# IN THE HIGH COURT OF JHARKHAND AT RANCHI

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## L.P.A. No. 187 of 2023

Beldih Club Jamshedpur, P.O. Kadma and P.S. – Kadma, Jamshedpur, District – East Singhbhum, through its Honorary Secretary Amitava Baksi, aged about 60 years, resident of 7 Office Road, Northern Town, Bistupur, P.O. Bistupur and P.S. Bistupur, District – East Singhbhum.

… **Petitioner/Appellant**

**Versus**

1.The State of Jharkhand through the Secretary, Department of Labour, Government of Jharkhand, having its office at Nepal House, Doranda, P.O. & P.S. Doranda, District Ranchi.
2. The Employees' State Insurance Corporation through its Regional office, Jharkhand Namkom, P.O. Namkom and P.S. Namkom District Ranchi.
3. The Deputy Director, Employees State Insurance Corporation, Regional office Jharkhand, Namkom, P.O. Namkom and P.S. Namkom District Ranchi.
4. The Area Inspector, Employees' State Insurance Corporation, Jamshedpur at 39 Nawadih Basti Golmuri P.O. Golmuri and P.S. – Golmuri, District East Singbhum.

… **Respondents/Respondents**

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**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**
**HON'BLE MR. JUSTICE NAVNEET KUMAR**

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For the Appellant : Mr. Indrajit Sinha, Advocate.
For the Res-ESIC : Mr. Ashutosh Anand, Advocate
For the Res-State Mr. Suresh Kumar, SC (L&C)-II
Mr. Rajesh Kumar Singh, AC to SC (L&C)-II

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***C.A.V. on 03/10/2023*** ***Pronounced on 18/10/2023***
***Per Sujit Narayan Prasad, J.:***

**1.** The instant appeal, under clause 10 of the Letters Patent, is directed against judgment/order dated 02.02.2023 passed by learned Single Judge in W.P. (C) No. 3313 of 2008, whereby and whereunder

the writ petition has been disposed of declining to interfere with order dated 25.02.2008 passed by the Regional Director, Employees' State Insurance Corporation, (ESIC) Namkum by which the representation filed by the petitioner, pursuant to order passed by this Court in W.P. (C) No. 6101 of 2007 has been rejected holding that E.S.I Act, 1948 is applicable on the petitioner's establishment; and the demand notice dated 07.09.2007 issued by the ESIC for the recovery of its contribution for the period 01.09.2000 to 31.03.2007 for an amount of Rs. 17,35,556/- has been upheld to be legal and valid, however, to meet the ends of justice, the petitioner-club was directed to make the payment of liability in 12 equal monthly installments commencing from 15.03.2023.

**2.** Brief facts of the case, as per the pleading made in the writ petition, read as under:

**3.** The petitioner is a society registered under the Societies Act, 1860. The petitioner received a notice dated 20.09.2001 from the ESI Inspector asking the petitioner-club to produce the record register for the periods 01.10.1996 to August, 2001, to which the petitioner replied vide letter dated 26.10.2001 stating that all its employees and their family members are

provided medical facilities in Tata Main Hospital (TMH) and they are fully satisfied with the said facility. It is stated that the petitioner-club had made an arrangement with M/s Tata Steel Limited by which the medical benefits, as is being provided to the employees of M/s Tata Steel Limited in Tata Main Hospital, is also available to the employees of the petitioner-society. The medical and other facilities including insurance cover benefits and other sickness benefits, as is prevalent under ESI Act, is also provided by the petitioner-society which is same and similar as provided by M/s Tata Steel Limited.

**4.** Thereafter, another notice dated 30.10.2001 was served by Insurance Inspector stating the petitioner club is covered under Section 2(12) of the ESI Act and as such all the workers/employees drawing wages below the prescribed limits are covered under the ESI Act and merely stating that medical benefits are provided in TMH does not exempt the petitioner-club, from the purview of ESI Act.

