SANGAM SPINNERS

v.

REGIONAL PROVIDENT FUND COMMISSIONER-I

DECEMBER 4, 2007

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Employees Provident Funds Act, 1952—s.16(1)(d)—Infancy protection—To newly set up factories, by way of exemption from applicability of the Act for 3 years—Omission of exemption provision in 1998 w.r.e.f. 22-9-1997—Held: Irrespective of the omission, appellant factory, which was set up on 1-9-1995, entitled to protection for full 3 years starting from the date of set up—General Clauses Act 1897—s.6 (c).

Repeal—Effect of, on accrued right—General Clauses Act 1897—s.6 (c).

Interpretation of Statutes—Retrospective or prospective operation—Determination—Held: Every statute is **prima facie** *prospective unless expressly or by necessary implication made to have retrospective operation.*

Appellant factory was set up on 1-9-1995. Newly set up factories were entitled to infancy protection i.e. exemption from applicability of the Employees Provident Funds Act, 1952, for 3 years from the date of set up. The provision for such infancy protection i.e. clause (d) of s.16(1) of the Act was omitted from the statute in 1998, but with retrospective effect, from 22-9-1997.

The Regional Provident Fund Commissioner held that in view of the omission of s.16(1)(d) of the Act with retrospective effect, the benefit of exemption thereunder was available to appellant-factory only till 22-9-1997 and not thereafter. That order was affirmed by the High Court. Hence the present appeal.

A **Allowing the appeal, the Court**

HELD: 1.1. In terms of Clause (c) of s.6 of the General Clauses Act, 1897 unless a different intention appears, the repeal shall not affect any right, privilege or liability acquired, accrued or incurred under the enactment repealed. The effect of the amendment in the instant case is the same. [Para 16] [891-C]

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1.2. 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. But the rule in general is not 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'*. 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 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. 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. [Para 17] [891-D, E, G; 892-A]

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Keshvan Madhavan Memon **v.** *State of Bombay,* **AIR (1951) SC 128;** *Delhi Cloth Mills & General Co. Ltd.* **v.** *CIT,* **Delhi AIR (1927) PC 242;** *Amireddi Raja Gopala Rao* **v.** *Amireddi Sitharamamma,* **AIR (1965) SC 1970;** *Union of India* **v.** *Raghubir Singh,* **AIR (1989) SC (1933);** *State of Jammu and Kashmir* **v.** *Shri Triloki Nath Khosa & Ors.,* **[1974] 1 SCC 19;** *Chairman, Railway Board & Ors.* **v.** *C.R. Rangadhamaiah & Ors.,* **[1997] 6 SCC 623 and** *S.L. Srinivasa Jute Twine Mills (P) Ltd.* **v.** *Union of India and Anr.,* **[2006] 2 SCC 740, relied on.**

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Jayantilal Amratlal **v.** *Union of India and Ors.,* **AIR (1971) SC 1193;** *Govinddas and Ors.* **v.** *Income Tax Officer and Anr.,* **AIR (1977)**

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SC 552 and *Magic Wash Industries (P) Ltd* **v.** *Assistant Provident Fund Commissioner, Panaji and Anr.*, **(1999) Lab.I.C. 2197, referred to.** A

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

"Principles of Statutory Interpretation" by Justice G.P. Singh. **(Tenth Edition, 2006), referred to.** B

2. The appellant shall be entitled to the protection for the period of three years starting from the date the establishment was set up irrespective of the repeal of the provision for such infancy protection. [Para 20] [892-E] C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1785 of 2001.

From the Judgment and final Order dated 29.11.2000 of the High Court of Rajasthan in D.B. Special Appeal No. 1150 of 2000. D

Dr. Manish Singhvi, P.V. Yogeswaran and Ashok K. Mahajan for the Appellant.

