(1997) 04 KAR CK 0002

Karnataka High Court

Case No: Writ Petition No. 1888 of 1997 and Ors.connected Writ Petitions

Employees'' State Insurance Corporation and Others		APPELLANT
	Vs	
The Workmen of ITI Ltd. and Others		RESPONDENT

Date of Decision: April 17, 1997

Acts Referred:

- Constitution of India, 1950 - Article 21, 226, 39 (e)
- Employees State Insurance Act, 1948 - Section 2 (9) (b), 88, 89, 90, 91

Citation: (1997) ILR (Kar) 1433

Hon'ble Judges: R.P. Sethi, C.J; G. Patribasavana Goud, J

Bench: Division Bench

Advocate: M. Papanna, M.C. Narasimhan, K. Subba Rao, D. Leela Krishnan, R.N. Deshpande, V. Gopala Gowda, Nangalnba Rao. H, K. Sarojini Muttanna, B. Sirinivasa Gowda, K.S. Subramanya, T.S. Ananthram, S.V. Shastri, Madhurita Baghci, for the Appellant; K. Kasturi and Ashok Haranhalli, C.G.Sc, K. Vishwanath, HCGP, H. Rangavitlachari, G.A, M.L. Narasimhan, M. Papanna, R. Gururajan, S.N. Murthy, V. Narasimha Holla, M. Pappanna, S.V. Shastri, M.R.C. Ravi, N.S. Narasimhaswamy, B.C. Prabhakar, K. Lakshminarayana Rao, Murthy and Kumar, K.L.N. Rao, S.S. Ramdas, for the Respondent

Final Decision: Dismissed

Judgement

G. Patribasavana Goud, J.

In WP. No. 1888 of 1997 filed by the Employees Union of the Indian Telephone Industries Ltd., and in the connected Writ Petitions filed by others under Article 226 of the Constitution, constitutional validity of Section 2(9)(b) of the Employees'' State Insurance Act, 1948 ("Act" for short) as amended by Act 29 of 1989, and the validity of Rule 50 of the Employees'' State Insurance (Central) Rules, 1950 ("Rules" for short), together with Rules 51 and 54 thereof, as amended by the Employees'' State

Insurance (Central)(Second Amendment) Rules, 1996 under Notification dated 23.12.1996, are questioned.

2. While issuing Rule Nisi and passing a conditional order of stay, Learned Single Judge, by his order dated 4.2.1997, referred the said Writ Petition No. 1888 of 1997 and the connected Writ Petitions to the Division Bench. The Employees'' State Insurance Corporation ("Corporation" for short) has also preferred Writ Appeal No. 1436 of 1997 as against the said conditional stay order passed in Writ Petition No. 1888 of 1997. That is how, all these matters are before this Division Bench.

3. Section 1(4) of the Act provides that the Act shall apply in the first instance to all factories including the factories belonging to the Government, other than the seasonal factories, provided that nothing contained in the said sub-section shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits under the Act. Sections 87 to 91 of the Act authorise the appropriate Government to grant certain exemptions like exemption of a factory or establishment or dass of factories or establishments u/s 87, exemption of person or class of persons u/s 88, exemption of factories or establishments belonging to local authorities u/s 90, and exemption of any employee or class of employees in any factory or establishment from one or more provisions of the Act u/s 91. But for these exemptions under the proviso to Sub-section (4) of Section 1 and any exemptions that may be granted under Sections 87 to 91, the Act has general application. However, that it was meant to be brought .into effect in a phased manner is apparent from Sub-section (3) of Section 1 of the Act which authorised the Central Government to bring into force the said Act on different dates in different States or for different Parts thereof and for different provisions of the Act.

4. In the back-ground of these provisions relating to application of the Act and exemptions therefrom, Section 2(9) of the Act, interalia, defines "employee" to mean any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies, but not including the members of armed forces and as the material provision, namely Section 2(9)(b) provided, to any person whose wages did not exceed a particular limit per month. The upper limit of wages had initially been provided in the statute itself, namely in the said Section 2(9)(b). It was initially Rs. 400/- per month. By Act 44 of 1996, it was increased to Rs. 500/- per month. By Act 88 of 1975, it was increased to Rs. 1000/- per month. By Act 45 of 1994, it was increased to Rs. 1,600/-. It was then that Section 2(9)(b) was amended by Act 29 of 1989 so as to delegate the power of fixing wage limit to the Central Government rather than the Parliament itself changing the wage limit, as had been earlier done in 1968, 1975 and 1984. Result was that the said Amending Act 29 of 1989 amended Section 2(9)(b) so as to exclude those persons whose wages per month exceeded such wages as may be prescribed by the Central Government.

After Section 2(9)(b) was so amended by Act 29 of 1989, Rule 50 of the Rules was also amended by a Notification dated 27.3.1992 so as to increase the wage limit from 1600/- per month to Rs. 3,000/- per month, thus brining into the purview of the Act those employees whose monthly wages did not exceed Rs. 3,000/-. Constitutional validity of Section 2(9) so amended by Act 29 of 1989 and the Notification issued pursuant to the said provision by which Rule 50 was amended, come to be assailed by the workmen of BHEL Limited and others on various grounds, but without success (see Workmen of Bharat Heavy Electricals Ltd. Vs. Union of India and others, , An appeal was preferred to a Division Bench of this Court. This Court however dealt with the appeal as though the matter was no longer res integral, in view of the decision of the Supreme Court in Workmen of Bharath Electronics Ltd. Vs. Employees State Insurance Corporation, . It so happens that the decision of the Supreme Court that the Division Bench referred to had not dealt with the challenge to the validity of the amendment to Section 2(9)(b). The Supreme Court concerned itself with the question as to whether the Kerala High Court fell into a patent error in postponing the date of operation of the notification, the validity of which notification the High Court had upheld. The Supreme Court said that the amendment of the Rules being a delegated legislation, the High Court could not have interfered with the date of operation of the notification. It thus remained that the constitutional validity of Section 2(9)(b) of the Act as amended by Act 29 of 1989 and the pursuant amendment to Rule 50 increasing the wage limit from Rs. 1,600/- to Rs. 3,000/-, as had been upheld by the Learned Single Judge in Workmen of Bharat Heavy Electricals Ltd. Vs. Union of India and others, , held the filed. Now, in exercise of the very power u/s 2(9)(b) of the Act so amended by Act 29 of 1989, Rule 50 of the Rules has been further Amended by Notification dated 23.12.1996. The amended Rule 50 which came into effect from 1.11.1997, has brought into the purview of the Act the employees drawing wages upto Rs. 6,500/- Per month as against those who were drawing Rs. 3,000/- per month prior to the amendment. Rule 51, also amended, increases the contribution of the employees and the employers. This has again given rise to the challenge in these Writ Petitions to the constitutional validity of Section 2(9)(b) as amended by the Act 29 of 1989, and to the amendment of the said Rules by the Notification dated 23.12.1996.

