2023 INSC 60

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 312 OF 2023
(@ SLP(C) NO. 12520 OF 2022)

The ESI Corporation ...Appellant(S)

Versus

M/s. Radhika Theatre ...Respondent(S)

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 17.02.2021, passed by the High Court for the State of Telangana at Hyderabad in Civil Misc. Appeal No. 125/2011, by which, the High Court has allowed the said appeal and has set aside the order dated 13.12.2010 passed by the Employees Insurance Court (hereinafter referred to as the EI Court) dismissing EIC No. 14/2003 in which the respondent herein challenged the demand notice dated 31.08.1994 issued by the ESI Corporation, the ESI Corporation has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under: -

2.1 That the respondent herein was running a Cinema Theatre since 1981. It paid ESI contributions up to September, 1989. However, thereafter, as its employees were less than 20 in number, it did not pay the contributions. Therefore, the appellant – corporation issued demand notices. The respondent herein challenged the demand notices before the EI Court by way of EIC No. 14/2003 containing, *inter alia*, that prior to the insertion of Sub-section (6) of Section 1 of the ESI Act, 1948 w.e.f. 20.10.1989, it employed less than 20 persons and therefore, it was not liable to be covered under the provisions of the ESI Act. The EI Court dismissed the case vide order dated 13.12.2010. The order passed by the EI Court confirming the demand notices was the subject matter of appeal before the High Court. Before the High Court, it was the case on behalf of the respondent – original appellant that Sub-section (6) of Section 1 of the ESI Act which came to be inserted on 20.10.1989 shall not be made applicable retrospectively and the same would be

effective only on or after 20.10.1989 and not prior to that date. On the other hand, it was the case on behalf of the ESI Corporation that the ESI Act being a social welfare legislation, greater amplitude is required to be given to the same, as, it is intended for the welfare of the workmen concerned. It was submitted that as per amended Sub-section (6) of Section 1, all the establishments shall be governed by the ESI Act, notwithstanding the fact that the number of persons engaged therein is less than the prescribed number. However, thereafter, by the impugned judgment and order the High Court has allowed the appeal preferred by the respondent herein taking the view that amendment to Section 1 of the ESI Act by which Sub-section (6) of Section 1 came to be inserted w.e.f. 20.10.1989, the same shall not be applicable retrospectively and the same shall not be made applicable to an establishment, established prior to 20.10.1989/31.03.1989.

2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the ESI Corporation has preferred the present appeal.

3. Shri Mahesh Srivastava, learned counsel appearing on behalf of the appellant – ESI Corporation has vehemently submitted that the High Court has materially erred in allowing the appeal and setting aside the demand notices even for the period post 20.10.1989 by holding that amendment to Section 1 by inserting Sub-section (6) shall not be applicable retrospectively.

3.1 It is vehemently submitted that the High Court has not properly appreciated the object and purpose of the ESI Act and that the ESI Act is a social welfare legislation and intended for the welfare of the workmen concerned. It is submitted that therefore, to achieve the object and purpose of the ESI Act, the legislature thought it fit to insert Sub-section (6) to Section 1 of the ESI Act by which a factory or an establishment shall be governed by the ESI Act notwithstanding the number of persons employed therein at any time falls below the limit specified by or

under the ESI Act or the manufacturing process therein ceases to be carried on with the aid of power.

3.2 It is submitted that demand notices for the period post 20.10.1989, therefore, cannot be said to be illegal applying Sub-section (6) of Section 1 retrospectively as observed and held by the High Court. It is submitted that at the most, the demand notices for the period prior to 20.10.1989 can be said to be bad in law as in that case Sub-section (6) of Section 1 of the ESI Act can be said to have applied retrospectively.

3.3 It is submitted that in any case in view of insertion of Sub-section (6) of Section 1 w.e.f. 20.10.1989, any factory or establishment shall have to be governed by the ESI Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under the ESI Act.

3.4 Making the above submissions and relying upon the decision of this Court in the case of **Bangalore Turf Club**

Limited Vs. Regional Director, ESIC; (2014) 9 SCC 657, it is prayed to allow the present appeal.

4. Though served none has appeared on behalf of the respondent.

5. Having heard learned counsel appearing on behalf of the appellant – corporation and having gone through the impugned judgment and order passed by the High Court, the short question which is posed for consideration of this Court is whether with respect to the demand notices post 20.10.1989 a factory or an establishment, established prior to 20.10.1989 shall be governed by the ESI Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under the ESI Act?

