

(2004) 03 CAL CK 0018

In the Calcutta High Court

Case No : A.P.O.T. No. 124 of 2001 and W.P. No. 248 of 1997

Regional Director, Employees" State Insurance Corpn. Ltd.	APPELLANT
Vs	
Jardine Henderson Staff Association and Others	RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Employees State Insurance (Central) Rules, 1950 — Rule 50
Employees State Insurance Act, 1948 — Section 2(9), 87

Citation : (2004) 2 CHN 568 : 108 CWN 144 : (2005) 1 LLJ 16

Hon'ble Judges : Ashok Kumar Mathur, C.J;Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Anindya Mitra, Subal Moitra, J. Sengupta, Keya Bhattacharjee and Durba Bandhopadhyay, Balai Chandra Roy, Bikash Ranjan Bhattacharjee, Dilip Kumar Chatterjee and Upen Roy, S.K. Kapoor and Bidyut Kumar Roy, Samaraditya Pal, Partha Sarathi Sengupta and D. Mukherjee, for the Appellant;Dipak Kumar Ghosh, N.K. Mehta, P.K. Bhowmick, Soumya Majumdar, Paritosh Sinha and Amitava Mitra, for the Respondent

Judgement

Ashim Kumar Banerjee, J.—The principal issue involved in this appeal is as to whether the learned Judge was right in quashing the impugned notification which had extended the benefit of the Employees" State Insurance Act, 1948 (hereafter referred to as "the said Act, 1948" to the class of employees getting salaries upto Rs. 6,500/- per month.

2. Challenging the said notification series of writ petitions were filed mostly by the employees union both in original side and the appellate side of this Court.

3. All the writ petitions were disposed of by a common judgment and order dated June 30, 2000 delivered by Mr. Samaresh Banerjea, J. (as His Lordship then was).

4. Although the writ petitions involved diverse questions the principal challenge in the said writ petitions was the impugned notification dated December 23, 1996 by which Rule 50 of the Employees" State Insurance (Central) Rules, 1950 was

amended by raising the salary limit from Rs. 3,000/- to Rs. 6,500/-. In such view of the matter we intend to dispose of all the appeals arising out of the said common judgment and order dated June 30, 2000 by this common judgment.

5. In some of the writ petitions the vires of the Section 2(9)(iii)(b) of the said Act of 1948 was challenged in addition to the challenge made to the amendment of Rule 50 as stated above. In some of the cases the employers supported the writ petitioners being employees union and in some of the cases the employer opposed the writ petition as would appear from the argument made by the learned Counsel appearing for the rival parties to be dealt with hereinafter.

6. By the elaborate judgment and order of His Lordship the vires of the Section 2(9)(iii)(b) of the said Act, 1948 was upheld and challenge to the same was rejected. After declaring the said provision as valid His Lordship set aside the amendment of the rules of 1950 by which the upper wage limit of Rs. 3,000/- was enhanced to Rs. 6,500/-.

7. The instant batch of appeals filed by the E.S.I. Corporation as well as Union of India against that part of the order by which the amendment of Rule of 1950 was quashed. No appeal and/or cross appeal was however filed by any of the writ petitioners against the part of the judgment of His Lordship upholding the validity of Section 2(9)(iii)(b) of the said Act of 1948.

8. In such view of the matter we are only to deal with the sole question as to whether the amendment of Rule 50 was made properly or as to whether the quashing of the said amendment by the learned Judge was proper or not.

9. To appreciate the problem in hand let us first discuss briefly the scope of the said Act of 1948 and rules framed thereunder. Under 1948 Act the Parliament extended benefit to the poorer section of the work force having upper wage limit of Rs. 400/- only per month so as to bring them under insurance covering accidental benefit and/or sickness in course of employment. The said Act also provided benefit for medical treatment, maternity and other co-related arena. However, subsequently the Parliament by way of amendment delegated the power to the Central Government for fixing of the wage limit that is to say which class of persons being the members of work force would come under the scope of the Act. Section 2(9)(iii)(b) of the said Act, 1948 being relevant herein is quoted below :

"any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period,".