5.1 Before proceeding to consider each ground on which the validity of the amendment to the Act and the Rules is assailed, we may briefly refer to the scheme of the Act as enumerated in some of the earlier decisions. Before doing so, it would also be relevant to refer to the fundamental right under Article 21 of the Constitution with regard to protection of life and personal liberty, as also the directive principles of the State policy and Article 39(e) of the Constitution with regard to health and strength of workers, Article 41 with regard to the right to work, Article 42 with regard to the provision for just and humane conditions of work and maternity relief and Article 43 of the Constitution with regard to living wage, conditions of work ensuring decent standard of life and full enjoyment of leisure

and social and cultural opportunities.

5.2. In Employees State Insurance Corporation, Madras Vs. S.M. Sriramulu Naidu, , the Madras High Court stated thus:

"The Employees'' State Insurance Act is the outcome of a policy to provide a remedy of the widespread evils arising from the consequences of national poverty. It is a piece of social security legislation, conceived as a means of extinction of the evils of society named by Lord Beveridge (in his report which inspired this type of legislation in all countries), namely, want, disease, dirt, ignorance and indigence. Having regard to the magnitude of the task, the Act was made in the first instance applicable to factories, as defined therein. It primarily provides benefits to the employees in such factories. The Act envisages also the extension of benefits to other establishments, industrial, commercial, agricultural or otherwise by a notification by the appropriate Government. It provides for benefits to the employees in the event of sickness, maternity, injuries in the course of employment and payment to dependants in certain cases. The monetary and other benefits granted under the Act to an insured employee of a factory are secured by a system of compulsory insurance under which the employer, employees and the Government each contribute financially.

"This is unlike the previous legislation in respect of workers in factories. The Workmen''s Compensation Act, the Factories Act and the Maternity Benefits Act are based on the liability of the employer. The benefits conferred by the Employees'' State insurance Act cover a larger area of employees than what the Factories Act and allied legislations intended. u/s 46 of the Act the insure persons, or, as the case may be, their dependents, are entitled to its benefits. An insured person is an employee past or present in respect of whom contributions are or were payable under the Act. Contributions are made payable by and in respect of an employee. We have already referred to the definition in the Act of the term, "employee". That will include within its scope clerical and labour workers engaged or paid through contractors and also part time workers and paid apprentices. That is in keeping with the objects of the Act, which was to relieve poverty, a feature not being confined only to the actual workers in a manufacturing plant."

5.3. In REGIONAL DIRECTOR, EMPLOYEES STATE INSURANCE CORPORATION v. SUVARNA SAW MILLS AND OTHERS (1979) 2 KLJ 158, the Full Bench of this Court pointed to the various benefits provided under the Act to the employees in paragraph 8 of the judgment, which reads thus:

"8. In order to appreciate the above submission made on behalf of the employers, it would be necessary to point out to the various benefits provided under the Act to the employees and the conditions of eligibility for getting those benefits. Chapter V of the Act which deals with the benefits commences with Section 46 which enumerates various types of benefits that are required to be extended to the employees under the Act. They are as follows:

Section 46(1) (a) Sickness benefit
(b) Maternity benefit
(c) Disablement benefit
(d) Dependents'' benefit
(e) Medical benefit
(f) Funeral Benefit

Section 47 of the Act prescribes the condition of eligibility for an employee to secure sickness benefit. According to the said provision, an employee becomes eligible for claiming sickness benefit during any benefit "period if during the corresponding contribution period, weekly contributions in respect of him were payable for not less than thirteen weeks. The sickness benefit payable under the Act is in the form of monetary payment to the employee during the sickness period when he is unable to earn the wages according to the rates prescribed under the Act. Maternity benefit required to be given u/s 50 of the Act to a female employee is also similar and subject to similar conditions. Section 51 of the Act prescribes the condition of eligibility tor granting disablement benefit at the rates provided in the First Schedule. According to Clause (a) of the said provision, if an employee sustains temporary disablement for not less than three days excluding the day of accident, he becomes entitled to periodical payment for the period of such disablement in accordance with the provisions of the First Schedule. According to Clause (b) of Section 51 of the Act, a person who sustains a permanent disablement, whether total or partial, becomes eligible for periodical payment for such disablement in accordance with the provisions contained in the First Schedule. According to the proviso to "Section 51 of the Act, such disablement benefit would be available either for a limited period or for life as the case may be depending upon the nature of disability. Section 52 of the Act prescribes the condition of eligibility for dependents'' benefit. According to the said provision, if an insured person dies as a result of an employment injury sustained as an employee under the Act, his dependants become eligible for payment of dependants'' benefit at the rates prescribed in the First Schedule. Subdues (i) and (ii) of clause 6(a) of Section 2 of the Act defines the dependants to whom the benefit should be given. In addition to this, Section 46(f) of the Act also provides for payment of funeral benefits (sic) subject to a maximum of Rs. 100/-. Section 56 of the Act prescribes the eligibility for medical benefit. According to the said provision, the insured or a member of his family whose condition requires medical treatment and attendance become entitled to receive the medical benefit. According to Sub-section (3) of Section 56 of the Act, a person becomes entitled to the medical benefit during any week for which contribution is liable to be paid in respect of him, or during the period when he is qualified to claim sickness benefit or maternity benefit. According to the proviso to Section 56(3) of the Act, the medical benefit could be made available by regulations for such period as may be specified in the regulations even to a person in respect of whom contribution has ceased."

6. In the above background, we may refer to various grounds on which the validity of the relevant provisions of the Act and the Rules is assailed. On the ground that extending the protective umbrella with regard to the availability of benefits under the Act, and in that regard to prescribe a cut off wage limit being a legislative function, the Parliament could not have delegated this function to the Executive. It is contended that the employees of various organisations concerned in these Writ Petitions and other industrial concerns similarly situated having already been in enjoyment of medical benefits superior to those provided for by the Corporation Hospitals, their right to medical care which they have been enjoying and which is a fundamental right under Article 21 of the Constitution has now stood affected by such employees being compulsorily brought under unfavourable conditions of health care by the amendments concerned. It is next urged that even if the Parliament could delegate its function u/s 2(9)(b) of the Act to fix the wage limit to the Central Government, such delegation, in the absence of any guidelines and with unriddled discretion given to the Central Government to fix any wage limit of its choice, amounts to excessive delegated legislation. It is further contended that increase in wage limit from Rs. 3,000/- to Rs. 6,500/- has been done without proper application of mind and is also liable to be questioned on the ground of being unreasonable for the reason that such increase has no rationale vis-a-vis rise in All India Consumer Index, and also to the comparative benefits already being availed of by the employees before they are brought into the "net" of the Act by virtue of these amendments. It is further contended that the amendment to Rule 50 is without compliance to Section 95(1) of the Act, inasmuch as there is no consultation with the Corporation in the manner as provided in the said Section 95(1). It is lastly contended that the medical benefits already being availed of by the writ petitioners and other employees similarly situated in terms of various settlements previously arrived at between the managements and workmen, which settlements still held the field as on the date of the Act, were made applicable to them on 1.1.1997 by virtue of the said amendments, and the benefits under the said settlements under the Industrial Disputes Act, 1947, between the Managements and the workmen, cannot be taken away by these amendments to the Act and the Rules.