**5.** Again on 31.10.2001, a letter was received from the Deputy Director, ESIC stating that the petitioner-club is covered under ESIC Act since 01.09.2000 but is not paying ESI contributions and neither records are being produced, which is in violation of Sections

40 and 26 of the ESI Act, to which, the petitioner replied vide letter dated 24.11.2001 stating that it is not an establishment as such it is not covered under the E.S.I. Act. It is the case of the petitioner-club that there was no further correspondence for a long period of time but all of a sudden on 25.11.2005 a notice was served upon the petitioner from the authorities of ESIC regarding non-submission of contributions by the petitioner-Club from 31.03.2000 to 30.09.2005.

**6.** Thereafter, on 07.05.2007, a demand notice was issued by the Deputy Director demanding contributions of Rs. 17,66,301 for the periods 01.09.2000 to 30.04.2007 and the petitioner was also asked to show cause within 15 days as to why the demand be not recovered. Pursuant thereto, the petitioner appeared through its Advocate and submitted its reply indicating that the petitioner club was not covered under the ESI Act. But again on 07.09.2007, notice was issued by the Assistant Director, ESI asking the petitioner club to pay the contribution of Rs. 17,35,556/- for the period from 01.09.2000 to 31.03.2007. Pursuant thereto, the petitioner represented before the authority concerned stating that the petitioner club has incurred an expense of Rs. 42 lakh for providing medical facilities

to its employees for the period in question and apart from that the petitioner club is not covered under the purview of the Act but it did not evoke any response.

**7.** Aggrieved thereof, the petitioner approached this Court by filing writ petition being W.P. (C) No. 6101 of 2007, which was disposed of vide order dated 20.12.2007 granting liberty to the petitioner to raise its grievance and claim before the Regional Director, Employees' State Insurance Corporation, Jharkhand, who shall determine the issues involved in the case and pass appropriate order and further the operation of impugned notice and demand was kept in abeyance for a period of 10 weeks.

**8.** With the liberty aforesaid, the petitioner represented before the Regional Director, Employees' State Insurance Corporation, Jharkhand, who rejected the petitioner's representation vide order dated 25.02.2008.

**9.** Aggrieved with order dated 25.02.2008 passed by Regional Director, Employees' State Insurance Corporation, Jharkhand, the petitioner again approached this Court by filing W.P.(C) No. 3313 of 2008, which was disposed of vide order dated 02.02.2023 declining to interfere with order dated 25.02.2008 passed by the Regional Director,

Employees' State Insurance Corporation, Namkum by which representation filed by the petitioner, pursuant to order passed by this Court in W.P. (C) No. 6101 of 2007, has been rejected and ESI Act has been made applicable on the petitioner's establishment/club and the demand notice dated 07.09.2007 issued by the ESIC for the recovery of its contribution for the period 01.09.2000 to 31.03.2007 for an amount of Rs. 17,35,556/- has been upheld to be legal and valid, against which, the instant *intra-court* appeal has been preferred.

**10.** It is evident from the aforesaid factual aspect made in the writ petition that the appellant-writ petitioner claims to be a society registered under the Societies Registration Act, 1860. A notice dated 20.09.2001 issued by the ESI Inspector was served upon the petitioner to produce the record register for the periods 01.10.1996 to August, 2001, to which the petitioner replied vide letter dated 26.10.2001 stating that all its employees and their family members are provided medical facilities in Tata Main Hospital (TMH). Thereafter, another notice dated 30.10.2001 was served upon the petitioner club stating that the petitioner is covered under Section 2(12) of the ESI Act and as such all the workers/employees drawing

wages below the prescribed limits are covered under the ESI Act and merely stating that medical benefits is provided in TMH does not exempt the petitioner-club. Therefore, the petitioner was directed to produce the records. Again on 31.10.2001, a letter was sent by Deputy Director, ESIC stating that the petitioner-club is covered under the ESI Act since 01.09.2000 the petitioner-club neither is paying ESI contributions nor records are being produced, which is in violation of Sections 40 and 26 of the ESI Act, to which, the petitioner replied vide letter dated 24.11.2001 stating that it is not an establishment as such it is not covered under the ESI Act.

**11.** Finally on 07.09.2007, notice was issued by the Assistant Director, ESI asking the petitioner club to pay the contribution of Rs. 17,35,556/- for the period 01.09.2000 to 31.03.2007. Pursuant thereto, the petitioner represented before the authority concerned but it did not evoke any response.

