

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1880 OF 2022

1. **P.D. Hinduja National Hospital and Medical Research Centre,**
Belonging to, “The National Health & Education Society”, A society, registered under “The Societies Registration Act, 1860 (XXI of 1860)” and “The Bombay Public Trusts Act, 1950 (BOM XXIX of 1950)”, Veer Savarkar Marg, Mahim, Mumbai – 400 016.
2. **The Assistant Secretary,**
of the Board of Management of the Applicant Hospital belonging to, “The National Health & Education Society”, A Society, registered under “The Societies Registration Act, 1860 (XXI of 1860)” and “The Bombay Public Trusts Act, 1950 (BOM. XXXIX of 1950)”, Veer Savarkar Marg, Mahim, Mumbai – 400 016. **.. Petitioners**

Versus

1. **Employees’ State Insurance Corporation,**
Regional Office Maharashtra, Panchdeep Building, Colaba, Mumbai – 400 005.
2. **The Regional Director,**
The Employees State Insurance Corporation,
Regional Office Maharashtra, Panchdeep Building, Colaba, Mumbai – 400 005.
3. **Narsingh, Deputy Director,**
Employees’ State Insurance Corporation,
Panchdeep Bhavan, N.M. Joshi Marg,
Insurance Branch III, Regional Office Lower Parel, Mumbai – 400 013.
4. **R.K. Chaudhari, Deputy Director,**
Employees’ State Insurance Corporation,
Panchdeep Bhavan, N.M. Joshi Marg,
Insurance Branch III, Regional Office Lower Parel, Mumbai – 400 013. **.. Respondents**

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- Mr. Abhishek Ingale a/w. Mr. Pradeep Kumar, Advocates i/by C.R. Naidu & Co. for Petitioners.
 - Mr. P.M. Palshikar, Advocate for Respondent Nos.1 and 2.

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 09, 2023.

JUDGMENT:

1. Heard Mr. Ingale, learned Advocate for Petitioners and Mr. Palshikar, learned Advocate for Respondent Nos.1 and 2.

2. Rule. Rule is made returnable forthwith and the matter is heard finally at the stage of admission itself by consent of the parties.

3. The present Writ Petition takes exception to the impugned order dated 14.09.2017 passed below Exhibit – 25 in Application (ESI) No.15 of 2011 filed in the Employees Insurance Court at Mumbai (for short “**ESI Court**”). Application below Exhibit – 25 was filed for seeking amendment to the original Application (ESI) No.15 of 2011.

4. Petitioner filed original Application for adjudication as to whether the provisions of the Employees’ State Insurance Act, 1948 (for short “**the said Act**”) would be applicable to its entire hospital or whether it would be applicable to one of its unit in the hospital namely Kitchen / Food Services Department. In view of notices which were received by Petitioner from the Respondent – Corporation, Petitioner – Hospital filed Application for seeking amendment on the ground that certain material and essential facts which are inadvertently left out

while filing the Application at the inception were to be added. The Schedule of amendment is at page No.24 of the Petition. With the able assistance of Mr. Ingale, I have perused the Schedule of amendment.

5. Mr. Ingale would submit that the impugned order allows the amendment in respect of paragraph Nos.2A to 2D and amendment in respect of paragraph No.8A to 8K i.e. upto page No.28 of the Petition. He would submit that paragraph No.8L to paragraph No.8Y, except paragraph No.8W has been denied and therefore he is aggrieved with the impugned order.

6. I have heard Mr. Palshikar, learned Advocate for Respondent – Corporation and perused the impugned order. It is seen that principal Application has been filed by Petitioner – Hospital challenging the coverage of its Kitchen / Food Services Department under the provisions of the said Act and the matter is to be decided pursuant to an earlier order of this Court remanding the matter for trial afresh.

7. On the proposed amendment it is seen that the ESI Court has after perusal of the Schedule rejected some of the amendments as alluded to herein above on the ground that those amendment which are rejected merely plead submissions on behalf of the Petitioner – Hospital and the applicable statute and provisions of law.

