifies the benefits to which the insured persons, their dependants and others shall be entitled. There are other detailed provisions indicating the manner of working out the various benefits."

The Supreme Court held in the above judgment that the payment of contribution by the employer towards the premium of an employee's compulsory insurance under the Act falls directly within Entries 23 and 24 of list III and it is wholly unnecessary to seek justification for it by recourse to Entry 97 of List I or Entry 47 of List III in any circumlocutious fashion. Even if the charge is to be construed as a fee, the Supreme Court held that the same is justifiable on that basis also.

5. There is no attack regarding the constitutional validity of the Act before me. The Act is made for the benefit of the employees to provide freedom for them from economic fear. There is no case before me that the Act is not applicable to any factory or establishment under whom the employees are employed. The only case is that the persons in question, viz. the employees within the wage bracket of Rs. 1,600/- to Rs. 3,000/- are in receipt of benefits substantially similar or superior to the benefits provided under the Act and, therefore, the Act will not apply to them. This submission is not well founded. Only because the employees drawing a salary between Rs. 1,600/- and Rs. 3000/- are getting better medical facilities, it cannot be contended that the Act will not apply to the factory. The Act is made applicable to the factory or establishment and employees who have been drawing salary upto Rs. 1,600/- are admittedly covered—Some of the employees now in the wage bracket of Rs. 1600/- and Rs. 3,000/- might have been covered until they came out of the coverage by virtue of the enhancement of wages. It may be that by virtue of industrial settlement the employees who were getting salary above Rs. 1,600/- and not covered by the Act and Scheme were given medical and other benefits by the respective management. This is provided under separate settlements applicable to staff members who are not covered by the Act. But that will not make the Act inapplicable to them if the ceiling for coverage were suitably enhanced.

6. If the limit for coverage under the Act is enhanced to Rs. 3,000/-, there can only be employees who are covered under the Act and employees who are not so covered. If in any factory or establishment the employees are in receipt of benefits substantially similar or superior to the benefits provided under the Act, it is for them to claim exemption under the Act under Sections 87 - 91 read with Section 1(4) proviso or a suitable declaration from the Insurance Court under Sections 75 - 78 read with Section 1(4) proviso as the case may be. Therefore, the notification amending the rule cannot be held to be illegal by any of the grounds mentioned in the objections. The Government is authorised to issue notification u/s 95 providing the limit of wages beyond which a person shall not be deemed to be an employee. The rule has been published in the official gazette

and the same has been laid: before each House of Parliament, in the Lokh Sabha on May 6, 1992 and in the Rajya Sabha on May 7, 1992. The rule, of course, will come into force with effect from April 1, 1992 and it shall be effective from that day onwards. The requirement for laying the rule, after it is made, before each House of Parliament while it is in session for a total period of 30 days, whether it is comprising in one session or two or more successive sessions, is not a condition precedent to be complied with before the rule is brought into force. Sub-section (4) of Section 95 clearly says that if both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall have effect only in such modified form or be of no effect as the case may be. It further provides that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. That means the rule is valid with effect from April 1, 1992, the date on which it was brought into force and it will stand confirmed, modified or annulled, as the case may be, if both Houses concur, modify or annul the same. In this case, there is no modification or annulment made by both Houses and, therefore, the rule stands.

7. Petitioners detailed certain benefits which they are getting from their respective employers such as contributory health scheme for employees, under which the employees get considerable sickness benefit, medical benefit, maternity benefit, disablement benefit, dependent benefits, funeral benefit as well as benefits for the family and also for the dependants. Some of the managements have fullfledged hospitals with full-time doctors to treat in-patients and out-patients with no ceiling provided for medicines. Under some managements, arrangements were made for treatment by specialists. Reimbursement of consultation fee, medical expenses etc. are also provided. The question whether such facilities are available to all the employees of the establishment will have to be looked into when the question whether the Act is applicable to the factory or establishment is being considered. It is an admitted case that all the employees of the establishment have not approached this Court. The petitioners represent only a fraction of the employees. The benefits given under the Act is not confined to medical treatment alone. Chap. V of the Act details the benefits that are being given or extended by the Corporation, Section 46 refers to the benefit of periodical payment to any insured person in case of his sickness; periodical payment to an insured woman in case of confinement, or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage; periodical payment to an insured person suffering from disablement as a result of an employment injury sustained as an employee under the Act; periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under the Act; medical treatment for an attendance on insured persons; and payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person. Sections 49, 50, 51, 51A to 51D, 52 - 73 and Rules 54 and 57 detail the various benefits

