

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No. 12/2016**

% **1st May, 2017**

REGIONAL DIRECTOR EMPLOYEE STATE INSURANCE
CORPORATION Appellant

Through: Mr. A.K. Verma, Advocate.

versus

M/S NULIFE HOSPITAL & MATERNITY CENTRE Respondent

Through: Mr. Gopi Chand, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed by Employee State Insurance Corporation against the judgment of the court below dated 30.6.2015 which has decreed the petition filed by the respondent herein and held that the respondent will not be covered under the Employee's State Insurance Act, 1948 (hereinafter referred to as 'the ESI Act').

2. It is not disputed before this Court, and it was not even disputed before the court below, that hospitals and nursing homes are otherwise exempted from the coverage of the ESI Act and they were only covered by the ESI Act prospectively from 1.4.2011. We are in the present case dealing only with the period prior to 1.4.2011. Prior to

1.4.2011 the only way in which the hospitals or nursing homes could be covered under the ESI Act was in terms of the ratio of the judgment of the Supreme Court in the case of *Christian Medical College Vs. Employees' State Insurance Corp.*, (2001) 1 SCC 256 wherein it was held by the Supreme Court that if any one department of a hospital which could be segregated from the hospital, in that the department will be considered as an independent unit and not as part and parcel of the hospital, then such independent unit if it employed more than 10 or more persons then the said department would have coverage under the ESI Act.

3. In the present case, it is seen that though the respondent did not lead any evidence before the court below, and the appellant led evidence and proved its survey report dated 12.8.2005 Ex.DW1/A, however it is seen that even this report only shows working of 13 employees with the present respondent, being 7 as house-keeping staff 3 persons working in the kitchen and 3 as security guards, i.e there are a total of 13 persons working with the respondent and there is no finding or conclusion in the survey report dated 12.8.2005 Ex.DW1/A that 10 persons out of the 13 persons are working in any one single department and which department is an independent unit apart from the hospital. Therefore, once there is no conclusion in the survey report

that at least 10 persons formed part of one department of the respondent which can be said to be a separate unit independent of the respondent as a hospital, and hence coming under coverage of the ESI Act, I hence do not find any illegality in the judgment of the court below that the respondent cannot be covered under the ESI Act. The relevant paras of the judgment of the court below are paras 9 to 12 and these paras read as under:-

“9. Before proceeding further, I would first like to mention that the initial onus to prove that a particular establishment is covered under the Act is upon the ESI department. Reference can be made to judgment titled as **“ESIC Vs. Om Prakash & Ors.” (2010) II LLJ 524 Delhi**”.

10. In the case in hand, the respondent in order to cover the petitioner under the Act have heavily relied upon one judgment of Hon’ble Supreme Court titled as **“Christian Medical College, Vellore Vs. ESIC” Civil Appeal No.3125 of 1998, (2001) 1 SCC 256.**

I have carefully gone through the said judgment. The said judgment is not applicable to the facts of the present case for the reason that the ratio of the said judgment is that even a separate department of a hospital can be covered under the Act, even if, entire hospital is not covered. In the present case, the respondents have relied upon the survey report dt. 12.8.2005 Ex.DW1/A. The survey report dt. 12.8.2005 shows that petitioner was covered by the respondents as on the date of survey the respondent’s inspector found 13 employees working in the maternity centre and hospital of the petitioner. The breakup of those 13 employees has been given by the respondents as 7 housekeeping employees, 3 working in kitchen and 3 as security guards. From the perusal of survey report it seems that respondents themselves are not clear whether they want to cover the separate department of the petitioner’s hospital and maternity centre or they want to cover the entire hospital and maternity centre.

11. During arguments, Ld. Counsel for respondents has conceded that the hospitals and nursing homes are not covered u/s 2(12) of the Act. He has argued that as per judgment of **Christian Medical College (supra)** the separate department of the hospital can be covered. Undoubtedly, the ratio of **Christian Medical College (supra)** is this only that separate department of a hospital can be covered but in the case in hand the respondents have not covered any separate individual department of the petitioner hospital but they have covered the petitioner’s hospital alleging that total 13 employees were working in the petitioner hospital i.e. 3 in kitchen, 3 as security guards

and 7 as housekeeping employees. Had the petitioner was employing 10 or more employees in the kitchen or any other unit individually (**subject to considering the nature of work of said unit**), then we could have said that the Act is applicable on the kitchen or on the said unit of the petitioner hospital, however, as per own admission of the respondents only 3 employees were working on the date of inspection by the respondents inspector in the kitchen, 7 in house keeping and 3 as security guards which clearly means that in none of the department of the petitioner more than 10 employees were working. Therefore, it cannot be said that any department of petitioner hospital is covered under the Act by any stretch of imagination.

12. During arguments, Ld. Counsel for petitioner pointed out that respondents corporation notified the coverage of Hospital, Nursing Homes, Pathological Labs and Diagnostic Centers u/s 1(5) of the Act w.e.f 1.4.2011, however, the said notification of ESI department was challenged before Hon'ble Delhi High Court and Hon'ble High Court vide its order dt. 3.2.2012 stayed the said notification. The order dt. 3.2.2012 is placed on record by the petitioner which is also not disputed by the respondents. The said order of Hon'ble High Court itself manifest that prior to issuance of notification dt. 23.3.2011 the Act was not applicable on the Hospitals and Nursing Homes. Needless to mention that in view of **Christian Medical College (Supra)** the individual department can always be covered under the Act, however, in the present case this issue is not involved."

4. In view of the above discussion, there is no merit in the appeal, and which is therefore dismissed. However it is made clear that this Court has not observed anything with respect to coverage of the respondent under the ESI Act with effect from 1.4.2011, and that aspect will be decided in terms of a writ petition which is said to be pending in this Court and which has stayed the notification covering hospitals, nursing homes, pathological labs and diagnostic centres as per Section 1(5) under the ESIC Act.

5. Appeal is dismissed with the aforesaid observations.

MAY 1, 2017/ JAK/ib

VALMIKI J. MEHTA, J