10. By virtue of the power conferred upon the Central Government the Central

Government from time to time enhanced the wage limit from Rs. 400.00 to Rs. 1,000/- thereafter Rs. 1,000/- to Rs. 1,600/- then Rs. 1,600A to Rs. 3,000/- and ultimately from Rs. 3,000/- to 6,500/-. All this changes necessitated principally because of the rise in price index and contemporaneous wage increments. Earlier challenge was thrown to the enhancement of the limit upto Rs. 3,000/- before the Karnataka High Court in the case of Bharat Heavy Electricals Ltd. reported in 1993, Labour Law Journal, page 833 wherein the Karnataka High Court upheld the increase. We are told that the present enhancement was also challenged before various other High Courts and the validity of such amendment was held valid by the other High Courts.

11. Although there were various grounds taken in the writ petitions three principal grounds were urged by the learned Counsel appearing for the writ petitioners/respondents before us as well as before the learned Single Judge which were as follows :

(i) The indepth study was not made by the concerned authority while enhancing the limit.

(ii) The existing medical benefits enjoyed by the class of employees enjoying wages between Rs. 3,000/- to Rs. 6,500/- were much better than that of the facilities extended by the E.S.I. Corporation.

(iii) The E.S.I. Corporation was not equipped with adequate infrastructure to extend benefit to the huge work force having wage limit between Rs. 3,000/- to Rs. 6,500/-.

12. The learned Single Judge quashed the said amendment as well as notification by which the said amendment was brought into force on the following grounds :

(i) The proposal for increasing the wage limit was not initiated by the Central Government but by the E.S.I. Corporation.

(ii) No proper enquiry was made before increasing the upper wage limit.

(iii) Corporation was unable to create a proper infrastructure for giving benefit to the larger work force by enhancing the wage limit.

(iv) The purpose for which the upper wage limit was enhanced was inconsistent with the purpose of the Act and would create an absurd and dangerous situation.

(v) The principal purpose for enhancing wage limit was for raising the fund and not for giving actual benefit.

(vi) The policy of increasing the upper wage limit can not be guided by profit motive, the main amendment was really made for the benefit of the corporation and not for the employees.

(vii) The amendment was made without any application of mind and in perfunctory manner,

(viii) The decision was taken by the Minister-in-Charge without any effective discussion between the Central Government and the Corporation.

13. Some parts of the judgment of His Lordship being relevant herein and are quoted below :

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There cannot by any doubt therefore, in my view, that which class of employees will get the protective umbrella of the E.S.I. Act is a legislative policy. It is further evident from the Act as it originally stood, which laid down the employees of which wage group will get the benefit of the insurance under the said Act.

It has been urged by the learned counsel appearing for the respondents that in view of the provision contained in Section 95, Sub-section (4) of the Act the Parliament retains sufficient control over the said delegated legislation and therefore it cannot be said that the legislation in question suffers from the vice of the excess delegation.

Firstly it appears to this Court that such increase has been made in the wage limit for a purpose which is not consistent with the policy laid down in the Act but for a purpose which is inconsistent thereto.

As pointed out hereinbefore the purpose of the Act is to extend such benefit of insurance relating to health, accident, maternity etc. to the weaker section of employee who need such protection. For the purpose of determining therefore which class of employees will require such protection, it is necessary for the Central Government to make an indepth study in respect thereof. The very purpose of the Act being to extend such benefits to weaker section of employees

decisions in respect thereof cannot be taken mechanically.

While it cannot be disputed that with the change of time because of steep increase of price index, the employees who did not require protection earlier may now require the same and the primary consideration is therefore whether such protection is required to be given to an employee belonging to higher wage group than the employees who are already within the purview of the Act, even after increase of price index those employees belonging to higher wage group may not really require protection, already baring such protection from the concerned employer or for any other reason. Our State being a Socialist State as per the Constitution, no doubt, the ideal situation will be when all employees of all industries and organization of whatever wage high or low should get protection from the State in the matter of such health, maternity employment accident etc. specially when right to health has been held by the Supreme Court part and parcel of right life as enshrined under Article 21 of the Constitution. But because of lack of resources and other financial constraint the State not really is in a position to extend such benefit to all employee, but only to weaker section of employees who will be needing the same most.

The proposal of increasing the wage limit of the employees to Rs. 6,500/-was not even initiated by the Central Government which is the delegate, but by the E.S.I. Corporation.

In the name of fulfilment of such legislative policy, employees belonging to the higher wage group cannot be brought within the purview of the Act for the purpose of earning revenue and for raising more funds for the running the infrastructure which already exists or for increase thereof.