7.1. Several decisions are referred to contend that the right to health is a fundamental right of a workmen under Article 21 of the Constitution.

7.2 In AIR INDIA STATUTORY CORPORATION v. UNITED LABOUR UNION AND OTHERS AIR1997 SCW 430 the Supreme Court observed thus:

"41. Right to health and medical care to protect health and vigour, while in service or after retirement, was held a fundamental right of a worker under Article 21 read with Article 39(e), 41, 43, 48-A and all related constitutional provisions and fundamental human rights to make the life of the workmen meaningful arid purposeful with dignity of person. The right to health of a worker is an integral facet of meaningful right to life, to have not only a meaningful existence but also robust

health and vigour without which the worker would lead a life of misery. Lack of health denudes him of his livelihood. Compelling economic necessity to work in an industry exposed to health hazards, due to indigence for bread-winning for himself and his dependents, should not be at the cost of the health and vigour of the workmen,"

7.3. In Surjit Singh Vs. State of Punjab and Others, , it is observed by the Supreme Court thus:

"11. It is otherwise important to bear in mind that self-preservation of one''s life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right to self-defense in criminal law. Centuries ago thinkers of this great land conceived of such right and recognised it. Attention can usefully be drawn to Verses 17,18,20 and 22 in Chapter 16 of the Garuda Purana (A dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine:

17. Vinaa dehena kasyaap canpurushaartho na Vidyate Tasmaaddeham dhanam rakshetpunyakarmaani Saadhayet Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

18. Rakshayetsarvadaatmaanamaatmaa sarvasya bhaajanam Rakshane yatnamaatishthejee vanbhaadraani Pashyati One should protect his body which is responsible for everything, He who protects himself by all efforts, will see many auspicious occasions in life.

20. Shararakshanopaayaah kriyante sarvadaa budhaiah Necchanti cha punastyaagamapi kushthaadiroginah The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.

"22. Aatmaiva yadi naatmaanamahitebhyo nivaarayet Konsyo hitakarastasmaadaatmaanam taarayishyati If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself."

7.4. In KIRLOSKAR BROTHERS LIMITED vs. EMPLOYEES'' STATE INSURANCE CORPORATION AIR 1996 SCW 2296, dealing with the very Employees'' State Insurance Act, 1948, the Supreme Court observed thus:

"10. In expanding economic, activities in liberalised economy Part IV of the Constitution enjoins not only the State and its instrumentalities but even private industries to ensure safety to the workmen and to provide facilities and opportunities for health and vigour of the workman assured in relevant provisions in part IV which are integral part of right to equality under Article 14 and right to

invigorated life under Article 21 which are fundamental rights to the workman. Interpretation of the provisions of the Act, therefore, must be read in the light not only of the objects of the Act but also the constitutional and fundamental and human rights referred to hereinbefore."

7.5. In Consumer Education and Research center and others Vs. Union of India and others, , the Supreme Court observed thus:

"26. The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning to himself and his dependents should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workmen. Provision for medical test and treatment invigorates the health of the worker for higher production of efficient service. Continued treatment, while in service or after retirement is a moral, legal and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(c), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial thereof denudes the workman the finer facets of life violating Article 21. The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Article 38 and 39 of the "Constitution. Facilities for medical care and health against sickness ensures stables manpower for economic development and would generate devotion to duty and dedication to give the workers'' best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workmen.

27. Therefore, we hold that right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39(c), 41, 43, 48A and all related Articles and fundamental human rights to make the life of the workman meaningful and

purposeful with dignity of person."

7.6. In the light of the principles enunciated in these decisions, Learned Counsel for the workmen urged that the workmen''s right to life guaranteed under Article 21 of the Constitution would require that the said workmen should have medical aid of their choice and not compulsory and totally unsatisfactory medical aid being provided by the Corporation hospitals. Learned Counsel urged that the settlements arrived at between the workmen and the managements, apart from providing to the workmen hospitals of their choice, also provide for much sophisticated and advanced medical care as compared to a totally negligent and unsatisfactory medical care that is provided for in the Corporation hospitals. Bringing the workmen into the net of the Act and depriving them of the said better facilities would, according to the said counsel, affect the fundamental right of the workmen under Article 21 of the Constitution.

7.7. It is true that the workers are necessarily to be provided with proper environment and working conditions from the point of view of hygiene as also proper medical care. But, to contend that the workmen should have a right of medical aid of their choice which is not there even under the existing settlements, is to stretch this right to the extreme. Even in Surjit Sing''s case (supra) the employee was held entitled to expenses that the Escort Heart Institute, New Delhi, would have charged, though he had undergone operation abroad, for the reason that the Escort Heart Institute was one of the hospitals recognised by the employer. Even under the settlements between the workmen and the Managements, certain hospitals are specifically referred to by name, and the workmen have the choice of going to one or the other of the said hospitals. It is true that now, by the amendments concerned herein, they are covered by the services rendered by the ESI hospitals. An awful picture of the condition of medical aid that is being given in the said ESI hospitals is presented in the course of arguments. This submission of the Learned Counsel for the workmen is in utter disregard to the very services that are now being availed of by those employees each of whose monthly wages do not exceed Rs. 3,000/-. The petitioners workmen have no tears to shed for those poor workmen/employees whose wages are low. If the argument of the Learned Counsel for the workmen in those proceedings with regard to the said workmen having a right of choice of any hospital for medical care is to be accepted, then such right would amount to be recognised only in respect of those workmen of high-bracketed incomes. While right to health and medical care is recognised under Article 21 of the Constitution, it cannot be stretched to the point of holding that the workmen have a choice of approaching any hospital of their choice. The medical services available in the ESI hospitals is as much compliance with Article 21 as any other private medical service. ESI Corporation is a statutory authority. It is under obligation to provide efficient medical service to the employees covered by the Act. If the conditions in the ESI hospitals are awefully bad, as submitted in course of arguments, there are ways and means of forcing the said Corporation in appropriate proceedings to make services

in its hospitals meaningful and effective and not to render the right to medical care under Article 21 of the Constitution an illusion. That is altogether a different aspect of the matter. Sorry state of affairs in the ESI hospitals by itself does not amount to deprivation of the workmen''s right under Article 21 of the Constitution when they are brought under the purview of the Act. This is in so far as the workmen''s complaint with regard to their fundamental right under Article 21 of the Constitution is concerned.

