Supreme Court of India
Calcutta Electric Supply ... vs Calcutta Electric Supply ... on 26 August, 1993
Equivalent citations: (1995) ILLJ 874 SC, (1994) 6 SCC 548
Author: P Sawant
Bench: P Sawant, Y Dayal
ORDER P.B. Sawant, J.

1. These are appeals against the award dated February 5, 1993 made by the Third Industrial Tribunal, Calcutta, West Bengal. Two questions arose for consideration before the Tribunal, viz., (1) whether the change effected by the appellant employer was in contravention of Section 9-A of the Industrial Disputes Act, 1947 (the 'Act'); and (2) whether the employer was entitled to withdraw the medical benefits which were already given by it to the employees prior to the coming into force of the Employees' State Insurance Act, 1948 (the 'ESI Act').

2. On both questions, the Tribunal held against the appellant employer and hence the present appeals. To withdraw the said benefits, the employer served as many as four notices dated March 30,1964, June 19,1968, November 13,1975 and August 10, 1976. It is not disputed that none of the notices in question was in Form 'E' prescribed under Rule 34 of the Industrial Disputes (Central) Rules, 1957. Nor is it disputed that none of them was served either on the respondent Union of workers as required by Rule 34 and Form 'E' or on the authorities mentioned in Form 'E'. In fact, it was the case of the employer that there was no change in the service conditions prejudicial to the workers and hence no notice under Section 9-A of the Act was necessary. The Tribunal held that the withdrawal of the medical benefits was prejudicial to the workers and therefore, the notice was necessary and since no such notice was given, the withdrawal of the benefits was illegal. We are in agreement with the said finding for the reasons given below. That takes us to the main controversy, viz., whether after coming into force of the Employees Insurance Act, the employer was justified in withdrawing the said benefits.

3. Dr. Shankar Ghosh, learned Counsel appearing for the appellant employer contended that the benefits available under the Employees Insurance Act are more generous and comprehensive compared to the benefits extended by the employer. After coming into operation of the Employees Insurance Act, the employer is required to make contribution under the Act. In view of the said contribution, the continuation of the medical benefits by the employer at its own cost had become both burdensome and redundant. The employer was, therefore, not only justified but also entitled to withdraw the benefits. It is for this reason that notice under Section 9-A of the Act was not necessary since the withdrawal of the said benefits in the context of the availability of the more generous benefits was not prejudicial to the interest of the employees.

4. There is no doubt that both the said questions, in a sense, are interlinked. If it is held that the benefits available under the Employees Insurance Act are more generous, it may be possible to argue that the notice under Section 9-A was not necessary. Hence the examination of the two schemes of benefits is necessary.

5. The medical benefits available to the employees under the employer have been enumerated in an annexure to the appeal-memo. It is not necessary to discuss each of the said benefits. It suffices to point out that one of the major benefits available to the employees is hospitalisation in a private nursing home in case of illness and reimbursement of the medical expenses incurred for such hospitalisation. There is no such benefit available under the Employees Insurance Act. A reference of the patient to a private nursing home is possible only if no facility for the treatment of the ailment is available at the hospitals run by the ESI Corporation and the Medical Officer concerned certifies to that effect. We have taken this instance only to point out that Dr Ghosh's contention that the benefits under the Employees Insurance Act are more generous or beneficial, is not borne out by facts.

6. This is apart from the question whether the availability of medical benefits as a part of the service conditions of the employees, is liable to be withdrawn unilaterally by the employer merely because the employees in question are also covered by the Employees Insurance Act. That question has to be answered in the negative for various reasons. In the first instance, there is nothing in the Employees Insurance Act which enables the employer to withdraw such benefits merely because the employees come to be covered by that Act. On the other hand, the provisions of Section 72 of that Act prohibit withdrawal of the benefits. The section reads as follows:

72. Employer not to reduce wages etc. - No employer by reason only of his liability for any contributions payable under this Act shall, directly or indirectly reduce the wages of any employee, or except as provided by the regulations, discontinue or reduce benefits payable to him under the conditions of his ] service which are similar to the benefits conferred by this Act.

(emphasis supplied) The only regulation which permits discontinuance or reduction of benefits is Regulation 97 of the Employees' State Insurance (General) Regulations, 1950 which provides as follows:

97. Discontinuation or reduction of benefits. - An employer may discontinue or reduce benefits payable to his employees under conditions of their service which are similar to the benefits conferred by the Act to the extent specified below, namely-

(a) from the date of the commencement of the first benefit period following the appointed day for his factory or establishment

(i) sick leave on half-pay to the full extent.

(ii) such proportion of any combined general purposes and sick leave on half pay as may be assigned as sick leave but in any case not exceeding 50 per cent of such combined leave;

(b) any maternity benefit granted to women employees to the extent to which such women employees may become entitled to the maternity benefit under the Act:

Provided that where an employee avails himself of any leave from the employer for sickness, maternity or temporary disablement, the employer shall be entitled to deduct from the leave salary of the employee the amount of benefit to which he may be entitled under the Act for the corresponding period.

7. Dr. Ghosh, however, contended that Section 72 of the Employees Insurance Act prohibits discontinuance or reduction only of the monetary benefits except as provided by the Regulations made under that Act. It does not prohibit discontinuance or reduction of the other benefits. We are afraid the contention begs the question. The correct reading of the provisions of Section 72 will show that the discontinuance or reduction of benefits permitted by the said section is only of the monetary benefits and no other benefits. There is no provision in that Act which permits tampering with the service conditions on account of the operation of the Act. Unless that Act or any other law permits the employer to effect a change in the service conditions of the employees, any change effected has to be held as illegal. To construe the provisions of the Employees Insurance Act and in particular of Section 72 of that Act as permitting discontinuance or reduction of the other benefits is to construe the absence of provisions in the Act enabling such discontinuance or reduction as a positive permission or licence to effect such discontinuance or reduction. Such construction of the statute to say the least, is unwarranted. What is further necessary to remember in this connection is that the payment of contribution by and on behalf of the employee does not compel the employee to avail of the benefits under the Act. It is upto the employee to avail of the benefits available to him under the service conditions or under the Act. The view which we are taking, viz., that the benefits which have become a part of the service conditions are not intended to be affected by the provisions of the Employees Insurance Act and its scheme except to the extent permitted by Regulation 97 and on the conditions mentioned therein, is supported by a decision of this Court in Bareilly Holdings Ltd. v. Workmen 1979-1-LLJ-352.

8. In the result, we uphold the award of the Tribunal and dismiss the appeal with costs to be payable to the respondents, viz., the Union of Workmen and the ESI Corporation in two separate sets.