Such purpose, in my view, is not only inconsistent with the purpose of the Act but also creates an absurd and dangerous situation inasmuch as, if the purpose of bringing employees of higher wage group within the purview of the Act is to earn more revenue and to raise fund for meeting the cost of running the infrastructure for the existing employees under the Act such a process will be a never ending one inasmuch as, with the further rise of price index and rise of cost of running the infrastructure employees belonging to the further higher group of income would have to be brought under the purview of the Act again and again for meeting the cost of existing infrastructure frustrating the very

object of the Act.

On such ground alone, in my view, the impugned amended rule is liable to be struck down being inconsistent with the purpose of the Act.

For the reasons aforesaid although I am unable to hold that the impugned delegation is liable to be struck down suffering from the vice of excess delegation, I have got no hesitation to hold that the impugned amended rules is liable to be struck down being ultra vires the purpose of the Act and being inconsistent therewith, and being wholly arbitrary, unreasonable and violative of Article 14 of the Constitution and also for the reasons such rule has been framed without proper application of mind and without taking relevant matters into consideration and without following the proper procedure as prescribed in the rules. The Employees' State Insurance (Central) (2nd Amendment) Rules, 1996 is accordingly struck down".

14. From the aforesaid paragraphs it would appear that on the one hand the learned Judge had very rightly explained the purpose of the Act and on the other hand termed the impugned amendment as a profit making device. These two aspects are totally inconsistent with each other according to us. While agreeing with His Lordship that the subject Act is a social welfare legislation we are of the view that there is no scope for making any profit out of the said scheme at the cost of the work force. The learned Judge heavily relied on the submissions of the writ petitioners to the extent that there was no application of mind by the concerned authority while enhancing the wage limit and decision was taken by the E.S.I. Corporation and not by the Central Government. The aforesaid fact is totally inconsistent with the records annexed to the pleading appearing at the paper book, probably this was not drawn the attention of the learned Single Judge. From the minutes of the meeting it would appear that the Central Government through the concerned Minister-in-charge took the decision after making thorough study. It is needless to say that the Board of Directors of the E.S.I. Corporation are having sufficient representations from the members of the work force being the representatives of the recognized trade unions under whose affiliation most of the writ petitioners are carrying on their trade union activity. It would appear from the minutes of the meeting held on various dates appearing at the paper book that all the members of the Board of Directors including the worker's representatives unanimously felt the need of enhancing of the limit and ultimately they unanimously left the issue to the Minister-in-charge representing the Central Government who was eventually the Chairman of the E.S.I. Corporation. In this regard may we refer to the minutes of the meeting held in this regard prior to the amendment. Relevant extract of the minutes of the

meeting dated March 7, 1996 appearing at pages 149-150 is quoted below :

"ITEM No. 19 : Enhancement of wage limit for coverage under the E.S.I. Act, 1948.

19.1. Introducing the subject, the Director General stated that the wage limit for coverage was enhanced to Rs. 3,000/- p.m. from 1.4.1992. However, due to wage increase from time to time a large number of workers had gone out of coverage of E.S.I. Scheme. In addition, the reduction in contribution rate from 7.25% to 5.5.% of wages has brought down the revenues of the Corporation substantially. Both these factors together had made the Corporation heavily dependent upon the interest on investments. In order to cater to the same target group of workers as was covered on 01.04.1992 as well as to stabilise the financial condition of the Corporation it was necessary to enhance the ceiling from Rs. 3,000/- p.m. to Rs. 5,000/- p.m. immediately. Many of the members participated in the discussion that followed which included S/Shri Chitnis, Sanjeeva Reddy, K.L. Kaul and Vasant Khanolkar. Representatives of the State Governments also participated in the discussion. However, there were divergent views on the subject. Summing up, the discussion, the Chairman desired that Labour Secretary and Director General should have more time for studying the matter thoroughly as they were new to the E.S.I. Scheme. He suggested that the matter should be considered in the next meeting of the Corporation".

