S.L. SRINIVASA JUTE TWINE MILLS P. LTD. A

v.

UNION OF INDIA AND ANR.

FEBRUARY 15, 2006

[ARIJIT PASAYAT AND R.V. RAVEENDRAN, JJ.] B

Employees Provident Fund and Miscellaneous Provisions Act, 1952; Section 16 with amendments:

Infancy protection to newly set up factories/establishments—Exemption clause—Removal of exemption clause by the amending Act of 1998—Effect of amendment on the existing rights—Held: Every statute **prima facie** *prospective in effect unless legislature expressly or by necessary implication make it retrospective in effect—In terms of the provisions of repeal in the General Clauses Act unless different intention appears, the repeal shall not affect any rights/privilege or liability acquired/accrued or incurred under the enactment/ repeal/amendment—Since protection accrued to the factories/establishments prior to amendment, in 1997, they are entitled to the protection—Hence, Judgments of High Court indefensible—General Clauses Act, 1897—Section 6.* C D E

Legal Maxims:

Maxim **'nova constitutio futuris formam unponere debet non practeritis'**—*Applicability of.*

Appellant mills filed writ petitions before the High Court praying for issuance of a writ of *mandamus* to declare that Act 10 of 1998 which was seeking to amend provisions of Section 16 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, shall not apply to them and they would continue to have the "infancy protection" for a period of 3 years starting from the date of establishment of the industries. The High Court by the impugned judgment dismissed the writ petitions. Hence the present appeal. F G

Appellants contented that the High Court has clearly erred in holding that the accrued rights were in no way affected or altered by effecting

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A amendments in the Act since under the un-amended provisions they were entitled to the protection for the infancy period.

Respondents submitted that in public interest the amendment can be done; and that keeping the ultimate welfare of the workers in view the amendment in the provisions of law was made and the exemption was not
B granted to any category of establishment.

Allowing the appeals, the Court

HELD: 1. In terms of Clause (c) of Section 6 of the General Clauses Act, unless a different intention appears the repeal shall not affect any
C right, privilege or liability acquired, accrued or incurred under the enactment repeal. The effect of the amendment in the instant case is the same. [243-C]

2. It is a cardinal principle of construction that every statute is *prima facie* prospective in effect unless it is expressly or by necessary implication
D made to have retrospective operation. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only *'nova constitutio futuris formam imponere debet non praeteritis'*. The judgments of the High Court are indefensible and are set aside. The appellants shall be entitled to the protection as had
E accrued to them prior to the amendment in 1997 for the period of 3 years starting from the date the establishment was set up irrespective of repeal of the provision for such infancy protection. [243-D-E; 244-C]

Jayantilal Amratlal v. *Union of India and Ors.*, AIR (1971) 1193; *Govinddas and Ors.* v. *Income Tax Officer and Anr.*, AIR (1977) SC 552;
F *Magic Wash Industries (P) Ltd* v. *Assistant Provident Fund Commissioner, Panaji and Anr.*, (1999) Lab. I.C. 2197; *Keshvan Madhavan Memon* v. *State of Bombay*, AIR (1951) SC 128; *Delhi Cloth Mills & General Co. Ltd.* v. *CIT, Delhi*, AIR (1927) PC 242 and *Amireddi Raja Gopala Rao* v. *Amireddi Sitharamamma*, AIR (1965) SC 1970, relied on.

G *Reid* v. *Reid*, (1886) 31 Ch D 402, referred to.

"Principles of Statutory Interpretation" by Justice G.P. Singh. (Tenth Edition, 2006) at PP. 474, referred to.

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6777 of 2003.

From the Judgment and Order dated 3.10.2002 of Andhra Pradesh High Court in Civil Writ Petition Nos. 33660,31991,31994 of 1998 and 13929 of 2000. A

WITH

C.A. Nos. 6780, 6779 and 6778/2003. B

S.S. Rana, B. Rana, Vikrant Rana and Ms. Amaya Singh for the Appellant.

K. Radhakrishnan, C.V. Subba Rao, Ajay Sharma, B.K. Prasad and Mrs. Anil Katiyar for the Respondents. C

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. These four appeals involve common points of law and, therefore, are disposed of by this judgment which shall govern each one of them. Appellant in each appeal has questioned correctness of the D judgment rendered by a Division Bench of the Andhra Pradesh High Court dismissing the writ petitions filed before the High Court praying issuance of a writ of *mandamus* to declare that Act 10 of 1998 seeking to amend provisions of Section 16 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short the 'Act') shall not apply to the writ petitioners and they would continue to have the "infancy protection" for the period of 3 years E starting from the date of establishment of the industry. The High Court by the impugned judgments dismissed the writ petitions holding that the amendment was intended to take away certain benefits by way of necessary amendments to Section 16 and the question as to whether any vested right are sought to be affected would arise only when the provisions are given retrospective F operation.