8. The next contention urged on behalf of the workmen is that the decision as to which section of employees should be extended the protective umbrella under law even if the extension of the provisions of the Act were to be for the welfare of the employees, is to left to the Legislature and not the executive by way of delegated legislation.

Learned Counsel for the workmen referred to several provisions of related Acts to contend that the cut off limit is always provided by the Legislature and is not left to the Executive. An observation of the Supreme Court in H.R. Adyanthaya Vs. Sandoz (India) Ltd., etc. etc., , in a different context, is referred to wherein the Supreme Court observed that at what stage which of the section of the employees should come under the protective umbrella is a matter which should be left to the Legislature, which is the best Judge in the matter.

Another decision of the Supreme court in L.C. BHATTIA AND ORS. vs. UNION OF INDIA AND ANOTHER (1955) 1 SCC 104 is referred to in this regard wherein it is held that it is for the Legislature to decide whether or not any section of people should be protected in any way by law. The Supreme Court was dealing with the cut off figure provided in the Act itself and it did not involve consideration of the aspect of delegated legislation. Learned Counsel for the workmen derives sustenance for this argument, in view of the fact that all along, u/s 2(9)(b) of the Act, it was the Parliament which had retained the power to decide whether the employees drawing wages upto certain limit should be covered by the Act, and that it was only by the amending Act of 1989 that this power was delegated to the Central Government. It is in this back ground, Learned Counsel urged that it is the function of the Legislature to decide this question/ issue and that, by amending Section 2(9)(b) so as to give that power to the Central Government, the Parliament has abdicated its legislative function. This argument overlooks the fact that, for certain welfare measures like the Act for example, it becomes necessary to bring it into force by stages, particularly having regard to section of employees that is required to be brought into protective umbrella, the necessary infrastructure available to render the said Section of employees the benefits effectively and meaningfully in the true spirit of the said beneficial legislation. By its very nature, the decision in this regard needs to be taken from time to time, depending upon the increase in wages, inflation, improvement in the infrastructure, etc. It is on the basis of these factors at each relevant time that an agency other than the legislature shall have to take a

decision as to extending the protective umbrella. It, therefore, cannot always be said that the cut off line in this regard must necessarily be drawn by the Legislature itself. It would be worthwhile to notice as to how the Supreme Court repelled such an argument in respect of the provisions of another welfare measure, namely, Section 27 of the Minimum Wages Act, 1948.

The Supreme Court, referring to a decision of the High Court of Australia in BAXTER v. AH. WAY (1909) 8 CLR 626 (Aus.)(A), observed that when the Legislature is given plenary power to legislate on a particular subject, there must also be an implied power to make laws incidental to the exercise of such power. It was further observed that it is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power, that the Legislature cannot certainly strip itself of its essential functions and vest the same on an extraneous authority, and that the primary duty of law making has to be discharged by the legislature itself but delegation may be resorted to as a subsidiary or an ancillary measure. With these observations as the back ground, the Supreme Court proceeded to observe thus:

"The legislative policy is apparent on the face of the present enactment. What it aims, is the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour.

The legislature undoubtedly intended to apply this Act not to all industries but to those industries only, where, by reason of unorganized labour or want of proper arrangements for effective regulation of wages or for other causes, the wages of trousers in a particular industry were very low. It is with an eye to these facts that the list of trades has been drawn up in the schedule attached to the Act but the list is not an exhaustive one and it is the policy of the legislature not to lay down at once and for all time, to which industries the Act should be applied. Conditions of labour vary under different circumstances and from State to State and the expediency of including "a particular trade or industry within the schedule depends upon a variety of facts which are by no means uniform and which can best be ascertained by the person who is placed in charge of the administration of a particular State.

It is to carry out effectively the purpose of this enactment that power has been given to the "appropriate Government" to decide, with reference to local conditions, whether it is desirable that minimum wages should be fixed in regard to a particular trade or industry which is not already included in the list. We do not think that in enacting Section 27, the legislature has in any way stripped itself of its essential power or assigned to the administrative authority anything but an accessory or subordinate power which was deemed necessary to carry out the purpose and the policy of the Act."

The unavoidable delegation by the Legislature of working out details to the Executive or any other agency, in view of the multifarious activities of the welfare

State is aptly summed up by the Supreme Court in Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, while taking an excerpt from Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others, , though at the same, striking note of caution as to whether the Legislature has exceeded the limits of delegation. It reads as follows:

"The Constitution confers a power and imposes a duty on the Legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. An overburdened Legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a Court to hold on a fair, generous and liberal construction of an impugned statute whether the Legislature exceeded such limits. But the said liberal construction should not be carried by the Courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of the Court to strike down without any hesitation any arbitrary power conferred on the executive by the Legislature."

In respect of another provision of the very Act, namely the Employees'' State Insurance Act, 1948, i.e. in respect of Section 1(3) thereof, the Supreme Court considered the necessity of the Legislature resorting to delegation in view of the necessity of existence of several circumstances in order to bring into force the Act to a particular area. The Supreme Court observed that in the very nature of things, it would have been impossible for the Legislature to decide in what areas and in respect of which factories the Employees State Insurance Corporation should be established and that it was obvious that a Scheme of this kind, though beneficent, could not be introduced in the whole of the country all at once and that such beneficial measures which need careful experimentation have some times to be adopted by stages and in different phases, and, so, inevitably the question of extending the statutory benefits contemplated by the Act has to be left to the discretion of the appropriate Government. The Supreme Court further observed that the course adopted by the Legislature in dealing with the welfare schemes has uniformly conformed to the same pattern and the Legislature evolves a scheme of social and economic welfare, makes elaborate provision in respect of it and leaves it to the Government concerned to decide when, how and in what manner the Scheme

should be introduced.

From the above, we conclude that there is no substance in the arguments that just because, on earlier occasions, the Parliament retained the power to prescribe the cut off wages u/s 2(9)(b), the subsequent amendment delegating the said function to the Central Government amounts abdicating the essential legislative function. When the question is as to which Section of employees is to be brought within the protective umbrella of the beneficial provisions of the Act, and when such extension of the protective umbrella depends upon the capacity of the available infrastructure to meet the demands of the situation as also the increase in wages, inflationary measures and rise in consumer price index, it cannot be said that all these factors need to be borne in mind by the Parliament itself at the time the law is enacted. These details are necessarily to be left to be worked out by the Executive, and there is nothing wrong in the Parliament delegating this function to the Central = Government in the matter of fixing the wage limit u/s 2(9)(b) of the Act. This does not amount to abdicating the essential legislative function by the Parliament, though it falls for consideration as to whether the said delegation is coupled with necessary guidelines and the eventual legislative control over the functions exercised by the delegated authority.

