IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5054 of 2016

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Hindustan Construction Company Limited, through its Project-in-charge, Malay Kundu son of Sri Mahendra Nath Kundu, Kanti Bijlee Utpadan Nigam Limited, Muzaffarpur Thermal Power Project, Stage-II, Kanti, Police Station- Kanti, District- Muzaffarpur (Bihar).

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary Labour Resources Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Secretary, Labour Resources Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Employees State Insurance Corporation through its Director General Panchdeep Bhawan, CIG, Road, New Delhi- 110012.
4. The Addl. Comm. (Rev), the Emloyees State Insurance Corporation, Panchdeep Bhawan, CIG, Road, New Delhi- 110012.
5. Employees State Insurance Corporation, through its Regional Director, Regional Office, Jawahar Lal Nehru Marg, Patna.
6. The Assistant Director, Employees' State Insurance Corporation, Regional Officer, Jawahar Lal Nehru Marg, Patna.
7. The Deputy Director (Insurance)-cum- Authorized Officer, Employees' State Insurance Corporation, Regional Office, Jawahar Lal Nehru Marg, Patna.
8. The Kanti Bijlee Utpadan Nigam Limited, through its General Manager, Muzaffarpur Thermal Power Station, Kanti, Police Station- Kanti, District- Muzaffarpur.
9. The AGM, (CCD) Kanti Bijlee Utpadan Nigam Limited, Muzaffarpur thermal Power Station, Kanti, Police Station- Kanti, District- Muzaffarpur.
10. The Union of India through the Under Secretary, Ministry of Labour and Employment, New Delhi.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar Singh No. 4, Advocate
For ESIC	:	Dr. Anshuman, Advocate
For the Res. Nos. 8 & 9	:	Mr. Anil Kumar Sinha, Advocate
		Mr. Akash Keshav, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 11-04-2018

Heard learned counsel for the petitioner, learned counsel for respondent nos. 3 to 7 and learned counsel for respondent nos. 8 and 9.

2. In the instant writ petition, the petitioner has prayed for quashing the notification dated 28.07.2015 of the Government of India, Ministry of Labour and Employment, New Delhi whereby the provisions of the Employees' State Insurance Act, 1948 (for short 'the Act') has been extended to the construction workers at Kanti Kaswa, Muzaffarpur where the petitioner company is engaged in construction work.

3. Learned counsel for the petitioner submitted that earlier the construction agencies were exempted from the applicability of the Act by Employees' State Insurance Corporation (for short 'Corporation') vide Instruction No. 4 of 1999 dated 14.06.1999, which has yet not been withdrawn. He submitted that until such time, the notification of exemption is withdrawn and until such time the Corporation comes to its conclusion that the benefits sought to be provided under the Act is not being sufficiently provided by the petitioner to its workers, they cannot thrust the provision of the Act on the petitioner. With reference to Section 1(4) of the Act, he submitted that the said provision itself provides for exemption to such of the establishments which are already providing substantial benefits similar or superior to the benefits under the Act and it is in consideration of those provisions

that exemption was earlier granted to the construction agencies. He submitted that even though notification of the Government of India would cover other establishments in the area but in view of the exemption granted to the construction agencies and considering the benefits already provided to them, the petitioner cannot mechanically be brought under the coverage.

4. On the other hand, learned counsel appearing for respondent nos. 3 to 7 submitted that if any employer, who is capable to provide benefits similar or superior to those as provided under the Act, then it needs to seek exemption from the Act under Section 87 of the Act. According to him, such exemption is neither voluntary nor automatic as there is no provision under the Act according to which a coverable entity would be automatically entitled to exemption from the registration and compliance under the Act even if some other provisions provide few similar benefits. He contended that continued non-compliance of the Act by the petitioner is reprehensive inasmuch as it would keep the lower income earning workers away from the beneficial legislation which are statutory in nature under which series of benefits are available to them. He submitted that the construction site workers were earlier kept outside the coverage of scheme because of the manual process involved in delivery of medical care and other benefits available under the scheme at that time. However, after introduction of the computerization program 'Project Panchdeep'