It was held that the real intention was to deal with the establishments universally on equal footing under the provisions of the Act and, therefore, no exemption whatsoever was intended to be provided in favour of any establishment. On and from date of enforcement of the amended provisions G all establishments including the establishments who had enjoyed the benefit of exemption are brought within the purview of the operation of the Act and they in no way alter any of the rights accrued in favour of the writ petitioners' establishments.

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A The factual scenario needs to be noted in brief as the controversy is whether the appellants are entitled to the protection as claimed.

At the time of enactment of the Act:

B	Name of the appellant	Sri Lakshmi Srinivasa	Navya Jute Mills	Srinivasa Jute Mills	Sitaram Lakshmi Jute Mills
	Civil Appeal No.	6777/2003	6778/2003	6779/2003	6780/2003
C	Commencement of infancy period/commercial production	November 17, 1995	April 1, 1996	August 19, 1997	February 19, 1997
D	Expiry of infancy period as per Section 16(d) as claimed by appellant	November 16, 1998	March 31, 1999	August 20, 2000	February 18, 2000
	Date of Ordinance No.17/1997	September 22, 1997	September 22, 1997	September 22, 1997	September 22, 1997
E	Date of omission of Section 16(d) (vide Act 10/1998)	June 22, 1998 w.e.f. 22.9.1997	June 22, 1998 w.e.f. 22.9.1997	June 22, 1998 w.e.f. 22.9.1997	June 22, 1998 w.e.f. 22.9.1997
F	Balance infancy period to be availed	1 year 1 month 24 days	1 year 6 month 8 days	2 year 10 month 28 days	2 year 5 month 26 days

Learned counsel for the appellants submitted that the High Court has clearly erred in holding that the accrued rights were in no way affected or altered. In fact, under the un-amended provisions the appellants were entitled to the protection for the infancy period as provided in the Act.

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Learned counsel for the respondents on the other hand submitted that in public interest the amendment can be done and this is a case where keeping the ultimate welfare of the workers in view the amendment was made and the exemption was not granted to any category of establishment. That according to learned counsel for the respondents meet the requirements of law and the

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judgment of the High Court is therefore not open to challenge. A

The position of Section 16 at different points of time can be noticed. Section 16 as originally enacted read as follows:

> "16. Act not to apply to factories belonging to Government or local authority and also to infant factories. B
>
> This Act shall not apply to-
>
> (a) any factory belonging to the government or a local authority, and
>
> (b) any other factory established whether before or after the commencement, of this Act unless three years have elapsed from its C establishment.

Section 16 was amended by the Employees' Provident Funds (Amendment) Act, 1958 and sub-section (1) of Section 16 of the Principal Act was substituted as under: D

> "(1) This Act shall not apply to any establishment until the expiry of three years from the date on which the establishment is, or has been set up.
>
> *Explanation*: For the removal of doubts it is hereby declared that an establishment shall not be deemed to be newly set up merely by E reason of a change in its location".

Section 16(1) was once again amended by the Employees' Provident Funds (Amendment) Act, 1960 and sub-section (1) of Section 16 was substituted as under: F

> "(1) This Act shall not apply:
>
> (a) to any establishment registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to Co-operative Societies, employing less than fifty persons and working without the aid of power; or G
>
> (b) to any other establishment employing fifty or more persons or twenty or more but less than fifty persons until the expiry of three years in the case of the former and five years in the case of the latter, from the date on which the establishment is, or has been, set up. H

A *Explanation:* For the removal of doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a change in its location".

Section 16 was further amended by the Employees' Provident Funds and Miscellaneous (Amendment) Act, 1988 with effect from 1.8.1988, and B Clause (b) of sub-section (1) of Section 16 was substituted by clauses (b), (c) and (d) and the said amendment to Section 16 is as under:

"(b) to any other establishment belonging to or under the control of the Central Government or the State Government and whose employees are entitled to the benefit of contributory provident fund or old age C pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefit; or

(c) to any other establishment set up under any Central Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with D any scheme or rule framed under that Act governing such benefits; or

(d) *to any other establishment newly set up, until the expiry of a period of three years from the date on which such establishment is, or has been set up."*

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Thereafter, Section 16 was again amended by Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 1988, omitting clause (d) with explanation in sub-section (1) of Section 16 with effect from 22.9.1997. (The said omission was initially carried out by Ordinance No.17/ F 1997 promulgated on 22.9.1997 followed by Ordinance No.25/1997 dated 25.12.1997 and Ordinance No.8 of 1998 dated 23.4.1998 followed by Act 10 of 1998.)

According to the appellants, the un-amended provisions as it stood after the amendment in 1988 under clause(d), apply to their cases and they G were entitled to the protection regarding non-application of the Act for a period of 3 years from the date on which such establishment was set up. According to the High Court, as clause (d) was deleted with effect from 22.9.1997, the Act had application to every establishment and no exemption or 'infancy period' whatsoever was available from 22.9.1997.