9.1. Having thus concluded that the amendment to Section 2(9)(b) of the Act by Act 29 of 1989 has introduced an element of delegated legislation, the question that next arises is as to whether it is an excessive delegation without guiding principles as urged by the Learned Counsel for the workmen.

9.2. Referring to an American case, the Supreme Court observed in Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others,

"To put it in the language of another American case:

"To assert that a law is less than a law because it is made to depend upon a future event or act is to rob the legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or the things future and impossible to fully know." The proper distinction there pointed out was this:

"The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend.

"There are many things upon which wise and useful legislation must depend which cannot be known to the law making power, and, must therefore be subject of enquiry and determination outside the hall of legislature". (In Locke''s Appeal 72 Pa.491: Field & Co. v. Clark (1892) 143 US 649).

But the discretion should not be so wide that it is impossible to discern its limits. There must instead be definite boundaries within which the powers of the administrative authority are exercisble. Delegation should not be so indefinite as to amount to an abdication of the legislative function. Schwartz - American Administrative Law, page 21."

9.3. In Bhatnagars and Co. Ltd. Vs. The Union of India (UOI), , the Supreme Court was considering the arguments to the effect that in the enactment concerned therein, the legislature had not laid down the principle and had not given any guidance to the delegate while leaving the implementation of the statutory provisions to the delegate, and that the validity of the legislative enactment suffers from serious infirmity on the ground that the Legislature has surrendered its legislative power in favour of its delegatee. While meeting his argument, with reference to the enactment concerned, the Supreme Court observed thus:

"In dealing with this narrow ground of challenge, it would be necessary to consider the preamble and the material provisions of the Act to find out whether questions of policy have been clearly decided by the Legislature and whether guidance has been given to the delegate in the matter of implementing the provisions of the statute. Unfortunately for Shri Umrigar, his challenge to the validity of the impugned section under the Imports and Exports Act is completely covered by the decision of this Court in Harishankar Bagla v. The State of Madhya Pradesh [(1995 1 SCR 320]. In this case, Section 3 and 4 of the Essential Supplies (Temporary Powers) Act, 1946, were attacked as ultra vires on the ground of delegated legislation. This challenge was repelled. In repelling the argument of delegated legislation, Mahajan Chief Justice who delivered the judgment of the Court conceded that "the Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law". "The essential legislative function", the judgment proceeds to add, "consists in the determination or choice of the legislative policy and a formally enacting that policy into a binding rule of conduct." Then the Learned Chief Justice referred to the fact that the Legislature has laid down such a principle and that principle is the maintenance or increase in supply of essential commodities and of securing equitable distribution and availability at fair prices. It was held that the principle was dear and it offered sufficient guidance to the Central Government in exercising its powers u/s 3. In other words, in considering the question as to whether guidance was afforded to the delegate in bringing into operation the material provisions of the Act by laying down principles in that behalf, the Court considered the statement of the principles contained in the preamble to the Act as well as in the material provisions of Section 3 itself. This decision shows that if we can find a reasonably clear statement of policy underlying the provisions of the Act either in the provisions of the Act or in the preamble, then any part of the Act cannot be attacked on the ground of delegated legislation by suggesting that question of policy have been left to the delegate."

9.4. In M.K. Papiah and Sons Vs. The Excise Commissioner and Another, , the Supreme Court was examining the contentions raised by the appellant therein that Section 22 of the Mysore Excise Act, 1965 providing for delegation of power to fix the rates of excise duty to the Government by making rules without furnishing any guidance to the Government in the Act itself for fixing the said rate amounted to abdication of the essential legislative function by the Legislature. The Supreme Court referred to the earlier observations of Subbarao, C.J. in Devi Dass Gopal Krishnan''s case (AIR 1967 SC 8095), wherein the danger inherent in the process of delegation had been pointed out. Referring to various other decisions and in the light of the provisions of the Mysore Excise Act, 1965, the Supreme Court concluded that the power to fix the rate of excise duty conferred on the Government u/s 22 of the said Act was valid. The Supreme Court observed that in the compulsions and complexities of modern life, the dilution of parliamentary watch dogging of delegated legislation, though to be declared, cannot be helped.

9.5. In Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , the Supreme Court observed thus:

"...the question whether a particular piece of delegated legislation - whether a rule or regulation or other type of statutory instrument - is in excess of the power of subordinate legislation conferred on the delegate as to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong far the court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the Statute, the Court should not concern itself with the wisdom or efficaciousness of such rules or regulation. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute."

Further in paragraph 16 of the said judgment, the Supreme Court made the following observations:

"The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the - regulation making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution."

9.6. Lastly in Avinder Singh and Others Vs. State of Punjab and Others, , the Supreme Court observed:

"The legislature is responsible and responsive to the people and its representatives, the delegate may not be and that is why excessive delegation and legislative hara kiri have been frowned upon by constitutional law. This is a trite proposition but the complexities of modern administration are so baffling intricate and bristle with details, urgencies, difficulties and need for flexibility that our massive legislatures may not get off to a start if they must directly and comprehensively handle legislative business in all their plentitude, proliferation and particularisation. Delegation of some part of legislative power becomes a compulsive necessity for viability. If the 500-odd parliamentarians are to focus on every minuscule of legislative detail leaving nothing to subordinate agencies, the annual out pet may be both unsatisfactory and negligible. The Law making is not a turnkey project, ready-made in all detail and once this situation is grasped, the dynamics of delegation easily follows. Thus, we reach the second constitutional rule that the essentials of legislative functions shall not be delegated but the inessentials, however numerous and significant they be, may well be made over to appropriate agencies. Of course, every delegate is subject to the authority and control of the principal and exercise of delegated power can always be directed, corrected or cancelled by the principal. Therefore, the third principle emerges that even if there be delegation, parliamentary control over delegated legislation should be a living continuity as a constitutional necessity, Within these triple principles, Operation Delegation is at once expedient, exigent and even essential if the legislative process is not to get stuck up or bagged down or come to a grinding halt with a few complicated bills."

10.1. In the light of the principles enunciated in the above said decisions of the Supreme Court, we may examine as to whether the piece of delegated legislation u/s 2(9)(b) of the Act meets the tests laid down therein.