15. Relevant extract of the Chairman's address on August 30, 1996 appearing at pages 151 to 154 is quoted below :

"You may have noted that a very important item before us at this meeting, is the proposal for enhancement of wage limit for coverage under the E.S.I. Act. You will recall that the wage limit was last enhanced in April, 1992 from Rs. 1,600/- to Rs. 3,000/- per month. Alongside the statement, the rates of contributions, both in respect of employees and employer were brought down substantially from 7.25% from 5.50%. Since this deduction was neither based on actual assessment nor on the basis of valuer report on the assets and the liabilities of the Corporation, the decision resulted in reduction of contribution income by Rs. 74 crores in 1992 itself. On the other hand, many improvements have been made in the scale of benefits from time to time as a result of which the total expenditure now, far exceeds the contribution income. The fact is that the scheme is becoming unsustainable owing to the imbalance between the extent of coverage and contribution and the upgraded delivery of benefits in cash and kind. The latest statistics available with us indicate that, whereas, the average per capita contribution income for the year 1994-1995 stood at Rs. 776/- per insured person per annum the corresponding expenditure was Rs. 800/- per insured person per annum, The trend of perpetual exodus of employees from the ambit of coverage because of the present wage ceiling is retrograde. In 1952, the upper ceiling for purpose of coverage under the E.S.I. Act was Rs. 400A per month adjusted to inflation over the years, this ceiling would be at Rs. 8,000/- per month. Though the scheme as grown enormously in terms of infrastructure,

specialities and special services, the demographic base as narrowed.

The number of insured persons covered under the scheme at the beginning of the current year was just 73 lakhs as compared with 71.60 lakhs insured persons in 1981. We have indeed done well in terms of geographical expansion and infrastructural development, by setting up a large number of hospitals and dispensaries, but the essence of any meaningful social security system lies in the number of beneficiaries alone. The fact remains that we should not and cannot afford to lose sight of this trend of static coverage, With massive industrialization over the years, there has been a tremendous growth in worker population, particularly so, in the organized sector, without any corresponding increase in coverage under the E.S.I. scheme.

The proposal for enhancement of wage ceiling, I am told, has been on the agenda of the Corporation for quite some time. A purposive and positive decision has, therefore, to be taken at this meeting, with the sole objective of enhancing the scope and applicability of the scheme. After making a detailed actuarial assessment, the Corporation has now proposed the enhancement of the ceiling from the present Rs. 3,000/- per month to Rs. 6,500/- per month. I shall be happy if we go into this question in depth and have conclusive decision in this regard. Since the insurance market is coming up with a variety of medicare policies, it is time that we design our response by creating a more comprehensive security net for a much larger work force. Our strength lies in low premium for an integrated package of benefits, our vast and widespread infrastructure, as well as, our experience of nearly five decades in insurance and social security service".

16. It further appears from the minutes of the meeting held on October 5, 1996 appearing at pages 155 to 164 of the paper book the employees" representative Sri Sanjeeva Reddy (workers" representative) suggested that the Chairman be authorized to take an official decision regarding enhancement of the wage limit. Such suggestion was endorsed by all. Relevant portion of the said minutes is quoted below :

"Summing up, Shir Sanjeeva Reddy suggested that the Chairman be authorized to take the final decision regarding the enhancement in the wage ceiling and increase in the contribution rates which was endorsed by all".

17. Apart from the aforesaid minutes of the meeting there are other records annexed to the pleadings appearing at the paper book from which it would appear that there had been a detailed study by the concerned authorities which ultimately resulted in increase of the wage limit. The principal factor which had played vital role in enhancing the wage limit was rise in price index and increment in wages. The other relevant factor which had heavily weighed on the authorities were that because of increase in the wage limit there had been a sharp fall of contribution meaning thereby a substantial number of work force who were originally under the scheme came out of the purview of the said

scheme because of increase of the wage limit. The learned Judge in one place of his judgment quoted above dreamed a situation where all members of the work force would be covered by the concerned scheme. If that be the real approach then we do not find any logic which had prompted the learned Judge to quash the impugned amendment contrary to the interest of the work force.