S. Wasim A. Qadri, D.S. Mahra and B.V. Balaram Das for the Respondent. E

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment rendered by a Division Bench of the Rajasthan High Court at Jodhpur dismissing the Special Appeal filed by the appellant. Challenge F in the Special appeal was to the judgment of a learned Single Judge whereby the writ petition filed by the appellant was dismissed upholding the decision of the Regional Provident Fund Commissioner (in short the 'Commissioner'). It was held that Section 16(1)(d) of the Employees Provident Funds Act, 1952 (hereinafter referred to as the 'Act') was G omitted from the statute by Act No.10 of 1998 with retrospective effect i.e. from 22.9.1997. In other words, it was held that the infancy protection shall not be available to the appellant factory after 22.9.1997.

2. The factual scenario lies into a very narrow compass. Appellant started production on 1.9.1995 and according to it, it was entitled to H

A benefit under Section 16(1)(d) of the Act from that day. From August, 1998 appellant started to comply with the provisions of the Act as the three year fledging period as envisaged under Section 16(1)(d) of the Act came to an end. On 26.3.1999 enquiry under Section 7A of the Act was initiated to secure the compliance of the Act from September, 1995 to
B July, 1998. By order dated 27.7.2000 the Commissioner recorded a specific finding that the company was a new unit and was eligible for exemption under Section 16(1)(d) of the Act but since it was effaced from the statue from 22.9.1997 the benefit was available till that date and not thereafter. The writ petition filed was dismissed by the learned Single
C Judge, so was the special appeal.

3. In support of the appeal learned counsel for the appellant submitted that the view of the High Court is untenable and even if retrospective effect was given the same was to not in any way affect the entitlement of the appellant.

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4. Learned counsel for the respondent on the other hand supported the orders of the Commissioner and the High Court.

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

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"16. Act not to apply to factories belonging to Government or local authority and also to infant factories.

This Act shall not apply to-

F (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 establishment.

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6. 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:

"(1) This Act shall not apply to any establishment until the expiry

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of three years from the date on which the establishment is, or has been set up. 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". B

7. 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:

"(1) This Act shall not apply: C

(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

(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. D

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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".

8. Section 16 was further amended by the Employees' Provident Funds and Miscellaneous (Amendment) Act, 1988 with effect from 1.8.1988, and 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: F

"(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 pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefit; or G

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A (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 any scheme or rule framed under that Act governing such benefits; or

B (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."

9. Thereafter, Section 16 was again amended by Employees' C 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.17/1997 promulgated on 22.9.1997 followed by Ordinance No.25/1997 dated 25.12.1997 and Ordinance No.8 of 1998 D dated 23.4.1998 followed by Act 10 of 1998.)

10. 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 were entitled to the protection regarding non-application of the Act for a period of 3 years from the date on which such establishment E 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.

F 11. The crucial question therefore is the effect of the amendment on the existing rights.

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

G "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 H

and liabilities under the repeated law is neither material nor decisive of the question." A

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

"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." B C D E

14. 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: F

"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 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 G H

A 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 B 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 C 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 D 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."

E 15. 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 F 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

G (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

H (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; B

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."

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

17. It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made D to have retrospective operation (See *Keshvan Madhavan Memon* v. *State of Bombay,* AIR (1951) SC 128). But the rule in general is not 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 E 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 a right in existence at the passing of the statute are not to be applied retrospectively in the absence of F 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 obligation or imposes a new duty, or attaches a new disability in respect of transactions G 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 H

A subordinate 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 B Parliament. (See *Union of India* v. *Raghubir 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)

18. In *The State of Jammu and Kashmir* v. *Shri Triloki Nath* C *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 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.

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19. The above position was highlighted by this court in *S.L. Srinivasa Jute Twine Mills (P) Ltd.* v. *Union of India and Anr.,* [2006] 2 SCC 740.

20. In view of the above position in law, the judgments of the E Commissioner and the High Court are indefensible and are set aside. The appellant shall be entitled to the protection for the period of three years starting from the date the establishment was set up irrespective of the repeal of the provision for such infancy protection.

F 21. Appeal is allowed. No costs.

B.B.B. Appeal allowed.