10.2. Even when the Parliament had retained the power to fix the wage limit u/s 2(9)(b) of the Act prior to its amendment by Act 29 of 1989, we have seen as to how initially, the wage limit had been fixed by the Parliament only at Rs. 400/- p.m. As a beneficial legislation, extending its protective umbrella to the needy sections of the employees necessitated revising this limit, if not of any reason, at least for one single reason, namely, that the wages that a particular section of employees were earning considerably increased at a high rate over a period of time, so much so that the wage limit of Rs. 400/- fixed initially, if not increased subsequently, would have rendered the very beneficial legislation redundant. If left undisturbed, the number of employees that continued to be covered by the beneficial provisions of the Act, would have been rendered absolutely negligible. To bring under the protective umbrella at least those employees who were earning Rs. 400/- per month at the time the Act came into force, it was necessary to take into consideration the fact that the very section of employees over a period of time were earning wages not at Rs. 400/- per month, but at a substantially increased rate. Hence, necessity of amending this provision to increase the wage limit to Rs. 500/- by Act 44 of 1966 and then to Rs. 1000/- by Act 88 of 1974 and to Rs. 1.600/- by Act 45 of 1984. Having said this, it must also be recognised that extension of protective umbrella depended not merely on the wage earning capacity of the sections of employees that needed to be brought in, but also the sufficiency of the infrastructure available and such other relevant considerations. Thus, by its very nature, as to which section of wage earners should be brought within the purview of the Act depended upon the change in the facts and circumstances from time to time necessitating revision of the wage limit earlier imposed, and taking of a fresh look at the matter. This exercise having earlier been undertaken by the Parliament right upto 1984, as Statement of Objects and Reasons of the Amending Act 29 of 1989 spelt out, any change in the wage ceiling for coverage, etc. that required an amendment of the Act, usually took time and it was therefore proposed to provide for those specified matters to be attended to by the Central Government under the Rules. It, therefore, cannot be said that the delegation as done by Act 29 of 1989 was uncalled for.

11. For the Central Government to act as guideline in fixing the wage limit u/s 2(9)(b) in pursuance of the said delegated legislation, not only that the entire scheme of the Act was there before the Central Government in the matter of providing benefits to employees in case of sickness, maternity, employment injury, etc. but also that the previous history of several amendments made to xx Section 2(9)(b) by the Parliament itself, clearly gave to the Central Government the guiding principles in the matter of fixing the wage limit u/s 2(9)(b) of the Act. Added to this, there was one important feature which, in the circumstances, could be the best safe guard in the matter of exercise of its power of declarative legislation by the Central Government,

namely consultation with the Corporation required by Section 95(1) of the Act. It needs to be remembered that the Corporation, as provided by Section 4 of the Act, consists pf representatives of the Central Government, Governments of the States in which the Act is in force, representative of Union Territories, representatives of the employers, representatives of the employees, representatives of medical profession, and members of Parliament representing both the houses. The wage limit u/s 2(9)(b) of the Act being required to be fixed by making Rules u/s 95(1) of the Act after consultation with the Corporation, it is apparent that any such fixation of wage limit would have had the benefit of views of as widely a representative body as the Corporation consisting of representatives as referred to above. In addition to this consultation with the Corporation, Section 95(1) of the Act also requires that the Rules to be made shall be subject to the condition of previous publication. Section 23 of the General Clauses Act, 1897 inter alia requires that in such a situation, a draft of the proposed rules shall be published for information of persons likely to be affected thereby, specifying the date on or after which the draft would be taken into consideration, and that the objections received, if any, shall be duly considered. Thus, after consultation with the Corporation, the draft rules are to be published, and within a specified date, the persons likely to be affected thereby shall file objections or suggestions. It is only after consideration of the same that the rules will be made. Further, safeguard is provided by Section 95(4) of the Act, requiring the rules so made to be laid down before each of the houses of Parliament as provided therein, with a provision for the Houses making any modification of annulling the said Rules. Thus, apart from the necessary guidelines and safeguards, the ultimate authority of modifying or annulling the wage limit prescribed by the Government u/s 2(9)(b) is thus very much retained by the Parliament. Thus, as laid down as the third principle of delegated legislation by the Supreme Court in Avinder Singh and Others Vs. State of Punjab and Others, , delegate Central Government being subject to the authority and control of the principal, and exercise of delegated power being always capable of being directed, corrected or annulled by the principal, even if there be delegation, the position that would emerge is that the Parliamentary control over the delegated legislation being a living continuity as a constitutional necessity, delegated legislation u/s 2(9)(b) therefore, cannot be said excessive or unbridled or unguided.

12.1. Increase in wage limit from 3,000/- to Rs. 6,500/- per month is attacked as being unreasonable and arbitrary. It is urged that when the available infrastructure with the Corporation is so awfully inadequate as to be unable to meet the health requirements of even that section of employees that is covered by the Act prior to 1.1.1997, without so much as considering this aspect of inadequacy in the services rendered by ESI hospitals or its infrastructure, more number of employees are now brought within the purview of the Act. It is also urged that the increase is disproportionate to the rise in the consumer price index inasmuch as, there is no rationale at all between the All India Consumer Price Index and the increase in the

wage limit. It is also attacked as unreasonable on the ground that the employees, as it is, having better facilities under the settlements governing the industrial relations between them and their employers, without so much as considering this aspect, the employees have been blindly brought into the expanded net of the Act.

12.2. In I.E. Newspapers (Bombay) Private Ltd. v. Union of India (1), (1986) 159 ITR 856 (SC) the Supreme Court observed that the subordinate legislation, inter alia can be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. It however cautioned that the subordinate legislation cannot be struck down merely on the ground that it is not reasonable or that it has not taken into account the circumstances which the court considers relevant.

12.3. While dealing with this aspect, we may also refer to one more contention of the petitioners, namely, that the consultation with the Corporation as required by Section 95(1) of the Act has not been done. Learned Counsel referred to the conclusions of the Supreme Court in Supreme Court Advocates-on-Record Association and another Vs. Union of India, , in the matter of consultation with regard to appointment of Judges etc. Further contending that the delegated legislation or subordinate legislation must conform exactly to the power granted, Learned Counsel also referred to another decision of the Supreme Court in Supreme Court Employees'' Welfare Association and Others Vs. Union of India (UOI) and Another, The gist of the attack on the aspect of consultation is that Section 95(1) of the Act provides that after consultation with the Corporation, the Central Government may make rules. In this case, however, it is the Corporation that has initiated the proposal for increase of the wage limit and not the Central Government. There is thus no instance of the Central Government consulting the Corporation but it is vice-versa and that the Central Government has simply yielded to whatever decision that the Corporation has arrived at. Exercise of the power of delegated legislation does not strictly conform to this mandate of Section 95(1) of the Act.

