

PETITIONER:
ALEMBIC GLASS INDUSTRIES LTD. BARODA & OTHERS

Vs.

RESPONDENT:
THE WORKMEN & OTHERS

DATE OF JUDGMENT 30/07/1976

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
CHANDRACHUD, Y.V.
GOSWAMI, P.K.

CITATION:
1976 AIR 2091 1977 SCR (1) 80
1976 SCC (3) 522

ACT:

Employees' State Insurance Act, 1948--S. 61--If debars grant of sick. leave--If the Act deals with all aspects of sickness.

HEADNOTE:

The workmen's demand for grant of sick leave and its accumulation upto a period was rejected by the employers on the ground that the Employees' State Insurance Act, 1948 provided more than adequate sickness benefits, and that any additional benefits would place a financial burden on the industry and would adversely affect other industries in the region. The Tribunal, to which the dispute was referred, partly granted the workmen's demand.

On appeal to this Court it was contended that s. 61 of the Employees' State Insurance Act debarred a person entitled to any of the benefits under that Act from receiving similar benefit under the provisions of any other Act and as such the workmen were not entitled to the benefit of sick leave.

Dismissing the appeals,

HELD: (1) The Employees' State Insurance Act, does not deal with the question of sick leave. The scheme of the benefits admissible under the Act does not cover the workmen's demand for sick leave to the extent allowed by the Tribunal. Section 61 is not applicable because the benefits granted by the Tribunal are not similar to those admissible under the Act. [84 C]

The Hindustan Times Ltd., New Delhi v. Their Workmen [1964] 1 SCR 234 and Technological Institute of Textiles v. Its Workmen and others [1965] 2 L.L.J. 149 applied.

(2) Sickness benefit under the Act cannot be said to be adequate, for, it works out to about half the average wage of a workman which benefit is not admissible for the first two days of sickness except under the conditions provided in the Act. A workman is prevented from earning the normal daily wages during the period of his illness and there is no justification for the argument that the rate of benefit at about half his wage, under the Act, should be considered sufficient so as to deny him the benefit of sick leave on full emoluments for a period of 7 days when he is certi-

fied by a competent medical officer to be ill for that or a longer period. Sickness is a serious misfortune to a workman for it not only prevents him from earning his normal wages, but is a drain on his meagre financial resources by way of additional expenditure on food, nursing and visits to the medical centre etc. [84 E-F]

(3) The Tribunal could not be said to have erred in restoring the benefit which the workmen were receiving under an earlier award. The benefit of sick leave to the employees in the region was lost when the Act was made applicable to the region from December 14, 1969. This was obviously under a mistaken impression. The Act does not deal with all aspects of sickness benefit and does not provide for the grant of leave on full emoluments during the period of a workman's physical incapacity to earn his normal wages because of his sickness. [85 B-C]

(4) There is no force in the argument that the Tribunal had granted additional privilege leave for 7 days under the garb of sick leave because by its very nature sick leave would be admissible only in the case of actual sickness certified by a registered medical practitioner. [86 B]

(5) There is no evidence to show that the benefit had not been allowed by other companies in the region. The Tribunal had examined the financial

81

capacity of the companies and had given adequate reasons for holding that they were in good financial position and could bear the additional burden. [85 H]

(6) It has not been shown that the awards are illegal or unjust, or would adversely affect the economy or the industrial peace, or lead to imbalance in the conditions of service in other industrial establishments. [86 C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1951 of 1975.

Appeal by Special Leave from the Award of the Industrial Tribunal, Gujarat in Reference (II) No. 30 of 1974, published in the Gujarat Govt. Gazette dated 23-10-1975 and Civil Appeal No. 631 of 1976

Appeal by Special leave from the Award of the Industrial Tribunal, Gujarat in Ref. (II) No. 158 of 1974 published in the Gujarat Govt. Gazette Part I-L dated 15-4-76.

V.B. Patel, 1. N. Shroff and H.S. Parihar for the appellants (In CA 1951/75).

S.T. Desai, A. P. Hathi, Mrs. S. Bhandare, M. S. Narasimhan K.C. Sharma, A. K. Sharma and A. K. Mathur for the appellants in C.A. 631/76.