**12.** Aggrieved thereof, the petitioner approached this Court by filing writ petition being W.P. (C) No. 6101 of 2007, which was disposed of vide order dated 20.12.2007 granting liberty to the petitioner to raise its grievance and claim before the Regional Director, Employees' State Insurance Corporation, Jharkhand,

who shall determine the issues involved in the case and pass appropriate order.

**13.** Pursuant thereto, the petitioner represented before the Regional Director, Employees' State Insurance Corporation, Jharkhand, who rejected the petitioner's representation vide order dated 25.02.2008, which was challenged by the petitioner by filing W.P.(C) No. 3313 of 2008.

**14.** In the said writ petition, the petitioner had also filed one Interlocutory Application being I.A. No. 455 of 2010 for stay of demand made by the Employees' State Insurance Corporation for the period 01.09.2000 to 31.03.2007 and April, 2007 to August, 2009. The said Interlocutory Application was disposed of vide order dated 03.05.2010 granting stay of impugned demand notice till the disposal of the writ petition.

**15.** Before the writ Court, though learned counsel for the petitioner-club has conceded that the issue involved in the present case is squarely covered by the judgment rendered by Hon'ble Apex Court in the case of ***Bangalore Turf Club Limited Vs. Regional Director, Employees' State Insurance Corporation [(2014) 9 SCC 657*** wherein it has been held that for purposes of ESI Act, any establishment where a

systematic economic or commercial activity is carried on in the premises will serve the purposes of the ESI Act but relying upon the judgment rendered in ***Employees' State Insurance Corp. Vs. Distilleries & Chemical Mazdoor Union & Ors [(2006) 6 SCC 604]*** and ***Employees' State Insurance Corpn. & Ors. Vs. Jardine Henderson Staff Association & Ors [(2006) 6 SCC 581]*** submission has been made that the equities between the parties be balanced and the date of liability upon the petitioner be fixed from the date of final judgment.

**16.** On the other hand, learned counsel for the respondents-ESIC has submitted that so far as coverage and liability under the Employees' State Insurance Corporation Act is concerned, the case is fully covered by virtue of judgment rendered in the case of ***Bangalore Turf Club Limited Vs. Regional Director, Employees' State Insurance Corporation (supra),*** as such the impugned demand as also the order passed by the ESI Authority require no interference by this Court.

**17.** The learned Single Judge considering the fact that the issue has now been decided regarding club being covered under the ESIC Act, on the basis of

argument advanced by learned counsel for the parties, framed following issues to answer:

> **i.** ***Whether the petitioner is entitled for any direction to apply this judgement prospectively i.e giving coverage under Employees' State Insurance Corporation Act with effect from the date of passing of this judgement, on account of the so-called balancing of equities between the parties;***
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> ***ii. Whether the respondent authority was justified in extending the coverage of the aforesaid Act upon the petitioner from an earlier date i.e 01.10.1996 instead of coverage from 01.09.2000 (the date from which assessment was made);***
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> ***iii. Whether the petitioner is entitled for any relief on the point of interest on the payable amount;***
>
> ***iv. Whether the petitioner is entitled for fixation of instalments in making the payment of dues.***

**18.** The learned Single Judge, after considering the averments made by the parties and judgment relied upon, has held that the petitioner is not entitled for any direction/relief and the judgment relied upon by the petitioner is not applied in the case at hand, on account of so-called balancing of equities between the parties and further the petitioner is also not entitled to any remission or relaxation on the point of payment of interest. Rather the petitioner is bound by the obligations fastened upon the petitioner as per

the mandate of the aforesaid Act. Accordingly, decided issue nos. I and III were decided against the petitioner-club.

**19.** So far, issue no. (ii) is concerned, the learned Single Judge has held that the petitioner is entitled to the relief only to the extent that the coverage of the petitioner would be from 01.09.2000 onwards and not from 01.10.1996. The impugned order to the extent it fixes the date of coverage from 01.10.1996 was set aside and it has been held that the coverage would be from 01.09.2000 only. Accordingly, issue no (ii) was decided in favour of the petitioner-club.