An incidental question which is also posed for consideration of this Court is whether the demand notices for the period after 20.10.1989 i.e., from the date by which Sub-section (6) of Section 1 of the ESI Act came be inserted can it be said that the amended Section 1 of the ESI Act can be said to have been applied retrospectively?

6. While answering the aforesaid issues/questions the object, purpose and preamble of the ESI Act is required to be referred to and considered. The Preamble of the ESI Act is as under: -

> "An Act to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto."

6.1 Thus, the ESI Act being a social welfare legislation, any interpretation which would lean in favour of the beneficiary should be given. The object and purpose of the ESI Act has been elaborately considered by this Court in the case of **Bangalore Turf Club Limited (supra).** After considering catena of earlier decisions under the ESI Act, it is observed and held that ESI Act should be given liberal interpretation and should be interpreted in such a manner so that social security can be given to the employees. In paragraph 16 to 21, it is observed and held as under: -

> "16. The primary rule of interpretation of statutes may be the literal rule, however, in the case of beneficial legislations and legislations enacted for the welfare of employees, workmen, this Court has on numerous occasions adopted the liberal rule of interpretation to ensure that the benefits extend to those workers who

need to be covered based on the intention of the legislature.

17. The ESI Act is a welfare legislation enacted by the Central Government as a consequence of the urgent need for a scheme of health insurance for workers. It would be beneficial to reproduce the Preamble of the ESI Act in this context. It is as under:
"An Act to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto"

18. In *ESI Corpn.* v. *Francis De Costa* [1993 Supp (4) SCC 100 : 1994 SCC (L&S) 195] , this Court held that : (SCC pp. 105-06, paras 5-6)

"*5.* The Act seeks to cover sickness, maternity, employment injury, occupational disease, etc. The Act is a social security legislation. It is settled law that to prevent injustice or to promote justice and to effectuate the object and purpose of the welfare legislation, broad interpretation should be given, even if it requires a departure from literal construction. The court must seek light from loadstar Articles 38 and 39 and the economic and social justice envisaged in the Preamble of the Constitution which would enliven meaningful right to life of the worker under Article 21. The State is enjoined under Article 39(*e*) to protect the health of the workers, under Article 41 to secure sickness and disablement benefits and Article 43 accords decent standard of life. Right to medical and disability benefits are fundamental human rights under Article 25(2) of the Universal Declaration of Human Rights and Article 7(*b*) of the International Convention on Economic, Social and Cultural Rights. Right to health, a fundamental human right stands enshrined in socio-economic justice of our Constitution and the Universal Declaration of Human Rights. Concomitantly right to medical benefit to a workman is his/her fundamental right. The Act seeks to succour the maintenance of health of an insured workman. The interpretative endeavour should be to effectuate the above. Right to medical benefit is, thus, a fundamental right to the workman.

6. Moreover, even in the realm of interpretation of statutes, rule of law is a dynamic concept of expansion and fulfilment for which the interpretation would be so given as to subserve the social and economic justice envisioned in the Constitution. Legislation is a conscious attempt, as a social direction, in the process of change. *The fusion between the law and social change would be effected only when law is introspected in the context of ordinary social life. Life of the law has not been logic but has been experience. It is a means to serve social purpose and felt necessities of the people. In times of stress, disability, injury, etc. the workman needs statutory protection and assistance*. The Act fastens in an insured employment, statutory obligation on the employer and the employee to contribute in the prescribed proportion and manner towards the welfare fund constituted under the Act (Sections 38 to 51 of the Act) to provide sustenance to the workmen in their hours of need, particularly when they become economically inactive because of a cause attributable to their employment or disability or death occurred while in employment. The fact that the employee contributed to the fund out of his/her hard-earned wages cannot but have a vital bearing in adjudicating whether the injury or occupational disease suffered/contracted by an employee is an employment injury. The liability is based neither on any contract nor upon any act or omission by the employer but upon the existence of the relationship which employer bears to the employment during the course of which the employee had been injured. The Act supplants the action at law, based not upon the fault but as an aspect of social welfare, to rehabilitate a physically and economically handicapped workman who is adversely affected by sickness, injury or livelihood of dependents by death of a workman."

