

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 10098 of 2016

Date of decision: 16.08.2016.

Mohali Industries Association

..... Petitioner.

Versus

Union of India and others

.....Respondents.

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MS. JUSTICE LISA GILL**

Present: Mr. Ramandeep Singh Pandher, Advocate, for the petitioner.

S.S. SARON, J.

The petition has been filed in the nature of public interest litigation by making the following prayers:-

- (i) Issue a writ especially in the nature of mandamus thereby directing the respondents for making payment/reimbursement of medical bills to the workers/insured persons within the time stipulated as per the provisions of the Employees' State Insurance Act, 1948, the Employees State Insurance (General) Regulations, 1950 and the circulars of the ESI Corporation.
- (ii) Issue a writ especially in the nature of mandamus thereby directing the respondents for clearing the pending medical bills of the workers/insured persons within the time stipulated as per the provisions of the Employees' State Insurance Act, 1948, the Employees

State Insurance (General) Regulations, 1950 and the circulars of the ESI Corporation.

- (iii) Issue a writ especially in the nature of mandamus thereby directing the respondents for providing cashless medical facility to the workers/insured persons, as per circulars issued by ESI Corporation.
- (iv) Issue a writ especially in the nature of mandamus thereby directing the respondents to open ESI Hospitals/Dispensaries at Kurali, Gharuan, Sialba Majri, Banmajra and Phase-9 Industrial Area Mohali in District Mohali and other areas of Punjab according to the strength of workers as per the decision of ESI Corporation.
- (v) Issue a writ especially in the nature of mandamus thereby directing the respondents to provide proper medical facilities, infrastructure and complete staff at ESI Hospital Mohali, other ESI Hospitals and Dispensaries.
- (vi) Issue a writ especially in the nature of mandamus thereby directing the respondents not to receive contribution for ESI fund, till the above stated facilities would be provided to the workers/insured persons.
- (vii) Issue any other appropriate writ, order or direction which this Hon'ble Court may deem fit in the facts and circumstances of the case.

(viii) Dispense with the filing of certified copies/true typed copies of the Annexures P1 to P15 as true typed copies/photocopies of the same are annexed herewith.

(ix) Dispense with the advance notice to the respondents.

A perusal of the above prayers shows that the petitioner in the public interest litigation has made various omnibus prayers. In para 22 of the writ petition, it is stated by the petitioner that he is left with no other remedy including appeal or revision except to approach this Court by way of the present petition under Articles 226/227 of the Constitution of India. In fact, the petitioner has efficacious remedies under the Employees' State Insurance Act, 1948 ('ESI Act' - for short) and also the Employees State Insurance (General) Regulations, 1950 ('Regulations' - for short). Chapter VI of the ESI Act relates to adjudication of disputes and claims. Therefore, in case there is any claimant entitled for payment of medical dues by the ESI Corporation, it would be expedient if the same is urged before the appropriate Forum under the ESI Act and not by way of a public interest litigation making omnibus prayers for payment to all the workers. This process results in unforeseen situations of claimants making claims for which they are not entitled to and the Court may not be in a position to verify or adjudicate upon the claims that are made by the workers. Some certificates (Annexure P16 - collectively) have been placed on record in connection with certain dues that are payable to particular workmen. The said documents are addressed, 'To Whom It May Concern'. In case those certificates as have been mentioned relate to the workmen whom the amount is indeed due, the same would require verification by the ESI

Corporation for which the appropriate remedy is the Forum under the ESI Act. The High Court is not a substitute for the Forum under the ESI Act to adjudicate upon the disputes. Besides, the specific averments need to be made before the Forum under the ESI Act raising its claim.

The Mohali Industries Association - the petitioner that has filed the petition in case it is espousing a public cause, should help the workmen to pursue their cases in the appropriate Forum in accordance with law. In case the workmen need necessary help from the Legal Services Authority, the same can be obtained to file the case, but for a prayer for general direction from the High Court to settle the claims for which verification may not be possible would be quite inappropriate.

Learned counsel for the petitioner then submitted that in any case medical facilities, infrastructure etc., which are liable to be provided in the ESI hospitals, may be provided as the Mohali Industries Association is making substantial contribution to the ESI fund. Another submission that has been made is for the grant of relief on the basis of circular dated 23.07.2008 (Annexure P5) relating to the provision of super specialty treatment to ESI beneficiaries incurring of expenditure outside the ceiling to be totally borne by ESI Corporation. According to the petitioner, said circular dated 23.07.2008 (Annexure P5) is also not being complied with by the respondents.

However, the learned counsel for the petitioner has not been able to show any statutory force to the circular that has been issued. Be that as it may, he prays that he may also be allowed to urge regarding this circular with reference to the statutory provisions by which it could be

enforced.

Learned counsel for the petitioner prays that he may be allowed to withdraw the petition and file a fresh one by limiting his prayer for providing of facilities.

The writ petition qua the specific claims made by the petitioner for the workmen is dismissed leaving the petitioner and/or the workmen to approach the appropriate Forum under the ESI Act. The petitioner may, however, file a fresh writ petition for claiming proper medical facilities, infrastructure etc. by making a reference to the specific provisions of the ESI Act for which liberty is given. The petitioner may also urge regarding the circular dated 23.07.2008 (Annexure P5) by making a reference to specific statutory provisions and its legal sanction.

(S.S. SARON)
JUDGE

(LISA GILL)
JUDGE

16.08.2016
Ramesh

Note:

1. Whether speaking/reasoned : Yes
2. Whether reportable : No