**20.** The learned Single Judge further considering the fact that the matter has remained pending since 2008 and the petitioner has been enjoying the interim relief and as such the interim relief has to be put to a logical end, held that to meet the ends of justice the petitioner-club has to make the payment of liability involved in the present case i.e., principal and interest, in 12 equal monthly installments commencing from March, 2023 with a rider that in case of even one default from the side of the petitioner, the entire amount will become realizable and it will be open to the respondents to take all further steps under the provisions of the Act. The first

installment will commence from 15.03.2023. Accordingly, the issue no. (iv) was decided in favour of the petitioner-club.

**21.** Resultantly, the writ petition was disposed of vide order dated 02.02.2023, which is the subject matter of instant *intra-court* appeal.

**22.** Mr. Indrajit Sinha, learned counsel for the petitioner-appellant has submitted that the appellant is not liable to make payment of dues under the ESI head since the very issue of club as to whether it comes under the fold of ESI Act or not was under cloud and the same was finally adjudicated in the year 2014, after pronouncement of judgment by the larger Bench of Hon'ble Apex Court in ***Bangalore Turf Club Limited Vs. Regional Director, Employees' State Insurance Corporation (supra)*** and hence any liability prior to 2014 cannot be cast upon the appellant-club on the ground that if the very issue has been decided in the year 2014 then the demand under the ESI Act is required to be raised only after adjudication of the issue i.e., after 2014 but the learned Single Judge has not appreciated the aforesaid fact while deciding the issue casting liability upon the writ petitioner-club w.e.f. 01.09.2000, the

day when the very applicability of Act, 1948 was in cloud.

**23.** Learned counsel for the appellant has submitted that the learned Single Judge since has failed to take into consideration the issue of prospective overruling and the balance of equity, therefore, the order passed by learned Single Judge is to be quashed and set aside on this ground.

**24.** Learned counsel for the appellant has further submitted that not only the liability has been casted from 01.09.2000 but the said liability is with the statutory interest and hence it is nothing but only burdening the petitioner-club even though no fault lies on the part of it rather the matter was pending before the Court of law but the learned Single Judge without considering these aspects of the matter has passed the impugned order, which is not sustainable in the eye of law.

**25.** *Per contra*, Mr. Ashutosh Anand, learned counsel appearing for the respondent-ESIC has defended the order passed by learned Single Judge by taking the ground that once the Act, 1948 has been implemented w.e.f. 19th April, 1948 wherein under the definitions part, as under Section 2 thereof, it has been provided that the club will come under the fold

of establishment within the meaning of 'principal employer', as has been defined under Section 2 (17) of the Act, 1948 and as per the said definition the club will come under the fold of employer and in that view of the matter it is the bounden duty of the club to deposit the amount under the ESI head.

**26.** It has been contended that merely because a dispute has been raised as to whether club will come under the fold of ESI Act or not that does mean that the employer concerned, the establishment, will claim waiver due to pending litigation. The contention has been raised that the issue of club to be under the fold of ESI Act has finally been adjudicated by Hon'ble Apex Court in the case of ***Bangalore Turf Club Limited Vs. Regional Director, Employees' State Insurance Corporation (Supra)*** and as such the liability which is to be borne by the establishment, the club herein, is required to be borne based upon the applicability of Act.

**27.** The learned counsel for the respondent-ESIC has further submitted that the learned Single Judge, after taking into consideration the fact that the issue of club being under the fold of ESI Act has already been decided and hence demand notice dated 07.09.2007 which was issued by the ESIC for the recovery of

contribution for the period 01.09.2000 to 31.03.2007 for an amount of Rs. 17,35,556/- has been upheld to be legal and valid.

**28.** The learned Single Judge while doing so has taken into consideration the very object and intent of the Act, 1948, which is for the purpose of extending beneficial measures to the employees concerned who are coming under fold of ESI Act, 1948.