V.M. Tarkunde, K.L. Hathi and P.C. Kapur for the Respondent in C.A. 1951/75 and Res. 1(1) C.A. 631/76.

S.S. Khanduja, S.K. Jain and Mrs. Laxmi Arvid for Respondent Nos. 1(2) In C.A. 631/76.

The Judgment of the Court was delivered by

SHINGHAL, J.--These two are companion appeals by special leave. They have been heard together at the instance of the learned counsel for the parties, and will be disposed by a common judgment.

Appeal No. 1951 of 1975 is directed against the award of the Industrial Tribunal Gujarat, dated September 24, 1975, in the dispute between the Alembic Glass Industries Ltd., Baroda, and its workmen, while appeal No. 631 of 1976 arises out of the Tribunal's award in the dispute between Jyoti Limited, Baroda, and its workmen. Speaking broadly, the dispute in both cases related to the workmen's demand

for 10 days sick leave, with retrospective effect, and its accumulation over a period of three years i.e. upto 30 days. The workmen particularly felt aggrieved because by virtue of the first proviso to section 49 of the Employees' State Insurance Act, 1948, hereinafter referred to as the Act, they were not entitled to the sickness benefit for the first two days of sickness except in the case of a spell of sickness following, at an interval of not more than 15 days, the spell of sickness for which sickness benefit was last paid. It was also a grievance that the benefit under the scheme of the Act was much less than the normal earnings of an employee and was not beneficial to the workmen.

The demand was resisted by the Companies in both cases. In the case of the Alembic Glass Industries Ltd., it was contended that the Act provided more than adequate sickness benefits, and any additional

82

benefit would place unproductive financial burden on the industry and would have an all round adverse effect on other industries. It was also urged that section 99 of the Act gave wide powers to the Employees' State Insurance Corporation to enhance the benefit and it was therefore the proper authority to examine the demand. The Company also contended that there was no practice of giving any such sick leave in the industries in Baroda or in the State of Gujarat. In the case of Jyoti Ltd. an objection was taken that the reference was incompetent and the Tribunal had no jurisdiction to entertain it. It was also pointed out that the benefit of sick leave of 7 days per year was initially given to the workmen under an award dated August 29, 1958 which contained a specific direction that it would be automatically discontinued when the benefits of the Employees' State Insurance scheme would become available to the workmen, and also that the reasonableness of the demand could not be examined by the Tribunal. An objection was also taken that the workmen had benefited a lot under the entire scheme of the Act and it would not be reasonable and proper to confer any additional benefit as the demands would place a heavy financial burden on the Company which it could not bear. The demand, according to the Company, would create an absurd position inasmuch as a worker would receive more wages by remaining absent than on duty. The Company also pleaded that the demand for sickness leave could not be granted retrospectively or allowed to accumulate.

While the reference in the case of Jyoti Ltd., Baroda, was still pending, the Tribunal gave its award dated September 24, 1975 in the case of the Alembic Glass Industries Ltd. The Tribunal, inter alia, awarded 7 days sick leave with full pay and dearness allowance to the workmen of that Company in a year, with the facility of accumulation upto 21 days. It was stated before the Tribunal, on behalf of the workmen of Jyoti Ltd., that the arguments advanced and the contentions made in the case of the Alembic Glass industries may be considered as those made in their case also. The reference in the case of Jyoti Ltd. proceeded accordingly and resulted in the award dated March 9, 1976 to which reference has been made above. The award was on the lines of the earlier award in the case of the Alembic Glass Industries case, except that the direction regarding 7 days sick leave was given retrospective effect from January 1, 1975. The Company applied for and obtained special leave to appeal as aforesaid, with the further direction that the appeal may be heard along with the identical matter (in the Alembic Glass Industries case). This is why these two have become companion appeals and are being disposed of together.

The controversy in these cases is whether the benefits admissible under the Act in the matter of the grant of sick leave are such as to justify the rejection of the workmen's demand and the setting aside of the Tribunal's awards in that respect.

It has been argued by the learned counsel for the appellants that as the benefits of sections 47 and 49 of the Act are already admissible to workmen in Baroda with effect from December 14, 1969, and they are quite adequate, the Tribunal committed an error

83

of law in granting the additional benefits mentioned above. Reference in this connection has been made to section 61 of the Act which provides that when a person is entitled to any of the benefits provided by the Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment. The argument was raised in the Tribunal, but was rejected.

