

EMPLOYEES STATE INSURANCE CORPORATION

A

v.

DWARKA NATH BHARGWA

AUGUST 21, 1997

[S.B. MAJMUDAR AND S. SAGHIR AHMAD, JJ.]

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Labour Laws :

Employees State Insurance Act, 1948—Section 45B—Recovery of unpaid contribution as land revenue—Arrears of contribution prior to the section coming into force—Remained payable throughout—Whether provision applicable retrospectively—Held, yes, since provision is purely procedural in nature, it is retrospective.

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The Appellant proceeded against respondent for recovery of unpaid contribution which became payable on 27.1.1967 and 24.1.1968, under Section 45B of the ESI Act, 1948 which provides for recovery of unpaid contribution, as arrears of land revenue, after the section was brought into force on 28.1.1968.

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The appellant issued notices for effecting recoveries of the unpaid amounts by resorting to Section 45B. The respondent challenged the same in the Employees Insurance Court and it was allowed.

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On first appeal the High Court held that provisions of Section 45B of the Act of 1948 cannot be made applicable to the Respondent since the recoveries pertain to the period prior to the date on which the section was inserted in the statute book.

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In appeal to this court it was contended that as the Section was a procedural provision, it could obviously apply retrospectively to cover all contributions which had remained unpaid even prior to the date on which the section came into force.

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Allowing the appeal, the Court

HELD : 1. Section 45B of the ESI Act can be pressed into service to effect recovery of unpaid contributions when the contributions have remained unpaid since prior to the coming into force of Section 45B and

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A have throughout also remained unpaid. As the provision is purely procedural in nature, it cannot be gainsaid that it could have retrospective effect. The notices issued in the present case against the respondent could not be said to be unauthorised or incompetent. [515-E]

B *Delhi Cloth and General Mills Co. Ltd. v. Income Tax Commr. Delhi*, AIR (1927) PC 242, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1618 of 1981.

C From the Judgment and Order dated 6.8.79 of the Allahabad High Court in F.A.F.O. No. 362 of 1972.

Arvind Kr. Sharma and Ms. Anubha Jain for S.N. Terdol for the Appellant.

D The Judgment of the Court was delivered by

E MAJMUDAR, J. The Employees State Insurance Corporation has brought in challenge the order passed by Allahabad High Court disposing of the first appeal from order No. 362 of 1972. By the impugned judgment, the High Court has taken the view that provisions of Section 45B of the Employees State Insurance Act, 1948 (hereinafter referred to as 'the Act') enabling recovery of contribution payable under the Act as arrears of land revenue cannot be pressed into service by the appellant-Corporation in the present case. Reason given by the High Court for the said conclusion is to the effect that the recoveries pertain to the period prior to the date on which Section 45B was inserted in the statute Book. The said section was brought into force on 28.1.1968, while the amount sought to be recovered became payable on 27.1.1967 and 24.1.1968. It is of course true that these amounts were to be paid by the respondent employer on these relevant dates, but these contributions were not made by the respondent in time. Therefore, they remained in arrears. After Section 45B was brought on the statute book, notices were issued to the respondent on 24.4.1970 and 9.9.1970 for effecting recoveries of these unpaid amounts of contributions by resort to Section 45B. Question, therefore is as to whether for the aforesaid contributions which remained unpaid resort to Section 45B could be effected on any day after the said section came on the statute book?

H Now a mere look at the said section shows that it is of procedural nature.

It provides that any contribution payable under this Act may be recovered as arrear of land revenue'. Consequently, on the date on which the recovery by way of arrears of land revenue is to be effected, the contribution in question should have remained unpaid. A

It is not in dispute and cannot be disputed that the contributions in question had remained payable all throughout and were not paid by the respondent. The day on which recovery by way of land revenue was sought to be made, section had already come into force. As it was a procedural provision, it could obviously apply retrospectively to cover all contributions which had remained unpaid even prior to the date on which the section came into force. In support of this contention, learned counsel for the appellant rightly invited our attention to a decision of the Privy Council in *Delhi Cloth and General Mills Co. Ltd. v. Income Tax Commissioner, Delhi and Another* reported in AIR (1927) PC 242 wherein it has been laid down that 'while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment'. B C D

As the aforesaid provision is purely procedural in nature, it cannot be gainsaid that it could have retrospective effect. Consequently, the contention of the learned counsel for the appellant in this connection is well made out and must be accepted. We, therefore, hold that Section 45B can be pressed in service to effect recovery of unpaid contributions when the contributions have remained unpaid since prior to the coming into force of Section 45B and have throughout also remained unpaid. E F

Consequently, notices issued in the present case against the respondent could not be said to be unauthorised or incompetent. The appeal is accordingly allowed. The judgment and order of the High Court as well as that of the Employees Insurance Court, Allahabad are set aside. The respondent's application before the Employees Insurance Court is disposed of in aforesaid terms. No costs. G

V.M.

Appeal allowed.