

# Supreme Court Issues Notice on Challenge to ESIC Decision to Extend ESI Benefits to Workers Engaged At Construction Sites

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The Supreme Court on Friday issued notice in a plea moved by Tata Projects challenging the Employees' State Insurance Corporation's decision to extend the benefits of the Employees State Insurance Act, 1949 to the employees engaged by building / construction agencies at the 'construction site'. Before issuing notice in the case, a Bench of Justices Dinesh Maheshwari and Sudhanshu Dhulia asked the petitioners why they couldn't approach the High Court.

It is the petitioner's case that such employees stand covered by legislations which are enacted to cater to their specific needs and benefits such as Building and Other Construction Workers' (Regulation and Employment and Conditions of Service) Act [BOCW], and the Employees' Compensation Act, 1923. The petition challenges certain instructions issued by ESIC on July 31, 2015 which sought to extend the benefit of the ESI scheme to the workers/employees engaged at construction site by building / construction agencies.

The ESI Instructions were challenged by certain employers before some High Courts contending that they only resulted in duplication of the benefits and the employer merely being subjected to double obligation. One order passed by the Bombay High Court then reached the doors of the Apex Court after which the 2015 Instructions were stayed by way of an interim order in 2018. Subsequent to this, a clarification was issued by the ESIC stating that no contribution was required to be collected from construction site workers and from their employers during the period of stay order.

The petition also seeks to challenge the "unilateral and arbitrary actions" of the ESIC in issuing notices and demanding contribution under ESI Act from the Petitioner.

Elaborating on the factual matrix, the petitioner submits that it consciously did not contribute in terms of the ESI Act in view of the Supreme Court's stay order. As a result of non-contribution, Tata Projects was served with about 25 Notices, which are in the form of C-18 Ad-Hoc Notices, issued by various Regional Offices of the ESIC from across the country.

While few Regional Offices of the ESIC conceded with the petitioner's stand, thereby not initiating any further action, about 9 Notices have culminated into a C-18 Final Notice. If the C18 Final Notices are not complied within a stipulated period, it can transform into an order under section 45-A of the ESI Act, whereby the contribution payable for the deferred period is realizable as arrear of land revenue in terms of Section 45B of the ESI Act, the plea says. In the present scenario, challenging each and every notice issued by the concerned Regional Office would amount not only amount to multiplicity of litigation but may also lead to divergence of opinion by various Courts, the plea contends.

The plea further relies on the legislative intent with which the ESI Act was enacted.

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"The Statement of Objects & Reasons categorically states that the ESI Act is to provide Health Insurance for industrial workers. The scheme envisaged is one of compulsory State Insurance providing for certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with the work in factories other than seasonal factories."

According to the petitioner, a 'construction site' does not fall within the scope and definition of either a 'shop' or a 'office' or a 'commercial establishment' or a 'factory' or 'mine' or 'plantation'. As such a plain reading of the above categorically suggests that the ESI Act primarily applies to a 'factory' or 'establishment'. Moreover, the expression 'construction site' does not even find a reference in the ESI Act.

"The ESIC without application of mind has proceeded with issuing Instructions dated 31.07.2015 which per se is detrimental to the interest of those engaged at the construction site. The individuals engaged at the 'construction site' are mandatorily required to be extended the benefit of the EC Act and the BOCW Act. Moreover, with the application of the ESI Act, the individuals cannot avail the benefits of the EC Act and the BOCW Act, which are rather more beneficial for those engaged at the construction site in view of Section 53 and Section 61 of the ESI Act."

The petition, filed by Advocate on Record Gaichangpou Gangmei, will be heard next on November 21.

Case Title: Tata Projects Ltd. Versus Union Of India And Anr | W.P.(C) No. 936/2022 Pil-W

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