8. I have carefully perused the findings returned by the learned ESI Court in paragraph Nos.7 and 8 of the impugned order. After perusing the Schedule of amendment and the relevant paragraphs which are covered in paragraph No.8 of the said order, I have no doubt in my mind that there is any ambiguity or discrepancy in passing the said order. On the basis of the Schedule of amendment placed before the ESI Court, the proposed amendment undoubtedly seeks to now draw a distinction between the canteen and the separate cafeteria situated on the ground floor of the hospital. Such an improvement therefore cannot be allowed to be substituted.

9. Mr. Palshikar would submit that if such an amendment is allowed, it would undoubtedly change the nature of the cause of action. Though I have seen the findings returned in paragraph No.8, I will not like to comment on the merits of the case so as to affect the judgment and disposition of the original Application (ESI) No.15 of 2011 before the ESI Court.

10. Further, I am of the opinion that the amendment in the Schedule which has been denied are mere submissions, either on facts or of law and therefore do not warrant inclusion in the original Application (ESI) filed by Petitioner. Needless to state that Petitioner will not be precluded from arguing the same, however, if available to the Petitioner and strictly in accordance with law at the time of final hearing of the Application.

11. Another ground for rejecting the amendment partly is with respect to the statutory provisions and the citations and therefore I see no reason to differ from the said findings. For the sake of convenience and reference, the findings returned in paragraph No.8 are relevant and paragraph No.8 is therefore reproduced below:-

“8. The proposed amendment is to plead about ground floor cafeteria. The learned advocate for the opponent has vehemently argued that the proposed amendment if allowed will take away the admissions that the employees of the canteen inspected are employees of the applicant. She has taken me through the cross-examination of the applicant’s witness for his deposition that “The canteen is located on 6th floor of the hospital building. I claim that all employees in canteen including cooks are our employees. The salaries of said employees is done from the account of hospital.” I made query to the learned advocate of the applicant how the admissions can be taken away. He has submitted that the applicant wants to take on record the fact that the food department is not a canteen and it is a separate cafeteria. On query it has been made clear that the inspected part of the hospital was on 6th floor which is now referred as kitchen or food department by the applicant and canteen as by opponent. The cafeteria is on ground floor. The facts of two different provisions is requires to be taken on record to avoid ambiguity. Earlier the fact of canteen on ground floor which is referred as cafeteria by the applicant was not on record. Same is also necessary to decide the real controversy between the parties as to whether the inspected area is factory or not. In the circumstances amendment sought to that effect is to be allowed. However on going through the proposed schedule I find that the schedule as it is if taken it contains some facts contrary to the record. In proposed para (E) to para (8) the words labelled as canteen by ESIC does not seem for the area of cafeteria. So in my opinion those words from the proposed sub-para (E) to para (8) of the application need not be allowed. The pleading shall not contain law points and citations. Only facts can be allowed to be pleaded. Hence, the proposed amendment for reproducing sections of ESI Act and citations etc. is to be rejected. The relevant para necessary to decide real controversy between the parties and remove ambiguity are para (A), (B), (C), (D), (E), {excluding the portion labelled as canteen by the ESIC in para (E)} (F), (G), (I), (J), (K) and (W). Hence, that much proposed amendment is to be rejected. Accordingly following order:

ORDER

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12. The ESI Court has clearly come to the conclusion that some of the facts which have been denied to be placed by way of amendment are completely contrary to the record.

13. In that view of the matter, I am in distinct agreement with the ESI Court in allowing the Schedule of amendment partly in respect of paragraph Nos.2A to 2D and paragraph Nos.8A to 8I and 8W as proper and necessary only. I see no reason to interfere with the impugned order dated 14.09.2017 passed by the ESI Court, Mumbai. The order is therefore sustained.

14. At the joint request of both learned Advocates, ESI Court is directed to decide Application (ESI) No.15 of 2011 within a period of six months from today after following the due process of law and strictly in accordance with law.

15. It is clarified that this Court has not opined on any merits of the matter and all contentions of both the parties are expressly kept open for a decision to be passed on merits with a reasoned speaking order while disposing of Application (ESI) No.15 of 2011.

16. Rule made absolute in the above terms.

17. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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