19. A three-Judge Bench of this Court, in reference to the ESI Act, in *Transport Corpn. of India* v. *ESI Corpn.* [(2000) 1 SCC 332 : 2000 SCC (L&S) 121] , held that : (SCC pp. 357-58, paras 27-28)

"*27.* Before parting with the discussion on this point, it is necessary to keep in view the salient fact that the Act is a beneficial piece of legislation intended to provide benefits to employees in case of sickness, maternity, employment injury and for certain other matters in relation thereto. It

is enacted with a view to ensuring social welfare and for providing safe insurance cover to employees who were likely to suffer from various physical illnesses during the course of their employment. *Such a beneficial piece of legislation has to be construed in its correct perspective so as to fructify the legislative intention underlying its enactment. When two views are possible on its applicability to a given set of employees, that view which furthers the legislative intention should be preferred to the one which would frustrate it.* …
28. Dealing with this very Act, a three-Judge Bench of this Court in *Buckingham and Carnatic Co. Ltd.* v. *Venkatiah* [AIR 1964 SC 1272] speaking through Gajendragadkar, J., (as he then was) held, accepting the contention of the learned counsel, Mr Dolia that : (AIR p. 1277, para 10)
'*10*. … It is a piece of social legislation intended to confer specified benefits on workmen to whom it applies, and so, it would be inappropriate to attempt to construe the relevant provisions in a technical or a narrow sense. This position cannot be disputed. But in dealing with the plea raised by Mr Dolia that the section should be liberally construed, we cannot overlook the fact that the liberal construction must ultimately flow from the words used in the section. If the words used in the section are capable of two constructions one of which is shown patently to assist the achievement of the object of the Act, courts would be justified in preferring that construction to the other which may not be able to further the object of the Act.'"

20. In Bombay Anand Bhavan Restaurant v. ESI Corpn. [Bombay Anand Bhavan Restaurant v. ESI Corpn., (2009) 9 SCC 61 : (2009) 2 SCC (L&S) 573] , it was observed that : (SCC p. 66, para 20)
"20. The Employees' State Insurance Act is a beneficial legislation. The main purpose of the enactment as the Preamble suggests, is to provide for certain benefits to employees of a factory in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The Employees' State Insurance Act is a social security legislation and the canons of interpreting a social legislation are different from the canons of interpretation of taxation law. The

courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. The Act, therefore, must receive a liberal construction so as to promote its objects."

21. The legislature enacted the ESI Act to provide certain benefits to employees in case of sickness, maternity in case of female employees, employment injury and to make provision in certain other matters in relation thereto. The provisions of the ESI Act apply to all the factories other than seasonal factories. The State Government with the approval of the Central Government is authorised to make the provisions of the ESI Act applicable to any other establishment or establishments. The provisions of the ESI Act provide that all employees in factories or establishments to which the ESI Act applies shall be insured in the manner provided under the ESI Act. Since the ESI Act is passed for conferring certain benefits to employees in case of sickness, maternity and employment injury, it is necessary that the ESI Act should receive a liberal and beneficial construction so as to achieve legislative purpose without doing violence to the language of the enactment."

7. Prior to insertion of Sub-section (6) of Section 1 of the ESI Act, only those establishments/factories engaging more than 20 employees were governed by the ESI Act. However, thereafter, Sub-section (6) of Section 1 of the ESI Act has been inserted on 20.10.1989, and after 20.10.1989 there is a radical change and under the amended provision a factory or establishment to which ESI Act applies would be governed by the ESI Act notwithstanding that the number

of persons employed therein at any time falls below the limit specified by or under the ESI Act. Therefore, on and after 20.10.1989, irrespective of number of persons employed a factory or an establishment shall be governed by the ESI Act. Therefore, for the demand notices for the period after 20.10.1989, there shall be liability of every factory or establishment irrespective of the number of persons employed therein. With respect to such a notice it cannot be said that amended Section 1 inserting Sub-section (6) is applied retrospectively as observed and held by the High Court. Only in case of demand notice for the period prior to inserting Sub-section (6) of Section 1 of the Act, it can be said that the same provision has been applied retrospectively. Therefore, the High Court has committed a very serious error in observing and holding that even for the demand notices for the period subsequent 20.10.1989 i.e., subsequent to inserting Sub-section (6) of Section 1 the said provision is applied retrospectively and the High Court has erred in allowing the appeal and setting aside the demand notices even for the period subsequent to 20.10.1989. Sub-section (6) of Section 1

therefore, shall be applicable even with respect to those establishments, established prior to 31.03.1989/20.10.1989 and the ESI Act shall be applicable irrespective of the number of persons employed or notwithstanding that the number of persons employed at any time falls below the limit specified by or under the ESI Act.

8. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court is hereby set aside and the demand notices for the period post 20.10.1989 are hereby restored. Present appeal is accordingly allowed. No costs.

.....J.
(M. R. SHAH)

.....J.
(C.T. RAVIKUMAR)

NEW DELHI,
JANUARY 20, 2023.