IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3523 of 2017
Date of Decision: 22.02.2017

The Punjab State Federation of Cooperative
House Building Societies, Ltd. and another ... Petitioners

Versus

Presiding Officer, Industrial Tribunal,
Patiala and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. T.P.S. Walia, Advocate,
for the petitioners.

RAJIV NARAIN RAINA, J.

1. The challenge in this petition is to the order dated January 27, 2016 passed by the Presiding Officer, Industrial Tribunal, Patiala in Claim Application No.734 of 2011 filed by the respondent-workman under Section 33-C (2) of the Industrial Disputes Act, 1947 ("1947 Act").

2. During and in the course of employment with the petitioning Punjab State Federation of Cooperative House Building Societies Limited the petitioner developed a heart condition on February 24, 2010 which required emergency medical attention and petition was admitted to the Patiala Heart Care Institute for indoor treatment. He incurred medical expenses to the tune of ₹ 1,94,000/- on his treatment. The Director Health & Family Welfare, Punjab, the competent authority, assessed the expenses of medical treatment in a sum of ₹ 1,74,403/-. The workman submitted his medical bills to his department in the office of the District Manager, Housefed, Patiala who forwarded the same to India Health Care Services

(TPA) Private Limited Max Pro Info for reimbursing the medical expenses.

3. It is not disputed that Housefed has an insurance arrangement with a society run under the name and style of Bhai Ghaniya Sehat Sewa Scheme for its employees. The workman is an enrolled member. Housefed has a deal with M/s ICICI Lombard Insurance Company Limited/India Health Care Services (TPA) Ltd. for settlement of claims of employees of Housefed, Punjab. The insurance card is issued by the Bhai Ghaniya Sehat Sewa Scheme which has been adopted by the private Insurance Company. There is no dispute with regard to treatment and expenses incurred to the extent approved by the Government.

4. The Labour Court entertained the application under Section 33 C (2) of the Act and has allowed the same and held the workman entitled to receive a sum of ₹ 1,74,043/- from the respondents as money due. The Labour Court has directed release the aforesaid amount within four months from the date of passing of the order failing which the applicant shall be entitled to interest @6% per annum on the ordered amount till actual realization.

5. Aggrieved by this order, Housefed has approached this Court under Articles 226/227 of the Constitution against the direction that they have been made accountable for payment of the amount of medical reimbursement when a direction alone should have gone to the Insurance Company and to the Bhai Ghaniya Sehat Sewa Scheme to make good the expenses. The liability is not disputed but is sought to be shifted to the other respondents i.e. the India Health Care Services etc. Housefed does not dispute that it has entered into an agreement with the Insurance Company to

indemnify payment of medical insurance for its employees and, therefore, it has become a condition of service by act of employer. Housefed has vicarious liability to pay off the medical expenses to the workman, in the first instance, and then claim the amount from the Insurance Company instead of leaving the workman to fend for himself with the Insurance Company and the private society which will involve delay and running about from pillar to post to settle with the insurance company.

6. The contention of the learned counsel appearing on behalf of Housefed that a claim for medical reimbursement, that too, from Insurance Company does not fall within the purview of Section 33-C (2) of the 1947 Act and, therefore, the claim application of this kind is not maintainable before the Labour Court is not the correct legal position and deserves to be rejected. It is also incorrect to urge that the dispute is essentially a consumer dispute within the jurisdiction of the Consumer Forum constituted under the Consumer Protection Act, 1986. Thirdly, whether the provisions of Section 55 of the Punjab Cooperative Societies Act, 1961 barred proceedings of Cooperative Societies under the 1947 Act is also not an argument worthy of acceptance. It is not the case of Housefed that the insurance contract was the private arrangement between the workman and the Insurance Company and on the other hand the position is accepted that the Housefed was a privy to the arrangement for its own employees and was therefore bound, if not to discharge, to process the liability with the Insurance Company on the terms of the arrangement. That liability it cannot avoid.

7. The petitioning Housefed has not disputed that the Cooperative Department, Punjab has implemented the Bhai Ghaniya Health Service

Scheme constituted under the Chairmanship of the Minister In-charge of the Cooperative Department. The circular dated October 30, 2009 has been placed on record by Housefed at Annex P-2 which operates through Third Party Administrator. It has not been shown that the scheme has lapsed for the period in question when medical treatment was given. There is a valuable document being letter dated February 07, 2011 of Housefed forwarding the workman's claim to the Chief Executive Officer, Bhai Ghaniya Trust, PICT, Sector-7, Chandigarh informing the Trust that the claim of the employee has not been settled even when the employee was issued Health Card by the District Manager, Housefed, Patiala on February 27, 2010 and since the treatment required immediate medical attention therefore, the hospitals authorized by the Trust were not available for treatment in the crisis of circumstances. The Managing Director of Housefed has issued this letter holding the employee entitled for medical claim under the Bhai Ghaniya Health Scheme since the employee is a member of the scheme and Housefed has deposited the amount of insurance with the Trust on time to cover the insurance. A request was made for sanctioning of an amount of ₹ 1,74,013/- in favour of the employee immediately.

8. Learned counsel submits that the award of the Labour Court may be modified to read the respondent exclusively as the Managing Director, India Health Care Services (TPA) Ltd. Max Pro Info, Mohali because Housefed is seriously aggrieved by the recovery certificate issued by the Assistant Collector, Grade-1 and Assistant Labour Commissioner, Patiala's coercive action issued under the Land Revenue Act, 1887 read with the

provisions of Section 33-C (1) of the 1947 Act ordering Housefed and the insurance company to pay the amount determined to the workman with interest at 6% per annum w.e.f. January 27, 2016. Since the amounts have not been paid and the award has not been complied with then in order to satisfy the claim, the recovery notice dated January 02, 2017 freezes the account of the "Management-Opposite party" which has been attached to be “read without salary”. This Court is not impressed with either of the argument that the order should be modified or the recovery notice set aside and instead would uphold them by applying the principle of pay and recover. Housefed would discharge the liability first and recover the amount from Third Party Administrator/Bhai Ghaniya Health Scheme. Where the money comes from is of no concern to the workman so long he was insured through the aegis of his employer Housefed.

9. Accordingly, the petition is dismissed holding Housefed owing primary responsibility as an employer to discharge the financial liability to the workman-employee with the liberty to recover the money either in separate proceedings or by an application before the Recovery Officer, as advised, from either/or the Trust and the Company. This would include the principal amount and the interest component as ordered by the order in execution which has attained finality henceforth.

(RAJIV NARAIN RAINA)
JUDGE

22.02.2017
manju

Whether speaking/reasoned *Yes*

Whether reportable *No*