H The crucial question therefore is the effect of the amendment on the

In *Jayantilal Amratlal* v. *Union of India and Ors.*, AIR (1971) SC 1193, it has been laid down as under : A

> "In order to see whether the rights and liabilities under the repealed law have been put to an end by the new enactment, the proper approach is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repeated law is neither material nor decisive of the question." B

In *Govinddas and Ors.* v. *Income Tax Officer and Anr.*, AIR (1977) SC 552, it was laid down that: C

> "Now it is well settled rule of interpretation hallowed by time and sanctified by judicial decisions that unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general-rule as stated by HALSBURY in Vol. 36 of the LAWS OF ENGLAND (3rd Edn,) and reiterated in several decisions of this Court as well as English Courts is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are *prima facie* prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only." D E F

A Division Bench of Bombay High Court while considering the earlier amendment to Section 16(1)(d) curtailing the infancy period from 5 years to 3 years, held thus, in *Magic Wash Industries (P) Ltd* v. *Assistant Provident Fund Commissioner, Panaji and Anr.*, (1999) Lab.I.C. 2197): G

> "There is no doubt that the vested rights or benefits under the legislation could be retrospectively taken away by legislation, but then the statute taking away such rights or benefits must expressly reflect its intention to that effect. The infancy period prior to the amended provision Section 16(1)(d) was five years in the case of H

establishments employing 20 to 50 workers and in the event this infancy benefit was to be withdrawn, it was necessary that the intention of the Legislature should have been clearly reflected in the amended provision itself that the rights and benefits which had already accrued stood withdrawn. The amended clause 16(1)(d) came on the statute book on June 2, 1988, when it was assented by the President of India but the amended Section 16 was put into operation only with effect from August 1, 1988, which empowered the Central Government to appoint different dates for the coming into force of different provisions of the Act. We find it difficult in the circumstances, to conclude that the intention of the Legislature was to take away the benefit of infancy period which had already accrued to the existing establishments and this benefit has not been expressly taken away or by implication by the amended provision Section 16(1)(d). In the circumstances, we are of the opinion that the infancy period benefit of the petitioner for a period of five years with effect from May 26, 1986, is not taken away by the amended provision Section (1)(d) of the Act; and the petitioner could continue to enjoy the said infancy benefit for a period of five years till May, 1991. Therefore, the demand made by respondent 1 for the period up to May, 1991, has to be quashed. The petitioners are complying with the provisions of the Act with effect from June, 1991."

The matter can be looked at from another angle. Section 6 of the General Clauses Act, 1897 (in short 'General Clauses Act') deals with effect of repeal. The said provision so far relevant reads as follows:

"6. *Effect of repeal.* - Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not —

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect

of any offence committed against any enactment so repealed; or A

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed." B

In terms of Clause (c) of Section 6 as quoted above, unless a different intention appears the repeal shall not affect any right, privilege or liability C acquired, accrued or incurred under the enactment repeal. The effect of the amendment in the instant case is the same.

It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation.(See *Keshvan Madhavan Memon* v. *State of Bombay,* D AIR (1951) SC 128. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only '*nova constitutio futuris formam imponere debet non praeteritis*'. In the words of LORD BLANESBURG, "provisions which touch E 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." (See *Delhi Cloth Mills & General Co. Ltd.* v. *CIT, Delhi,* AIR (1927) PC 242). "Every statute, it has been said", observed LOPES, L.J., "which takes away or impairs vested rights acquired under existing laws, or creates a new F obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect."(See *Amireddi Raja Gopala Rao* v. *Amireddi Sitharamamma,* AIR (1965) SC 1970). As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate G rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary. (See *Reid* v. *Reid,* (1886) 31 Ch D 402). In other words close attention must be paid to the language of the statutory provision for determining the scope of the retrospectivity intended by Parliament. (See *Union of India* v. *Raghubir* H

A *Singh* AIR (1989) SC 1933). The above position has been highlighted in "Principles of Statutory Interpretation" by Justice G.P. Singh. (Tenth Edition, 2006) at PP. 474 and 475)

In *The State of Jammu and Kashmir* v. *Shri Triloki Nath Khosa & Ors.*, [1974] 1 SCC 19 and in *Chairman, Railway Board & Ors.* v. *C.R. Rangadhamaiah & Ors.*, [1997] 6 SCC 623), this Court held that provision B which operates to affect only the future rights without affecting the benefits or rights which have already accrued or enjoyed, till the deletion, is not retrospective in operation.

C Above being the legal position, the judgments of the High Court are indefensible and are set aside. The appellants shall be entitled to the protection as had accrued to them prior to the amendment in 1997 for the period of 3 years starting from the date the establishment was set up irrespective of repeal of the provision for such infancy protection.

D The appeals are accordingly allowed. No costs.

S.K.S. Appeals allowed.