18. Mr. Anindya Mitra, learned Counsel appearing for the appellants, contended that the E.S.I. Corporation being a part and parcel of the Central Government was established by the said Act, 1948 to extend medical benefits and insurance benefits to the large number of work force working in different fields. According to Mr. Mitra the principal purpose of the said Act was to extend more and more benefits to the work force. When the Act was enacted in 1948 the legislature thought it fit to fix the upper wage limit at Rs. 400A. After elapse of so many years when the price index has gone on a higher side and the wages of the concerned employees have gone up it is the duty of the Central Government to keep on providing such medical and insurance benefit to those work force for which the enactment was made in the year 1948. Keeping in view those factors the upper wage limit was enhanced and the impugned amendment had been enhanced from Rs. 3,000/- to Rs. 6500/- Mr. Mitra drew our attention to various minutes of the meeting quoted (supra) and contended that there were adequate indepth study by the concerned authority before such enhancement and it was not the purpose of the Central Government or the E.S.I. Corporation, as the case may be, to use this enhancement as a device for revenue earning. According to Mr. Mitra in the minutes the concern made by the authorities due to fall of contribution was made to demonstrate that a large number of work force were going out of the scheme because of increase of their wages. Such, according to him, can not be termed as revenue earning.

19. Mr. Mitra in support of this contention cited the following decisions :

(i) Workmen of Bharat Heavy Electricals Ltd. Vs. Union of India and others,

(ii) Tata Employees Union Vs. Union of India (UOI), .

(iii) Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, .

(iv) , (Indian Express Newspapers Bombay Pvt. Ltd. and Ors. v. Union of India and Ors.).

(v) Employees" State Insurance Corpn. Vs. Kerala State Handloom Development Corpn. Employees Union (CITU), Kannur, Dist. Kannur, Kerala and Others, .

(vi) 2001, Labour and Industrial Cases, page 273 (Ennore Foundries Ltd. v. Government of India and Ors.).

20. Citing the above decisions Mr. Mitra lastly contended that on the identical issue the earlier enhancement from Rs. 1,600/- to Rs. 3,000/- was challenged before the Karnataka High Court which was upheld by the Division Bench of the

said Court in the case of Workmen, Bharat Heavy Electricals Ltd. According to Mr. Mitra, the learned Single Judge did not agree with the ratio decided by the Division Bench of the Karnataka High Court while distinguishing the said judgment having regard to the facts and circumstances of this case.

21. Mr. Mitra finally contended that once the learned Single Judge upheld the vires of the said Act, 1948 there was no occasion for His Lordship to quash the amendment which was made by the appropriate authority by virtue of the power conferred by Section 2(9)(iii)(b) of the said Act, 1948. He prayed for quashing of the judgment of His Lordship.

22. Mr. S. K. Kapur, learned Additional Solicitor General, appearing for the Union of India adopted the submission made by Mr. Mitra and contended that the impugned amendment was made with a view to keeping the existing work force within the scope of E.S.I. scheme and to give more benefits to them.

23. Mr. Dipak Kumar Ghosh, learned Counsel appearing for some of the employers supported the appellants. In support of his submission Mr. Ghosh relied on an Apex Court decision reported in Judgment Today, 1997, Vol. IX, page 316.

24. Opposing the appeal Mr. Bikash Ranjan Bhattacharjee, appearing for some of the writ petitioners including Jardine Henderson Staff Association and Ors. contended that no attempt was made by the appropriate authority while increasing the wage limit to know the present status of the employment condition. Mr. Bhattacharjee also contended that to rope in substantial part of the work force by increasing the wage limit the E.S.I. Corporation did not arrange for appropriate infrastructure and if the wage limit was allowed to be increased the concerned employees would be deprived of appropriate medical benefits which were being extended by the employers. According to Mr. Bhattacharjee no appropriate assessment was done by the Board Members while approving the increase of wage limit. Mr. Bhattacharjee drew my attention to page 294 of the paper book where in the learned Single Judge observed that no indepth study was made.

25. Mr. M. K. Mehata, learned Counsel appearing for some of the employers, contended that in case this Court upholds the enhancement of the wage limit appropriate protection should be given to the employers who could not collect the contribution from the concerned employees due to interim order of stay granted by the learned Single Judge as well as by the Court of Appeal.

26. Mr. Samaraditya Pal, learned Counsel appearing for CESC Ltd. also contended that the employees of CESC Ltd. were being provided appropriate medical benefit by the employer and during the period of stay no contribution was collected from the concerned employees. Mr. Pal also contended that CESC Ltd. had already made an application u/s 87 of the said Act, 1948 before the appropriate authority for exemption. Such application had not yet been disposed of by the concerned authority despite considerable time had passed in between. According to Mr. Pal

if this Court upholds the enhancement that should be made prospective.

27. Mr. Souma Majumder, learned Counsel appearing for some of the writ petitioners supported the contention of Mr. Pal to the extent that the enhancement if upheld by this Court should be made prospective.

