

State of Orissa and ors. Vs. Kailash Chandra Nayak and ors.

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SooperKanoon Citation : sooperkanoon.com/536347

Court : Orissa

Decided On : Sep-20-2006

Reported in : (2007)IILLJ675Ori

Judge : L. Mohapatra, J.

Appellant : State of Orissa and ors.

Respondent : Kailash Chandra Nayak and ors.

Disposition : Appeal allowed

Judgement :

L. Mohapatra, J.

1. This appeal is directed against the judgment and order dated May 2, 1994 passed by the learned District Judge-cum-Employees Insurance Court, Cuttack in E.S.I. Misc. Case No. 7/1994 allowing the prayer of the respondents and directing the Superintendent, E.S.I. Hospital, Choudwar to verify the Out Patient Register for the period from May 7, 1992 to June 21, 1992 and ascertain the nature of disease which the employees named therein suffered and further directing that if on verification it is found that the disease was of such nature which would have necessitated certain employees to abstain from duty, such employees should be issued regulation certificate whereupon the authority shall extend them sickness benefits in accordance with law.

2. The respondents are the employees of the Orissa Textile Mills (in short 'O.T.M.'), Choudwar, Cuttack which is a Government of Orissa Undertaking and is covered under the E.S.I. Act. The Act provides for grant of cash benefits to the employees/workers during sickness and maternity period and also to the injured who receive injury in course of employment. A lock out was declared in the Mill from May 7, 1992 to June 21, 1992. During the aforesaid period of lockout, it is alleged that some of the workmen were provided with sickness benefits but later on the amount had been recovered from them in contravention of the Act. It is also the case of the respondents that so far as other employees are concerned, who fell ill and were treated in the E.S.I Hospital were not provided with sickness certificate, as a result of which, the benefits granted under the Act had not been extended to them. Having not received the benefits during the aforesaid period, they had approached this Court in O.J.C. No. 9547/1992. The said writ application was disposed of at the stage of admission with observation that the respondents should approach the appropriate E.S.I. Court for the relief claimed. Accordingly, after disposal of the writ application, the respondents filed an application under Section 75 of the Employees State Insurance Act, 1948 (hereinafter called 'the Act') before the learned District Judge, Cuttack which is the Employees Insurance Court. The grievance of the respondents as is evident from the application filed is that during the period of lockout from May 7, 1992 to June 21, 1992 several workmen were treated in the E.S.I. Hospital and their names had been duly entered in the register but no sickness certificate was issued to them. In the absence of sickness certificate, such workmen who have been treated in the E.S.I. Hospital could not avail the benefits provided under the Act and accordingly, prayed for extension of such benefits for the period they were treated in the E.S.I. Hospital.

3. Present appellants filed objection stating therein that cash benefits for sickness, maternity, death, disablement etc. are given by the E.S.I. Corporation on the basis of the prescribed medical certificate issued by the Medical Officers of the E.S.I. Dispensary or Hospitals. A sickness benefit, which is the cash benefit to be paid by the local office of the E.S.I. Corporation, is given on the strength of regulation certificate issued by the Insurance Medical Officer of the E.S.I. Hospital. The lockout was declared in the O.T.M. from May 7, 1992 to June 21, 1992. During

that period, all medical benefits were provided to the insured persons of the Mill. However, regulation certificates were not issued to such sick employees to enable them to get cash benefit because of the reason that their case did not come within the ambit of law. It is also the case of the appellants before the learned District Judge that before issuance of such certificate, the Medical Officer has to be satisfied that the insured person requires medical treatment and attendance and that his condition necessitates to abstain from work. Since a lockout had been declared in the O.T.M. for the aforesaid period, the question of issuance of regulation certificate did not arise. The learned District Judge-cum-E.S.I. Court arrived at a finding that the lockout declared was illegal and, therefore, the insured workmen who had been treated in the E.S.I. Hospital during the period of lockout are to be given cash benefits. Having held thus, the trial Court directed the appellants to refer to the register and find out the names of the workmen who had been treated during the lockout and issue regulation certificates to them for the purpose of obtaining the cash benefit.