12.4. The above submission is not borne out by facts. Even if the initiative had come from the Corporation, there is nothing illegal in it. Dealing with this latter aspect first, we may refer to a Decision of the Supreme Court in State of Jammu and Kashmir Vs. A.R. Zakki and others, . Section 110 of the Constitution of Jammu and Kashmir provided that appointments of persons other than the District Judges to the judicial service of the State shall be made by the Governor in accordance with the Rules made by him in that behalf after consultation with the Public Service Commission and with the High Court. Accordingly, the Rules are made, under Rule 4 of the said Rules, selection for appointment is made by direct recruitment on the basis of competitive examinations conducted by the Commission. Readers and Librarians of the High Court submitted a representation to the Chief Justice for fixing up a quota for the employees of the High Court for recruitment to the said

judicial service. The Judges of the High Court at a Full Court Meeting considered this representation and resolved that the rules be amended in a way so as to provide for reservation of 25 per cent of vacancies for those in the service. The High Court proposed that Rule 4 of the existing rules be substituted by the proposed Rule. To give effect to the proposal, the High Court also proposed insertion of a new Chapter in the Rules. This proposal of the High Court was sent to the State Government, which in turn sent it to the Public Service Commission for opinion. Views of the Commission were forwarded to the High Court which reiterated its position. When the Government, inspite of it did not take any action on the proposal of the High Court for amendment of rules, the High Court had to deal with the matter on the judicial side when the Readers and Librarians of the High Court filed the Writ Petition. The matter reached the Supreme Court. Why we are referring to this decision is that though Section 110 of the Jammu and Kashmir Constitution prescribed that the rule relating to appointment of persons other than District Judges to the judicial service should be made by the Governor in consultation with the High Court, no exception was taken by the High Court on the Judicial side, as also by the Supreme Court, for the proposal to amend the Rules emanating from the High Court.

It is not uncommon that, though under a particular enactment, rules are required by the Government to be made in consultation with some specialised agency, number of times, it is the specialized agency which initiates the proposal and sends it to the Government rather than the Government initiating the proposal and sending it to the specialised agency. When a particular statute requires that the Government shall make rules in consultation with the specialised agency, there could be no illegality if the said specialised agency itself initiates a particular proposal and sends it to the Government. Where the Government and another agency are required to apply their mind and reach a conclusion with regard to a proposal, it matters little as to whether the proposal has emanated from the Government or the agency concerned, it is the application of mind by both the Government and the said agency that matters much, and not as to from whom did the proposal emanate.

Coming to the facts of the case, much is made of the proposal for increase in the wage limit having been exhaustively discussed by the Corporation in its Meeting of 5th October 1996 at New Delhi wherein a specific proposal of increase in the wage limit from Rs. 3,000/- to Rs. 6,500/- per month was discussed threadbare and in view of the divergent views, the decision was left to the Chairman who was the Central Labour Minister. The approved minutes of the said meeting of the Corporation would show that the Corporation did discuss this matter specifically and the decision regarding enhancement of the wage limit/ceiling was left to the Chairman. The Chairman then, in pursuance of this decision taken in the meeting, fixed the wage limit on 14.10.1996 for increasing it to Rs. 6,500/-. On the face of it, these two documents would show that the proposal for increase in the wage limit as also the

decision thereon were initiated, dealt with, and decided upon by the Corporation and by the Chairman of the said Corporation, though he also happened to be the Central Labour Minister. The contention of the learned Counsel for the Petitioners is that the Corporation having thus virtually decided everything, Central Government followed the foot-steps by just complying with the said decision of the Corporation by publishing the draft rules. This submission over-looks the correct factual position. Amount documents placed on record the communication from the Secretary of the Centre of Indian Trade Unions, West Bengal Committee, bearing Ref. No. 27/96/52 dated 14.10,1996, inter alia mentioning in detail as to the discussion regarding increase in the wage limit in the meetings of the Corporation held on 4th and 5th October 1996. As to what happened in the said meetings, we have already adverted to. What is of significance in this communication of the Secretary of the CITU is the following portion :

"With the increase of salary and D.A., many workers went out of the scheme. Workers of different Industries raised the demand for increasing the income ceiling to get the benefits of the Scheme. The Labour Minister of West Bengal too requested the Labour Minister, Government of India, to consider the proposal. On March 1996, a proposal was given by the Government to increase the upper limit of salary to Rs. 5000/- p.m. but there was no proposal of increasing the subscription rate. Mr. Sanjiva Reddy, President, IKTUC, opposed the proposal for increasing the income ceiling in that meeting. The representatives of workers and Managements, by and large, supported the proposal. But the then Labour Minister, Mr. Venktaswamy deferred the decision.

At present, a proposal has been given by the Central Government, to in dude the workers and employees receiving Rs. 6500/- p.m. with a higher rate of subscription. To raise the rate of subscription, the Government have given following reasons such as high price of mediciens, inflation, yawning gap between expenditure and income, etc."

(emphasis supplied)

It is thus clear that the proposal to raise wage limit emanated not from the Corporation, but from the Central Government itself. As early as March 1996, the Central Government had proposed increase of wage limit to Rs. 5,000/- per month without increase in the subscription rate. Though the representatives of workers and management, by and large, supported the said proposal, the President of INTUC Sri Sanjeeva Reddy opposed the proposal for increase in the income ceiling in that meeting. Then, the Labour Minister Sri Venktaswamy deferred the decision. It was thereafter that the Central Government proposed the increase in the ceiling limit to Rs. 6,500/- per month. With a higher rate of subscription, giving relevant reasons in that regard as acknowledged by the Secretary of CITU himself in the para extracted above. It was this proposal of the Central Government that was discussed by the Corporation. Thereafter, when the Central Government found that the

Corporation also had agreed to this proposal, it published the draft rules inviting objections/suggestions within a specified time-frame. That the persons likely to be affected thereby took active note of these draft rules is apparent from the fact that, placed on record are the AITUC''s objections/suggestions made to those draft rules. It is on consideration of objections/suggestions that the rules are made by the Central Government. There is, therefore, no substance in the contention of the learned Counsel for the petitioners that the exercise of delegated legislation has not been carried out so as to conform to the requirements of law in that record, namely, Section 95(1) of the Act.