28. Before dealing with the point in issue let me first discuss the cases cited by the parties:

(i) 1993 I L LJ 833 (Workmen of Bharat Heavy Electricals Ltd. v. Union of India and Ors.): Hon"ble Mr. Justice Rajendra Babu sitting singly in Karnataka High Court upheld the validity of Section 2(9) of the said Act, 1948. His Lordship also upheld the enhancement of the wage limit from Rs. 1,600/- to Rs. 3,000/-. In paragraph 10 of the said judgment His Lordship considered the "inflationary trends" in the country as well as "diminution of rupee value". His Lordship held that it is not appropriate for the Court to set any yardstick in Court to enhancement of the wage limit when decision had been taken after due consideration of all relevant factors.

The identical question was considered by the Division Bench of the Karnataka High Court which upheld the enhancement of Rs. 1,600/- to Rs. 3,000/- in Writ Appeal No. 1436 of 1997 vide judgment and order dated April 17, 1997.

(ii) Tata Employees Union Vs. Union of India (UOI), : Single Bench of the Kerala High Court also upheld the enhancement from Rs. 1,600/- to Rs. 3,000/-. Here also the learned Single Judge of the Kerala High Court rejected the argument of better medical benefits available to those group of employees from the employer. The learned Judge observed that in case any establishment is providing better benefits it is open for them to claim exemption under Sections 87 to 91 of the said Act, 1948 and that can not be a ground for challenge the enhancement.

(iii) Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, : In this case the Apex Court held that 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 has 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 for 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 to 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.

(iv) (Indian Express Newspapers Bombay Pvt. Ltd. and Ors. v. Union of India and

Ors.) Paragraph 78 of this judgment is relevant herein and is quoted below :

"78. That subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned has been held by this Court in the *Tulsipur Sugar Co. Ltd. v. Notified Area Committee, Tulsipur*, *Rameshchandra Kachardas Porwal v. State of Maharashtra* and in *Bates v. Lord Hailsham of St. Marylebone*. A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind, taking irrelevant matters into consideration, failure to take relevant matters into consideration etc. etc. On the facts and circumstances of a case, a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or Constitutional requirements or that it offends Article 14 or Article 19(1)(a) of the Constitution. It cannot, no doubt, be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant".

(v) 2001 Lab IC, 273 (*Ennore Foundries Ltd. v. Government of India and Ors.*) : In this case the enhancement of wage limit from Rs. 1,600/- to Rs. 3,000/- was stayed by the High Court. When the stay was vacated it was contended that the management was prevented by an interim order of this Court from collecting the E.S.I. contribution. Hence, after disposal of the impugned proceeding when the order of stay came to an end the management was liable to pay contribution from that date and not retrospectively. Such, submission of the management was indicated by the Division Bench of Madras High Court.

(vi) 1997 Judgment Today, Vol-IX, page 316 (*State of Tamilnadu v. K.Sabanayagan and Anr.*) : Paragraph 20 of this judgment was relied on and is quoted below :

"It is thus obvious that in the case of conditional legislation, the legislation is complete in itself but its operation is made to depend on fulfilment of certain conditions and what is delegated to an outside authority, is the power to determine according to its own judgment whether or not those conditions are fulfilled. In case of delegated legislation proper, some portion of the legislative power of the legislature is delegated to the outside authority in that, the legislature, though competent to perform both the essential and ancillary legislative functions, performs only the former and parts with the latter i.e., the ancillary function of laying down details in favour of another for executing the policy of the statute enacted. The distinction between the two exists in this that whereas conditional legislation contains no element of delegation of legislative

power and is, therefore, not open to attack on the ground of excessive delegation, delegated legislation does confer some legislative power on some outside authority and is therefore open to attack on the ground of excessive delegation. In this connection we may also refer to a decision of this Court rendered in the case of Sardar Inder Singh Vs. The State of Rajasthan, , wherein it is laid down that when an appropriate legislature enacts a law and authorizes an outside authority to bring it into force in such area or at such time as it may decide, that is conditional and not delegated legislation".