4. The learned Counsel appearing for the appellants challenges the impugned order on the ground that on May 6, 1992, the workers neither joined their duties nor they allowed the officers to enter into the Mill. The workers were indulged in brick-batting and caused damage to the properties of the Mill and also manhandled the Officers. Taking into consideration the situation, the management was forced to declare a lockout with effect from May 7, 1992 and intimated the authority accordingly. Coming to know about the incidents, giving rise to a lockout, the Labour and Employment Department of the State Government issued instruction not to issue sickness certificates to the insured persons and consequently issuance of sickness certificate was stopped with effect from May 16, 1992. The learned Counsel further submitted that during this period of lockout, the insured workmen and their family members were provided with all medical facilities and medicine costs were reimbursed. It is also stated by the learned Counsel that the insured workmen who had been hospitalized for their sickness just prior to the lockout and continued to remain sick were given the benefits. Sickness certificates were not issued in case of out door patient, as such certificate are supposed to be issued to the persons who according to the opinion of the Medical Officer, are required to abstain from work. The learned Counsel

further contended that a lockout having been declared, there was no work in the Mill and, therefore, the question of abstaining from work did not arise and accordingly sickness certificates were not issued. The learned Counsel for the respondents supported the impugned order on the ground that the lockout had not been declared in terms of the provisions contained in the Industrial Disputes Act and, therefore, the learned District Judge-cum-E.S.I. Court was justified in holding that the lockout having not been declared in accordance with law, all the insured workmen were entitled to such benefits even during lockout.

5. There is no dispute that the Management of O.T.M. Ltd. had declared a lockout for the period from May 7, 1992 to June 21, 1992. There is no dispute that during the aforesaid period of lockout, there was no work in the Mill. There is also no dispute that during the aforesaid period of lockout, several insured workmen had been treated in the E. S. I. Hospital as either indoor patient or outdoor patient. So far as indoor patients are concerned, it is admitted that they were given the required certificate and the benefits flowing from such certificate. The dispute relates to those workmen who had been treated as outdoor patients but no sickness certificate had been issued in their favour. There being no dispute that the Mill was not functioning during the lockout period, the question of abstaining from work does not arise. Under these circumstances, whether the E.S.I. authorities were justified in not issuing regulation certificate/sickness certificate to those workmen who had been treated as outdoor patient. Apart from above, the other question that comes up for consideration is as to whether the E. S. I. Court is competent Court to hold that clamping of lockout by the Management for the aforesaid period was illegal or not.

6. Chapter III of the Employees' State Insurance (General) Regulations, 1950 deals with benefits available to the workmen. Regulation 53 provides that every insured person, claiming sickness benefit or disablement, shall furnish evidence of sickness or temporary disablement in respect of the days of his sickness or temporary disablement by means of a medical certificate given by an insurance medical officer in accordance with these regulations in the form appropriate to the circumstances of the case. Regulation 55 deals with the manner in which a medical certificate is to be issued. Form Nos. 13 and 14 under the regulation are

the forms in which sickness certificates can be issued. Such forms can be used only when the insured has to remain absent for sickness. So far as the present case is concerned, admittedly, there was a lockout and the Mill not function did at all. The insured workmen neither attended the work nor allowed the officers also to enter into the office. Under these circumstances, the question of remaining absent from duty does not arise. I am, therefore of the view that the insured workmen during the aforesaid period of lockout having absented from work voluntarily cannot now take a plea that the absence was due to sickness and accordingly, they are not entitled to sickness benefits. Non-issuance of sickness certificate by the competent Medical Officer on the above ground also does not appear to be illegal or unjustified.

7. So far as finding of the learned District Judge in declaring the lockout to be illegal is concerned, one may take note of the fact that while acting as E.S.I. Court, the powers of the learned District Judge are confined to the provisions contained in the Employees' State Insurance Act, 1948. The learned District Judge cannot go beyond the scope of the Act and pass an order. There is no provision under the Employees' State Insurance Act, 1948 conferring jurisdiction on the learned District Judge to declare the lockout to be illegal. I am, therefore, of the view that the learned District Judge while deciding the case as the Employees' Insurance Court, could not have exercised the jurisdiction beyond the scope of the Act for the purpose of declaring the lockout illegal. The direction of the learned District Judge-cum-E.S.I. Court is based on such a declaration and I am, therefore of the view that the order is not sustainable.

8. I accordingly allow the appeal and set aside the impugned judgment. Under the facts and circumstances of the case, there shall be no order as to cost.