A similar question arose for consideration in *The Hindustan Times Ltd., New Delhi v. Their Workmen*(1) and was answered as follows by this Court,--

"Mr. Pathak has tried to convince us that in view of the provisions of the Employees' State Insurance Act, 1948, no provision need be made about sickness leave at all. That this Act has been applied, to the Company and that the workmen of the Company get the benefit of this Act is not disputed. It is difficult to see however how the benefit that the workmen will get under this Act can affect the question of sickness leave being provided for the workmen. This Act it has to be noticed does not provide for any leave to the workmen on the ground of sickness. It provides in s. 46(1)(a) for periodical treatment of any insured person in case of his sickness if certified by a duly appointed medical practitioner. It is unnecessary to mention here the several provisions in the Act; viz., Sections 47, 48 and 49 which deal with the eligibility of workmen for sickness benefit and the extent of the benefit that may be granted. Section 56 of the Act provides for medical benefits to the insured workmen or in certain cases to the members of his family. It appears to us clear however that in providing for periodical payments to an insured worker in case of sickness (sickness benefit) or for medical treatment or attendance to him or the members of his family, the legislature did not intend to substitute any of these benefits for the workmen's right to get leave on full pay on the ground of sickness."

The matter came up again for consideration by this Court in *Technological Institute of Textiles v. Its Workmen and others*(2) and it was held as follows with specific reference to the first proviso to section 49 of the Act according to which a person qualified to claim sickness benefit is not entitled to it for the initial waiting period of two days except in the case of continuous illness of the nature mentioned therein,--

"With regard to sick leave, the argument on behalf of the appellant was that benefits were granted by the Employees' State Insurance Act, but that is not a bar to the demand of the workmen for sick leave. The reason is that the first

proviso to s. 49 of the Employees' State
(1) [1964] 1 S.C.R. 234. (2) [1965] 2 L
L.3,149.

84

Insurance Act states that a person qualified to claim sickness benefit shall not be entitled to the benefit for an initial waiting period of two days except in the case of a spell of sickness following at an interval of not more than fifteen days, the spell of sickness for which benefit was last paid. It is apparent that the Employees' State Insurance Scheme does not cover all contingencies of sickness and in any event the first two waiting days are not covered. In our opinion, the tribunal was, therefore, justified in its view that the workmen are entitled to 7 days' sick leave with wages on production of a medical certificate."

It would thus appear that the Scheme of the benefits admissible under the Act cannot be said to cover the workmen's demand for sick leave to the extent allowed by the Tribunal. Section 61 of the Act cannot thus be said to be applicable for the simple reason that the benefits granted by the Tribunal are not similar to those admissible under the Act. The Act does not in fact deal with the question of sickness leave.

The other question regarding the adequacy of the sickness benefit under the provisions of the Act has been examined by the Tribunal with reference to the reports of the National Commission of Labour, 1969, the Labour Laws Review Committee and the Norms Committee of Gujarat State, which go to show that the benefit cannot be said to be adequate for, it works out to about half the average wage of a workman, and even that amount is not admissible for the first two days of sickness except in the case of a spell of sickness following, at an interval of not more than 15 days, the spell of sickness for which the sickness benefit was last paid. It has to be appreciated that a workman is prevented from earning the normal daily wages during the period of his illness and there is no justification for the argument that the rate of benefit at about half his wage, under the Act, should be considered sufficient so as to deny him the benefit of sick leave on full emoluments for a period of 7 days when he is certified by a competent medical officer to be ill for that or a longer period. Sickness is a serious misfortune to a workman for it not only prevents him from earning his normal wages, but is a drain on his meagre financial resources by way of additional expenditure on food, nursing and visits to the medical centre etc.