29. Let us now refer to the decisions of various High Courts challenging the subject increase from Rs. 3,000/- to Rs. 6,500/-. Four High Courts apart from Karnataka High Court upheld the said enhancement particulars whereof are set out below :

(1) Punjab and Haryana High Court, Civil Writ Petition No. 739 of 1997 (Escorts Employees Union v. Union of India and Ors.) vide judgment and order dated February 28, 1997. In this decision the Division Bench of the Punjab and Haryana High Court rejected the submission of the writ petitioners to the extent that better medical benefits are available from the employers.

(2) Kerala High Court vide judgment and order dated November 19, 1997 by the Single Bench upheld the enhancement wherein the learned Single Judge following the decision in the case of Tata Employees Union (supra) and Escorts Employees Union (supra) dismissed the writ petition.

(3) Patna High Court vide Single Bench decision dated February 24, 1998 in the case of Bata Workers Union v. Union of India) dismissed the writ petition following the earlier decision referred to supra.

(4) Rajasthan High Court vide Single Bench decision dated April 28, 1998 dismissed the writ petition upholding the increase of limit from Rs. 3,000/-to Rs. 6,500/-.

30. From the aforesaid decisions the following principles of law reveal:

(i) When a particular piece of legislation is under challenge that should be considered strictly in accordance with the provisions for which such legislation was made and not by implanting Court's opinion by sitting on appeal over the decision of the legislature.

(ii) Once the validity of Section 2(9) of the said Act, 1948 was upheld the corresponding rule enhancing the wage limit by considering all relevant factors is immune from challenge.

(iii) Whether a better medical treatment and/or benefit is available to the concerned employees from the employer or not is not a relevant factor to be taken into account while considering the enhancement.

31. Following the aforesaid principles of law I have no hesitation to hold that the subject enhancement is not open for challenge at least on the materials brought

before us.

32. From the minutes of the meeting and the relevant extract quoted supra it can not be said that the magic figure of Rs. 6,500/- had arrived at without being backed by any supportive factors. The learned Judge termed the enhancement as arbitrary and illegal. We are unable to accept such view of His Lordship. When the initial Act, 1948 came into force the wage structure of the work force and the money value prevalent at that time were taken into account by fixing the wage limit at Rs. 400/-. The situation of 1948 specially the economical condition of the work force as well as the country had changed a lot which necessitated enhancement of the wage limit from time to time and ultimately upto Rs. 6,500/- considering a workman drawing Rs. 400/- per month in 1948 a workman doing identical job in 1997 must have been drawing much higher sum. That increase was made in usual course taking into account the decrease in money value. The socio-economic condition of those particular work force might not have changed a lot and a supportive treatment is still required to be given to those work force. Hence it would not be appropriate for us to allow a large section of workmen to go out of the E.S.I. Scheme only because of increase in the wage structure in due course. Some of the employers might be benevolent only to extend better medical facilities and treatment to the workmen, such can not be at all a relevant factor to consider the subject enhancement. If a particular workman or a class of workmen are eager to avail the facilities extended by the employer it is open for them to ask for exemption in accordance with the provision of Section 88 of the said Act, 1948. Similarly a benevolent employer is also entitled to apply u/s 87 for exemption of its unit from the E.S.I. Scheme. Sections 87 to 91 of the said Act, 1948 have provided elaborate process for any employer or employee or a group of employees to come out of the said scheme under the said Act, 1948.

33. The principal grievance in the writ petitions as appears from the elaborate judgment of learned Single Judge was that better medical benefits were available from the employer and the subject enhancement would be detrimental to the interest of the concerned work force. In our view, once the validity of Section 2(9) was upheld by the learned Single Judge the scope of the writ petition came in a very narrow campus. u/s 2(9) the appropriate authority was entitled to fix the wage limit by amendment of the concerned rules as would appear from the minutes of the various meetings appearing at the paper book and more particularly described in the relevant extract quoted supra the concerned authority took into consideration all relevant factors while enhancing the wage limit. Whether those particulars were sufficient enough for the concerned authority to enhance the wage limit or not we can not subscribe our own view while considering such enhancement. We are also not competent enough to term the said enhancement arbitrary or unreasonable on the basis of the particulars available to us. We are unable to appreciate how the said enhancement could be termed as ultra vires the purpose of the Act or being inconsistent therewith as held by the learned Single Judge.

34. In this backdrop we have no hesitation to hold that the subject enhancement was done in conformity with the provisions of the Act, 1948 and as a consequence whereof the decision of the learned Single Judge is liable to be set aside.