the beneficiaries are recorded and tracked electronically and are not subject to the geographical barriers now. They are neither required to visit the branch offices of the Corporation for availing the benefits nor their entitlements are likely to be interrupted due to change of locations. The beneficiaries (insured persons) can see their family details, contribution, their eligibility for various benefits online called the 'IP Portal' for all employers with whom they might work time to time. He submitted that for availing medical benefits the insured persons covered under the Act are issued with Smart Card based Identity Cards called 'Pehchan Cards' in duplicate or they are linked with 'Adhar Number'. One card is for the use of the insured person and other card is for the use of his family even if the family is living in his native village/any other part of the country for availing the medical benefits under the scheme. Moreover, insured person can take print of 'E-Pehchan Card' also after entry of their Adhar Card number and avail all types of benefits enshrined in the Act. He submitted that construction agencies/offices of builders have already been covered as commercial establishments under Section 1(5) of the Act and also as factory under Section 2(12) of the Act. When there is manufacturing process in law, the casual employees and contract employees are well within the definition of 'employees' coverable under the scheme as per Section 2(9) of the Act. He submitted that the coverage of construction site workers under the Act with effect from 01.08.2015 is varied in furtherance of the purpose envisaged in the Act.

5. Supporting the contention of respondent nos. 3 to 7 learned counsel appearing for respondent nos. 8 and 9 submitted that as per notification dated 28.07.2015 the Act came into force in Kanti Kaswa, Muzaffarpur with effect from 01.08.2015. Further, as per notice dated 31.07.2015 issued by the Additional Commissioner (Rev.) of the Corporation, all the construction workers are covered under the Act and would be entitled for benefits of complete medical care as well as a range of cash benefits in times of exigencies of employment injury, death, disablement, maternity and unemployment. Thus, all the provisions of the Act would be applicable to all contractor site workers. He submitted that in view of above notification, Kanti Bijlee Utpadan Nigam Limited is bound to ensure compliance of the provisions of the Act to safeguard the interest of the contract workers employed by the contractor at site. He submitted that even though the workers engaged have no fixed place of residence and are migrant workers moving from place to other depending on the availability of work in the construction industry the Act does not debar them to get benefit under the Act.

6. I have heard learned counsel for the parties and perused the record.

7. Section 1(5) of the Act as amended by Act 29 of 1989

with effect from 16.05.1990 reads as under:-

> “**1(5).** The appropriate Government may, in consultation with the Corporation and where the appropriate Government is a State Government, with the approval of the Central Government, after giving one months notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.
>
> Provided that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State.”

8. The term ‘appropriate Government’ used in Section 1(5) of the Act has been defined under Section 2 (1) of the Act as under :-

> “2(1) “ ”appropriate Government”” means, in respect of establishments under the control of the Central Government or a railway admin-istration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government.”

9. Thus, under Section 1(5) of the Act both the Central

Government and the State Government have powers to extend the provisions of the Act in such implemented areas to other class of establishments. The scope of such further extension is extensive and can cover any class of establishments, industrial, commercial, agriculture or otherwise.

10. Vide impugned notification dated 28.07.2015 in exercise of the powers conferred by sub-section (3) of Section 1 of the Act, the Central Government appointed 1st August, 2015 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which had already been brought into force) and Chapters V and VI (except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which had already been brought into force) of the said Act came into force in revenue village Kanti Kaswa Area, Thana No. 63, Tehsil Kanti, District Muzaffarpur and has been extended to the workers engaged at the construction site.

11. Thus, vide aforesaid notification dated 28.07.2015, Kanti Kaswa area of Muzaffarpur has been notified under the Act with effect from 01.08.2015. Accordingly, a notice dated 31.07.2015 has been issued to all the employers as would appear from Annexure-2 to the petition whereby all such employers employing construction site workers are required to get such workers registered online. They have been noticed to send such workers and their families to the nearest Branch Office of the Corporation for their photography and capturing of biometrics so

that ‘Pehchan Cards’ could be issued to the registered employees for availing the benefits under the Act.

