(2001) 08 GAU CK 0015

Gauhati High Court

Case No: M.A. (F) No. 24 of 1994

Employees State Insurance Corporation and Another		APPELLANT
	Vs	
Steel Engineers and Another		RESPONDENT

Date of Decision: Aug. 7, 2001

Acts Referred:

- Employees State Insurance Act, 1948 - Section 1(6)

Citation: (2002) 93 FLR 764 : (2001) 2 GLT 464 : (2001) 2 LLJ 1714

Hon'ble Judges: A.H. Saikia, J

Bench: Single Bench

Advocate: B.R. Dey, K.K. Nandi and H. Talukdar, for the Appellant; B.P. Kataky and R. Sarma, for the Respondent

Final Decision: Dismissed

Judgement

A.H. Saikia, J.

Heard Mr. B R Dey, learned counsel appearing on behalf of the appellants - ESI Corporation. Also heard Mr. B K Katakey, learned counsel for the opposite parties -respondent.

1. The short question of law involved in this Appeal is that whether Sub-section (6) of Section 1 of the Employees'' State Insurance Act, 1948 amended in the year 1989 shall have the effect of retrospective operation or prospective operation. Mr. Dey, learned counsel for the appellant contends that once the respondent-Industry started the contribution under the Act, shall be liable for such contribution even after there is less number of employees as prescribed under the act for making them liable for contribution in terms of the amended provision of Section 1(6) of the Employees'' State Insurance Act, 1949 (hereinafter in short referred to as ''Act'').

2. Before we go to discuss the issue in hand, it would be appropriate to look into the Provision of Section 1(6) which reads as follows:

"..A factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceased to be carried on with the aid of power."

3. The said amended provision has come into force with effect from 20.10.1989 after notification in the official Gazette by the Central Government. Sub-section (2) of the Section 1 of the Employees'' State Insurance (Amendment) Act, 1989 (for short the ''Amending Act'') reads as follows:

"It shall come into force on such date or dates as the Central Government may by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and for different States or for different parts thereof and any reference in any such provision to the commencement of this Act shall be construed in relation to any State or part thereof as a reference to the coming into force of that provision in that State or part thereof."

4. A bare perusal of the said provision of the Amendment Act, clearly shows that the amended provision of law shall be operative only on such date as the Central Government may be notification in the official Gazette appointed. In the case in hand, the Section 1(6) started its commencement with effect from 20.10.1989.

5. The appellants/ESI Corporation has moved this Court on being aggrieved by the impugned Judgment dated 26.10.1993 passed by the E.I. Court Guwahati in E.S.I. Case No. 42/91, wherein it was held that the appellant failed to ascertain that the Respondent-Industry ever had 10 or more employees, and as such, the respondent-Industry was not covered by- the Act to make any contribution as provided under the Act. The period in question for alleged liability for making such E.S.I. contribution is admittedly for the period from August/86 to July/87.

6. Mr. Katakey, learned Sr. counsel appearing for the respondents-Industry relying on the date of commencement of Section 1(6) of the Act submits that since the provision of Section 1(6) came into operation only on 20.10.1989, the respondents-industry can not be made liable for any contribution under the Act for the period from August, 1986 to July, 1987. It is correct that the provision of Section 1(6) of the Act as evident from Sub-clause (2) of Clause 1 of the amended Act, has not given the retrospective operation by the Legislature and, as such, there cannot be any question of liability of the respondent-Industry in the instant case.

7. In support of his submission, learned Sr. counsel has relied on a decision of the Apex Court reported in Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others, The principle laid down in the said decision is that since there is no express or implied provision in the amending Act to indicate that the Act will have

retrospective effect, the amending Act would apply only prospectively. Paragraphs, 26 and 27 of the aforesaid ruling are quoted below:

"...26. We are unable to accept the contention of the respondent State that Section 6 of the amending Act of 1974 is retrospective. In Sub-section (2) of Section 1 the Legislature clearly stated that the Act would come into force at once I.e. from the date of publication in the Gazette. Neither in Section 6 nor in any other Section of the amending Act was it mentioned that the Act would have retrospective effect. If we hold that the Act would have retrospective effect it would go against the intention of the Legislation.

27. Applying the golden rule of construction as stated by this Court in Garikapati Veeraya in the amending Act there was nothing to show that the Act would retrospective effect. As "the essential idea of a legal system is that current law should govern current activities". We hold that rate of compensation shall have to be determined in accordance with the, provisions of the Act which was in force at the time of compensation was payable i.e. the unamended Sub-section (4) of Section 25 of the Act would apply. Moreover, the amending Act affects the substantive right of the appellant, therefore, it would have prospective operation. There is also no express or implied provision in the amending Act to indicate that the Act will have retrospective effect. We, therefore, hold that the amending Act would apply prospectively."

8. In view of the aforesaid observations, I am of the considered opinion that the principle of abovementioned decision is squarely applicable in the case. Moreso, having thoroughly examined the materials available on record, I have found enough force in the submission of the learned Sr. counsel appearing on behalf of the petitioner and accordingly, I am in full agreement with those submissions.

9. Mr. Dey. learned counsel appearing on behalf of the appellant, at this stage, submits that since the Act is a social legislation and has been enacted for giving maximum benefits to the employees, the provisions of Section 1(6) of the Act must be read having retrospective effect. I am not at all impressed by the said submission in view of the fact that once amending Act itself clearly shows the applicability of the said provisions is prospective, there is no scope to give the effect of the said statutory provisions by retrospective operation. Moreso, debunking such claim made on behalf of the appellant Mr. Katekey, learned Sr. counsel for the respondents has referred a decision of the Division Bench of this Court in Oriental Insurance Co. Ltd. v. Malati Devi and Ors. reported in 2000(1) GLT 595 , wherein this court following the decision of the Apex Court in Kerala State Electricity Board and Another Vs. Valsala K and Another, held that since the accident in question took place prior to the coming into force of the amending Act (Workmen''s Compensation Act, 1923), the amount of compensation payable on account of the amendment Act could not be paid for the accident which occurred prior to commencement of such amending Act. Applying the said ratio in the present case, the learned Sr. counsel

has stated that though workmen Compensation Act itself is a social Legislation, even in that case also the question of retrospective operation of a Statute was not permitted.

6. Having regard to the ratio of those cases cited above and also having given my anxious consideration to the rival submissions made on behalf of the parties, I am of the view that the amending Act itself is very explicit as regards the prospective operation of the said provision, inasmuch as, the said provisions was made to operate with effect from 20.10.1989 after being notified in the Official Gazette by the Central Government. Since the period in question involved in the case in hand is from August 1986 to July 1987, I unhesitatingly say that the provision of Section 1(6) cannot be applicable to those period.

For the reasons, discussions and observations made above, I do not find any merit in this Appeal to interfere with the impugned judgment and accordingly the appeal is dismissed.

No costs.