35. In the result the appeal succeeds. The judgment and order of the learned Single Judge dated June 30, 2000 is quashed and set aside. The Writ Petition No. 238 of 1997 along with other writ petitions particulars whereof are appended in the Schedule annexed hereto are dismissed. Correspondingly all appeals in connection with those writ petitions appended in the Schedule are allowed.

36. Consequently, all interim orders passed in this connection inter alia staying the operation of the said enhancement are vacated.

37. Now question comes as to what would be the effective date of enforcement of the said enhancement.

38. On perusal of the records it appears that in some of the writ proceedings interim order was passed to the extent that the employer would not take any step or further step on the basis of such amendment and they were also restrained from making any reduction from the salaries of the employees on the basis of such enhancement. It was also provided that no penal action shall be taken against the employers by the E.S.I. respondents for not giving effect to the amended provisions.

39. This interim order was passed in some of the writ petitions. Submissions were made in this regard to the extent that since the employers were restrained from collecting E.S.I. contribution from the salary of the respective workmen after vacating all interim orders appropriate protection should be given to the employers so that they are not harassed by the E.S.I. authorities by taking penal action against them for non-payment of the contribution during the period when the interim order was in operation.

40. Following the general principles of law once the writ petition is dismissed and a particular enactment or notification is upheld it relates back to the original date of issue of the said original notification and/or its date of commencement irrespective of the interim order of stay prevalent during the pendency of the said proceeding. Regard may be had in this regard to the Division Bench decision of the Madras High Court in the case of Ennore Foundries Ltd. (supra). Hence, we hold that the subject notification would remain operative from the date of its commencement irrespective of the fact that the interim orders were passed in some of the writ proceedings. It is needless to say that the effect of the said notification was in rem and not in personem. From the date of its commencement, the said notification came into force throughout the country. Operation of the same might have been stalled for some time in respect of some persons or some units. Once such restrictions is lifted the said notification comes into operation retrospectively in respect of those persons as if there had been no restraint in the meantime.

41. However, in some of the writ petitions the learned Single Judge restrained the employer from collecting contribution from the employees. Hence, the concerned employees could not get any medical benefit or other benefits under the scheme for last 7 years in view of the order of stay. Similarly, the concerned employers were also compelled to extend medical benefits to their workmen in view of such interim order. If we allow the E.S.I. Corporation to collect the contribution retrospectively in those cases where interim order was subsisting both employees and the employers would be put to undue hardship. The employees will have to pay arrear contribution although they did not enjoy and benefit during the said period. Similarly the employer who suffered the order of injunction at the instance of the writ petitioners would be vulnerable for penal action for such default. It is well settled principles of law that for act of Court no party should be prejudiced. We therefore direct the E.S.I. Corporation not to take any penal action against those employers who suffered interim order of injunction from collecting any contribution from the employees as well as depositing the same along with their part of the contribution to the E.S.I. Corporation during the period when interim order was in operation. It is however made clear that those employers would be bound to comply with the amended Rule 50 on and from today in case they suffered order of injunction. In all other cases the employers would be bound to pay all arrear contribution to the Corporation from the date of such amendment coming into force.

42. We are told that CESC Ltd. had already applied for exemption u/s 87. Such application for exemption had not been disposed of by the State Government for last 7 years. We are unable to appreciate the stand of the State Government. The State Government being the appropriate authority under the said Act, 1948 was bound to consider the application for exemption within a reasonable time. We once again direct the State Government to dispose of the application for exemption made by the CESC Ltd. or any other employer, as the case may be, within a period of two (2) months from date. We also grant liberty to other employers as also group of persons being the writ petitioners to apply for exemption u/s 87 or 88 of the said Act, 1948, as the case may be and in case such application is made the State Government would dispose of the same within a period of two (2) months from the date of making such application.

43. We however make it clear that pendency of the application would not in any way exempt the employer or the group of employees from the scope of the E.S.I. scheme. They would only be exempted from making contribution from the date when exemption is granted by the State Government.

44. With the above observations all appeals being A.P.O. No. 124 of 2001 as well as other appeals both in Original Side as well as in Appellate Side particulars whereof are set out in a Schedule annexed hereto are disposed of accordingly.

45. There would be no order as to costs.

46. Urgent xerox certified copy would be given to the parties, if applied for.

Ashok Kumar Mathur, CJ.

47. I agree.