

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2417 OF 2013

United Labour Union

... Petitioner.

V/s.

Air India Ltd. and Others.

... Respondents.

Mr.Sanjay Singhvi, Senior Counsel a/w. Ms.Jane Cox i/by
Rajmohan Amonkar, Advocate for the Petitioner.

Mr. Sudhir Talsania, Sr. Counsel a/w. Ms. Kavita Anchan i/by M.
V. Kini & Co. for Respondent No.1.

Mr. Shailesh S. Pathak, Advocate for Respondent No.3.

**CORAM : V. M. KANADE AND
MRS. SWAPNA JOSHI, JJ.**

DATE : 19th AUGUST, 2016

P.C. :

1 Heard Mr. Singhvi, senior counsel appearing on behalf
of the Petitioner, Mr. Talsania, senior counsel appearing on behalf
of Respondent No.1 and Mr. Pathak, Advocate appearing on behalf
of Respondent No.3.

2 By this petition filed under Article 226 of the
Constitution of India, the Petitioner Union is seeking following
reliefs :

a) That this Hon'ble Court may be pleased to
issue a Writ of Mandamus or in the nature of

Mandamus or any other appropriate writ, order or direction, directing the Respondent No.3 to immediately register the workmen listed at Exhibit 'A' under the ESI Scheme and issue them with permanent ESI cards;

b) That this Hon'ble Court may be pleased to issue a Writ of Mandamus or in the nature of Mandamus or any other appropriate writ, order or direction, directing the Respondent No.3 to initiate strict action against the Respondents Nos. 1 & 2 and any other responsible officers of the Respondent No.1 under the provisions of the Employees State Insurance Act, 1948, including criminal proceedings under Sections 84, 85 and 86 of Act and including for damages and penalty;

c) That this Hon'ble Court may be pleased to issue a Writ of Mandamus or in the nature of Mandamus or any other appropriate writ, order or direction, directing the Respondent No.1 to refund to the workmen listed at Exhibit 'A' and to the legal heirs of those listed at Exhibit 'A1' the entire amount deducted in the name of ESI deductions from their monthly wages since 1995, with interest at the rate of 15% until such date as

they are registered by the Respondent No.3 and issued with ESI cards by the latter;

d) That this Hon'ble Court may be pleased to issue a Writ of Mandamus or in the nature of Mandamus or any other appropriate writ, order or direction, directing the Respondent No.3 to immediately register the workmen listed at Exhibit 'A' under the ESI Scheme and issue them with permanent ESI cards;

e)
f)
g)
h)

3 It is an admitted position that after the present petition is filed, the Respondent No.3 has registered the workmen listed at Exhibit 'A' under the Employees State Insurance Scheme (for short, "ESI Scheme") and has also issued them permanent ESI cards. In view of this, prayer clauses (a) and (b) do not survive.

4 A preliminary objection is raised by Shri Pathak, the learned counsel appearing on behalf of Respondent No.3 regarding maintainability of this petition. It is submitted that the petitioner has an alternate efficacious remedy available of filing an appeal before the ESI Court under section 75 (1)(g) of the Employees' State Insurance Act, 1948 (for short - "the ESI Act"). It is

submitted that the petition contains several disputed questions of facts and as such, therefore, this court should not entertain present petition while exercising writ jurisdiction under Article 226 of the Constitution of India.

5 On the other hand, Shri Singhvi, learned counsel appearing on behalf of the Petitioner-Union has submitted that said remedy is not an alternate efficacious remedy and, therefore, the petitioner is entitled to approach this court under its writ jurisdiction under Article 226 of the Constitution of India. He further submitted that a duty is cast on the employer on the schedule line under Regulation 12 of the Employees' State Insurance (General) Regulations, 1950. A duty is cast on the employer to ensure that an employee, before he is employed in the establishment, is registered under the ESI Scheme. He submitted that the duty is cast on the employer to enter the particulars in the declaration form including the temporary identification certificate and obtain the signature or the thumb impression of such person and also complete the form, as indicated thereafter. He also invited our attention to Regulation 15 of the said Regulations. Said Rule / Regulation lays down that appropriate office has to allot insurance number to each person in respect of whom that the declaration form has been received. He submitted that therefore, both Air India and Respondent No.3 are responsible for non-registration of these workmen who are working since 1986. He further submitted that in the affidavit-in-reply it is admitted that

since 1995 they have been deducting contribution from the wages of the workmen of petitioner union. They have produced records from 2002. He further submitted that only after the present petition was filed, the workmen have been registered under the ESI Scheme. He further submitted that Respondent No.3 on the other hand stated, as indicated from their record which was available, that the contribution from the wages/salaries of the workmen had been deducted by the Air India at least from 2007. Shri Sanghvi, learned counsel appearing on behalf of the petitioner submitted that since the petitioner workers were not registered under the ESI Scheme, the contribution which is deducted from their salary/wages should be refunded to them with interest. He further submitted that direction may be given to Air India to initiate proceedings against the erring officers.

6 On the other hand, Shri Pathak, learned counsel and Shri Talsania, senior counsel submitted that it was the responsibility of the workers to have submitted the information in the prescribed form and since this information was not given, they were not registered.

7 After having heard the learned counsel for the respective parties, we are of the view that this petition discloses that there are several disputed question of facts which can not be gone into by this court while exercising its writ jurisdiction under Article 226 of the Constitution of India. Section 75(1)(g) of the

ESI Act in terms provides that in case of a dispute between the principal employer and the corporation, such dispute has to be decided by the Employees Insurance Court under the said ESI Act. Said section 75(1)(g) reads as under :

“75. Matters to be decided by Employee's Insurance Court.- (1) If any question or dispute arises as to –

- (a)
 - (b)
 - (c)
 - (d)
 - (e)
 - (ee)
- [***]

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, [or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act], such question or dispute [subject to the provisions of sub-section (2A)] shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.”

8 The said section clearly discloses that a remedy has been provided under provisions of the ESI Act, 1948 of approaching the ESI Court for adjudication of the dispute. We are, therefore, of the view that we will not be in position to entertain this petition on two grounds namely - availability of an alternate remedy and that the petition raises several disputed questions of facts. On these two grounds, therefore, we are not inclined to grant the relief as claimed by the Petitioner in terms of prayer clause (d).

9 So far as prayer clause (c) is concerned, since the dispute is not adjudicated and no finding is recorded by the competent court as to whether the Air India or the officials of the ESI Corporation were responsible for non-registration of the Petitioner workers under the said Scheme, it will not be possible for this court to give such a direction unless such a finding is recorded by the competent court.

10 We, therefore, dismiss the present Petition on the ground that it is not maintainable. The Petitioner's right to exhaust alternate remedy available under section 75(1)(g) of the ESI Act is kept open.

 All contentions raised by both the parties are also kept open

(MRS.SWAPNA JOSHI,J.)

(V. M. KANADE,J.)