It has not been disputed before us that the "region-cure-industry" basis is suitable in cases like the present for examining any controversy regarding the workman's demand for additional benefits, but it has been argued by the learned counsel for the appellants that the award of the benefit of sick leave to the workers of the two Companies could not be justified on that basis. We find that the Tribunal has examined this aspect of the controversy also, and we have no reason to disagree with the view which it has taken. As has been stated, the Act came into force in the region concerned on December 14, 1969, and it has not been disputed before us that till then it was the practice in the glass industries to grant sick leave with wages for periods varying from 6 to 10 days. In fact in the

85

case of the Alembic Glass Industries Ltd., Baroda, the Tribunal made an award for 7 days sick leave on full pay and

dearness allowance in 1958, subject to the condition that the benefit would cease to apply when the benefits of the Act became available to the workmen. The benefit of sick leave was therefore lost when the Act was made applicable to the region from December 14, 1969. That was obviously under a mistaken impression of the sickness benefit which the Act allowed for, as has been shown, it does not deal with all aspects of the demand for sickness benefit and does not, at any rate, provide for the grant of leave on full emoluments during the period of the workman's physical incapacity to earn his normal wages because of his sickness. It therefore appears that the Tribunal could not be said to have erred in restoring the benefit which the workmen were receiving under the award of 1958, for it was taken away under the mistaken impression that it had been adequately replaced by the new provisions on the coming into force of the Act.

The appellants have filed a statement (Ex. 7) containing information regarding the companies which have provided the benefit of sick leave to its workmen in the region. It shows that even though the Act was applicable to the workers of the Precision Bearings India Ltd., Baroda, Hindustan Brown Bovari Ltd., Baroda, the Associated Cement Companies Ltd., and M.S. University Press, Baroda, the benefit of sick leave has been allowed to the workmen of those companies. It is therefore futile to contend that the benefit should not be admissible on the ground that it had not been allowed by other companies in the region. We also find that such a benefit has been allowed in the case of glass industries by Shree Vallabha Glass Works Ltd., Vallabh Vidyanagar, Ogale Glass Works Ltd., Oglewadi and Vijay Glass Works, Bombay. Even the Alembic Glass Industries Ltd. has allowed 6 days sick leave in a year to its employees in Bangalore and it is permissible to accumulate it upto 12 days in addition to the current year's leave, under a settlement dated July 17, 1969, which is being continued even after the coming into force of the Act. Learned counsel for the appellants have invited our attention to the case between the Textile Labour Association and the Ahmedabad Millowner's Association where the demand for sick leave was refused but, as the Tribunal has pointed out, the demand there was for a month's leave every year in addition to 15 days casual leave and pay in lieu of privilege leave. The Full Bench of the Industrial Court in that case considered the paying capacity of the mills also, and held that the additional leave demanded by the workmen would be very much beyond the paying capacity of the industry. As against this, the Tribunal has examined the financial capacity of the two companies in question, and has given adequate reasons for holding that they are in good financial position and can bear the additional burden of sick leave. Learned counsel for the appellants have in fact not advanced any argument to the contrary.

Mr. S.T. Desai has raised the argument, in the case of Jyoti Ltd., Baroda, that the Tribunal laboured under a misconception that

86

the sickness benefit would be lost for the first two days of sickness under the first proviso to s. 49 of the Act, that the Tribunal should not, in any view of the matter, have given the benefit of 7 days sick leave, and that the workmen did not deserve anything more than sickness benefit for the first two days also. According to him, what has been awarded by the Tribunal is additional privilege leave for 7 days in the garb of sick leave. The argument is however futile because, as has been stated, the Tribunal has cor-

rectly examined the controversy and given adequate reasons for allowing the benefit of 7 days sick leave in the manner set out in the award. Such a leave could not be categorised as privilege leave as, by its very nature, it would be admissible only in the case of actual sickness certified by a registered medical practitioner.

It would thus appear that the appellants have not been able to show that the awards in question are illegal or unjust; or would adversely affect the economy or the industrial peace, or lead to imbalance in the conditions of service in other industrial establishments. It appears, however, that it was not necessary, in the circumstances of the case, to award the benefit of the sick leave with retrospective effect from January 1, 1975, in the case of Jyoti Ltd. Baroda.

The appeals therefore fail and are dismissed except that the award in the case of Jyoti Ltd., Baroda, is made effective from the date of its commencement. The appellant companies shall pay to the workmen the costs of these appeals; one set of counsel's fees.

P.B.R.

Appeals

dismissed.

87