that are being received by the employees under the Act and under the respective management. Beneficiaries under the Act are many. Only a few of them, that is, few of the employees who are coming within the wage bracket of Rs. 1,600/- and Rs. 3,000/- have contended that they are enjoying a better facility. That by itself is not a ground for holding that the Act is not applicable to the factory or establishment in which they are employed. The position now is, the Employees State Insurance Act covers all employers who have employees in the factory and establishment drawing salary upto Rs. 3,000/-. During the period of invalidity because of sickness, not only medical facility should be made available, but financial assistance also should be extended. In the case of accidents, the Workmen's Compensation Act, which was applicable, is replaced by the Employees State Insurance Act in cases where the Act is extended. Employees covered by the Act get those benefits as well. Only because superior medical benefits are made available by the respective employers to a few of the employees, there is no justification for denying the benefits of the Act to other employees who form a large majority. The petitioners in the Original Petitions also do not represent all the employees of the respective management. There are many persons, it is contended in the counter affidavit, who are in favour of the benefits derived from the Employees State Insurance Corporation. All the recognised unions under the management have not approached the Court. Under the Employees State Insurance Scheme, even casual and contract employees are covered and, therefore, the Employees State Insurance Scheme caters for a larger number of people. Further, the Corporation has denied that the benefits enjoyed by the employees of the different management is in no way superior to the benefits under the Employees State Insurance Scheme. Corporation is bound to provide various social security services even if actual receipt of contribution is delayed. If any of the employees are getting better benefits, it is for them to seek exemption from appropriate government. If the factory comes under the provisions of Section 1(4) of the Act, they can make a proper representation before the Employees State Insurance Corporation setting out the full facts.

8. The counter affidavit of the Corporation stated that there is an elaborate network of hospitals and dispensaries in all the States in the country. In Kerala there are 13 hospitals and 123 dispensaries. Special facilities including dental care are available in those hospitals. In cases where expert treatment is required, patients are sent to institutions like Sri Chithra Institute of Medical Science and other hospitals for expert treatment. These treatments are available to casual and contract employees.

9. In a welfare State, it is the responsibility of the State to take care of the workforce, their health and welfare. The attitude of the Corporation against the insured will be different from the attitude of the employer towards their employees. Usually the management provides only 20 days' sick leave on halfpay, whereas the Employees State Insurance Act provides upto 91 days half pay compensation for sickness-relating absence in a year. The E.S.I. Scheme also provides approximately 62.5% of wage for 22 listed longterm illness for a

longer period ranging from 124 to 309 days in a year. The scheme provides approximately 70% of wages for disability without any limitation for the number of days besides medical treatment for such disability. Further, the E.S.I. Scheme provides various other benefits for leave in connection with family planning operation, invalid pension, permanent disability benefits, funeral expenses and comprehensive medical care. The scheme does not deny any of the existing benefits or services. Therefore, there is no merit in the contention that the notification is invalid because of the alleged superior benefits that are being received by the employees.

10. The contention that extension of the scheme spell in the realm of violation of Section 9A of the Industrial Disputes Act is also unfounded. The notification made under the E.S.I. Act cannot be held to be invalid on the basis that it is in violation of the contract or agreement entered into by the management and the workmen in any establishment. If there is actually any violation of any of the service conditions, the workmen have remedy under the Industrial Disputes Act.

11. The Act was originally made applicable to employees drawing a salary upto Rs. 400/- and gradually it was increased to Rs. 500/- in 1968, to Rs. 1,000/- in 1975, to Rs. 1,600/- in 1984 and Rs. 3,000 with effect from April 1, 1992. This increase was made to off-set erosion of money value and hike in wages. The increase now made is after consideration of the situation by the Standing Committee of the Employees State Insurance Corporation. Representatives of the employers and employees were there in the Committee apart from Central and State Government representatives. The ceiling thus fixed from time to time, especially the last one, cannot be considered arbitrary. No material is placed to show that such fixation of ceiling of wages is in any way arbitrary or illegal. There is no violation of Article 14 of the Constitution of India (see *State of Uttar Pradesh Vs. Kartar Singh*, The rule is not liable to be struck down and there is no merit in the contention of the petitioners in this regard.

12. It is contended in the petition that many of them have made representations for exemption from coverage under the Employees State Insurance Act. The Government claims that the Act is extended for the benefit of the employees. If the employees themselves feel that they are getting better benefits from the respective management and, therefore, they would like to remain outside the coverage under the Act, the Government certainly will have to wake up to the reality. The claims of the employees for exemption do not speak well of the benefits extended by the Employees State Insurance Corporation. The Corporation has to improve their medical services and other benefits that are extended to the insured. They also have a duty to consider the claim for exemption made by the employees. In many cases, the petitioners have made representations. Counsel on behalf of the petitioners also requested for another opportunity in cases where representation has not been made. In view of this, I direct that if a further representation is made detailing all facts for exemption within three weeks from today, the same will be considered by the Government

and the Corporation on its merit and appropriate order be passed as expeditiously as possible.

13. It is seen that there is an order from this Court staying the operation of the notification and circular extending the coverage to the employees falling within the wage bracket of Rs. 1,600/- and Rs. 3,000/-. They were enjoying the benefits by virtue of the stay from the respective employers and no benefits have been extended to them by the E.S.I. Corporation. Of course, if the rule is valid, the extension of the benefits is not a condition precedent for valid realisation of contribution from the employers and the employees. By virtue of the stay, the employers were prevented from collecting the amount from the employees. Therefore, taking a realistic view of the situation, I direct that the impugned notification and circular be implemented as against the petitioners and the respective employers with effect from November 1, 1992 only.

14. All the Original Petitions are disposed of as above.