12.5. Reverting to the earlier contention with regard to the increase in the wage limit and the contribution being unreasonable, the above proceedings themselves would make it abundantly dear that all the relevant considerations including increase in wages, rise of consumer index, cost of medicines, daim of authorities that the proposed increase would benefit more number of workers as against the contention of the representatives of employees as to the sorry state of affairs in the ESI hospitals vis-a-vis better conditions of health care available to the employees under the settlements, were all taken into consideration before the proposal to increase the wage limit and the rate of contribution was agreed to. Even after the draft rules were published and the objections/suggestions were called for, these aspects are once again urged in the objections as we have seen earlier. There is, therefore, no relevant factor left out from being considered. After this exhaustive consideration of all the relevant factors by all the agencies concerned, the wage limit and proportion of contribution are increased. The Court cannot, as observed by the Supreme Court in I.E. Newspapers (Bombay) Private Ltd. v. Union of India (1), (1986) 159 ITR 856 (SC) , introduce the circumstances which it considers to be relevant, to strike down the concerned piece of delegated legislation as unreasonable. The attack on the ground of increase in the wage limit and the rate of contribution being unreasonable, also, thus does not survive for consideration.

13.1. Lastly, it is urged on behalf of the petitioners - employees that the settlements in respect of each establishment having come into existence within the meaning of Section 2(B) of the Industrial Disputes Act, 1947 ("ID Act" for short) and the said settlements still being in force and binding on employees as well as employers u/s 19 of the ID Act, and the said settlements having provided to the employees much more beneficial medical care provisions as compared to those provided for by the ESI hospitals, the said medical care facilities available under the settlements cannot stand adversely affected by bringing the said employees within the purview of the Act by the amendments concerned herein. On behalf of the employers, it is urged that the employers cannot be made to provide facilities under the settlements as also to make contributions under the Act. The submission made, therefore, is that the concerned amendment is bad for the reason that the same adversely affects the settlements binding on both the parties u/s 19 of the ID Act.

13.2. The Supreme Court faced a similar situation in Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others, wherein a notification u/s 1(3) of the Act was issued appointing 28.8.1960 as the date on which some provisions of the Act would come into force in certain areas of the State of Bihar. By the said notification, the area in which the appellants therein namely, Basant Kumar Sakar and others were working, came within the scope of the Act. In pursuance of the said notification, the Chief Executive of Eagle Rolling Mills Limited i.e. the employer, informed the appellants that the medical benefits including indoor and outdoor treatment up to the extent admissible under the Act will cease to be provided to insurable persons from the appointed day. Similar notices were issued indicating to the appellants that the medical benefits would thereafter be governed by the relevant provisions of the Act i.e. Employee''s State Insurance Act, 1948, and not by the arrangements which had been made earlier by the employer Eagle Rolling Mills Limited in that behalf. That was the genesis of the Writ Petitions and the nature of the dispute between the parties that ultimately reached the Supreme Court. After upholding the constitutional validity of Section 1(3) of the Act, this is how the Supreme Court dealt with the argument relating to medical benefits:

"It was urged by the appellants before the High Court that these notices were invalid and should be struck down. The argument which was argued in support of this contention was that respondent No. 1 in all the three appeals were not entitled to curtail the benefits provided to the appellants by them and that the said benefits were not similar either qualitatively or quantitatively to the benefits under the Scheme which had been brought into force under the Act. The High Court has held that the question as to whether the notices and circulars issued by the respondent No. 1 were invalid, could not be considered under Article 226 of the Constitution; that is a matter which can be appropriately raised in the form of a dispute by the appellants u/s 10 of the Industrial Disputes Act. It is true that the powers conferred on the High Courts under Article 226 are very wide, but it is not suggested by Mr. Chatterjee that even these powers can take in within their sweep, industrial disputes of the kind which this contention seeks to raise. Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievances in respect of the said notices and circulars is to take recourse to Section 10 of the Industrial Disputes Act, or seek relief, if possible, under Sections 74 and 75 of the Act."

13.3. The Supreme Court once again come up with a similar situation in CALCUTTA ELECTRIC SUPPLY CORPORATION LIMITED vs. CALCUTTA ELECTRIC SUPPLY WORKERS UNION AND OTHERS 1995(3) SLR 697 sc. One of the questions that had arisen before the Industrial Tribunal, Calcutta was whether the employer was entitled to withdraw the medical benefits which were already given by it to the employees prior to the corning into force of the Act i.e. Employees'' State Insurance Act, 1948. The Tribunal hold against the employer. The matter reached the Supreme

Court. With regard to the contentions that the notices with regard to the withdrawal of the medical benefits given by the employer not being in compliance with Rule 34 of the Industrial Disputes (Central) Rules, 1957 nor had any of the notices been served on the Union of Workers as required by the said Rule 34, it was contended by the employer that there was no change in the service conditions prejudicial to the workers and hence, no notice u/s 9-A of the Industrial Disputes Act was necessary. The Industrial Tribunal held that withdrawal of medical benefits was prejudicial to the workers and therefore, a notice was necessary, and, since no such notice was given, withdrawal of the benefits was illegal. The Supreme Court agreed with this finding of the Industrial Tribunal. The Supreme Court next proceeded to consider the question as to whether, after coming into force of the Employees'' State Insurance Act, 1948, the employer was justified in withdrawing the said medical benefits. Apart from the question as to whether the benefits under the Employee''s State Insurance Act, 1948 are more generous or beneficial as compared to those that had been provided by the employer earlier, the Supreme Court proceeded to consider the question as to whether availability of medical benefits as a part of 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 Act i.e. the Employees'' State Insurance Act, 1948. Referring to Section 72 of the said Act, the Supreme Court emphasised that except as provided by the regulations, no employer shall discontinue or reduce the benefits payable by him to the employee under the conditions of service which are similar to the benefits conferred by the said Act, merely by reason of his liability for any contribution payable under the Act. The Supreme Court then noted that the only regulation which permitted discontinuance of reduction of the benefits was Regulation 97 of the Employees State Insurance (General) Regulations, 1950, which related to sick leave & maternity benefit. The Supreme Court then proceeded to hold as follows:

"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 ESI Act and in particular 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 ESI 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. Vs. Their Workmen, .

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."

13.4. We have upheld the constitutional validity of Section 2(9)(b) of the Act as amended by Act 29 of 1989, and the validity of Rules 50, 51 and 54 of the Employees State Insurance (Central) (Second Amendment) Rules, 1996 by Notification dated 23.12.1996. That means that the employees covered by the said amendments come within the purview of the Act with effect from 1.1.1997. There are also, however, settlements between the employers and employees within the meaning of Section 2(p) of the Industrial Disputes Act, 1947 that are still binding on the parties concerned, within the meaning of Section 19 of the said Act. The question that therefore arises is whether the employer can withdraw the benefits that form part of service conditions under the said settlements. On two occasions on which this very question came up for consideration before the Supreme Court, as noted earlier, namely in Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others, and Calcutta Electricity Supply Corporation case (1995(3)SLR 697 SC, the Supreme Court treated the said question as one arising as a dispute under the Industrial Disputes Act, 1947. Nothing more, therefore, needs to be said in this regard.

14. In the result, writ petitions and the appeal shall have to be and are hereby dismissed with costs.