12. Be it noted that once the notification of implementation of the Act from a specified date in a particular area is issued, all the coverable factories and establishments falling in that area would be amenable to the provisions of the Act from that date.

13. The construction agency is treated as commercial activity by the Corporation. Due to nature of employment and nature of work place, enforcement of ESI Scheme to construction workers were kept out of coverage under ESI Scheme vide instruction no.4/99 but the regular employees of construction agencies were not kept out of coverage of ESI Scheme.

14. It would be relevant to note that as the Act is a beneficiary piece of social welfare legislation aimed at securing well-being of the employees, the Court would not adopt an interpretation which would have the effect of defeating the objects of the Act.

15. In **Bombay Anand Bhavan Restaurant Vs. Deputy Director , ESI Corporation & Anr. [(2009) 9 SCC 61],** the Supreme Court held as under :-

> “The Employees State Insurance Act is a beneficial legislation. The main purpose of the enactment as the Preamble suggests, is to provide for certain benefits to employees of a factory in

case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto.

The Employees State Insurance Act is a social security legislation and the cannons of interpreting a social legislation is different from the cannons of interpretation of taxation law. The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. The Act, therefore, must receive a liberal construction so as to promote its objects…."

16. The respondent Corporation's decision to extend the coverage to the construction site workers cannot be held to be bad only because earlier the Corporation kept such site workers outside the ambit of the scheme vide instruction No. 4/99 dated 14.06.1999. There would be no legal impediment in covering them after introduction of modern technology through which beneficiaries are recorded and tracked electronically and are not subject to geographical barriers now.

17. It is a matter of common knowledge that the construction site workers are unorganized, their employments are casual and migratory in nature and these very characteristics

necessitate the social security coverage under the Act designed to confer benefits on this weaker segment in situations of distress as would be apparent from the preamble of the Act. The construction site workers are prone to employment injuries, accidents, sickness, etc. and, hence, any effort by the Corporation to protect them under the umbrella of social security schemes mandated under the directive principles of the State policy of the Constitution of India cannot be held to be bad.

18. It has rightly been urged by the learned counsel appearing for respondent nos. 3 to 7 that earlier vide instruction No. 4/99 dated 14.06.1999, the construction site workers were kept outside the ambit of ESI Scheme due to peculiar characteristics of the employment and hurdles in tracking and mapping the workers of their movement from one company/place to another. They were kept outside the coverage of ESI Scheme because of the manual process involved in delivery of medical care and other benefits available under the Scheme at that time. However, after introduction of computerization programme, the beneficiaries are recorded and tracked electronically and are not subject to geographical barriers now as they are neither required to visit the branch offices of the Corporation for availing the benefits nor their entitlement is likely to be interrupted due to change of locations. The insured persons are able to retain the same insurance number throughout their life irrespective of change of the employer and

change of locations. The permanency of insurance number in computerized maintenance has been introduced to provide social security benefits to casual workers, migrant works and those workers who had to change the employer due to the very nature of their job like the construction site workers. If the Corporation has secured itself to provide benefits under the ESI Scheme to the construction site workers, there would be no embargo in providing the benefits to such workers in the changed circumstances.

19. It has rightly been submitted on behalf of respondents that the exemption from the benefits of the Act to the construction site workers cannot be voluntary or automatic. In case such benefits are provided under any other statute, the petitioner may seek exemption under Section 87 of the Act. The Act cannot be superseded unless the benefits provided are better than or equivalent to the Act in all respect and exemption is granted under Section 87 of the Act.

20. Keeping in view the discussions made above, in absence of any legal bar in extending the benefits of the Act to the construction site workers, I see no merit in this writ petition. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2018
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