**29.** Further, so far as the issue of interest, as has been raised on behalf of appellant, is concerned the same also suffers from no error as the appellant ought to have deposited the said amount along with its own share so as to take the beneficial measures as per the object of the Act, 1948 but admittedly, the appellant has not deducted the share/subscription of the one or the other employees as also its share for the purpose of deposit of the said amount under the corpus of the Corporation so as to extend the benefit to the employees who are covered under the ESI Act rather the appellant has kept the said amount with it and utilize it fairly for a long period on the ground of pending litigation as such it is not available for the corporation to take this ground and even otherwise it is the statutory obligation which the appellant-club has to perform.

**30.** Learned counsel for the respondent-ESIC on the aforesaid ground has submitted that the impugned order passed by the learned Single Judge suffers from no error and requires no interference by this Court.

**31.** This Court has heard learned counsel for the parties, perused the documents available on record as also the finding recorded by learned Single Judge in the impugned order.

**32.** This Court, before proceeding to examine the legality and propriety of the impugned order, deems it fit and proper to refer the very object and intent of the Employees' State Insurance Act, 1948 for which it was enacted on 19th April, 1948.

**33.** The basic intent and object of the Act, 1948 is to introduce a health insurance for industrial worker for the purpose of providing certain benefit in the event of sickness, maternity and employment injury to all factories, including factories belonging to the Government other than seasonal factories. It was decided that there will be insurance fund which will be mainly derived from the contribution from employers and workmen. The contributions payable in respect of each employees will be based on the average wages which shall be in first instance payable by the employer. The employer will be entitled to

recover the workman share from the wages of the workman concerned. The workmen whose earnings do not exceed ten annas a day will be totally exempted from payment of any share of contribution, the entire contribution on account of such workman being made by employer. The insured workmen have been held to be entitled following benefits:

(a).Sickness cash benefits;
(b).Maternity benefits;
(c).disablement and dependent benefits.

**34.** Further, the intent and purport of the Act, 1948 is evident from its preamble. For ready reference, the Preamble of the ESI Act, 1948 is quoted as under:

> *"An Act to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto."*

**35.** The Act, 1948 has been amended from time to time considering the requirement of Industrial employees. The first amendment was made in the year 1951 and the second amendment was made in the year 1966. Again the Act was amended in the year 1975 for the purpose of increase in wage limit and so in the year 1984 and thereafter in the year 2010.

**36.** It appears from the very object and intent of the Act, 1948 that it is for the purpose of extending various beneficial measures to the industrial workers

and from time and time, depending upon the requirement, the amendment has also been carried out under the Act, 1948 to achieve the object of the Act.

**37.** It is thus evident that the very object of the Act is by way of beneficial piece of legislation to provide social security measures to the industrial workers.

**38.** The law is well settled that the primary rule of interpretation of statute may be the literal rule, however, in the case of beneficial legislations and legislations enacted for the welfare of the employees, workmen, the Hon'ble Apex Court has laid down the proposition that the liberal rule of interpretation is to ensure that the benefits extend to those workers who need to be covered based on the intention of the legislature.

**39.** Reference in this regard be made to the judgment rendered by Hon'ble Apex Court in the judgment rendered in ***Regional Director, ESI Corporation & Anr. Vs. Francis De Costa & Anr. [ 1993 Supp (4) SCC 100]*** wherein it has been held that to prevent injustice or to promote justice and to effectuate the object and purpose of the welfare legislation broad interpretation should be given even if it requires a departure from literal construction. For

ready reference, paragraph 5 and 6 of the judgment is quoted as under:

> ***"5.*** *The Act seeks to cover sickness, maternity, employment injury, occupational disease, etc. The Act is a social security legislation. It is settled law that to prevent injustice or to promote justice and to effectuate the object and purpose of the welfare legislation, broad interpretation should be given, even if it requires a departure from literal construction. The court must seek light from loadstar Articles 38 and 39 and the economic and social justice envisaged in the Preamble of the Constitution which would enliven meaningful right to life of the worker under Article 21. The State is enjoined under Article 39(e) to protect the health of the workers, under Article 41 to secure sickness and disablement benefits and Article 43 accords decent standard of life. Right to medical and disability benefits are fundamental human rights under Article 25(2) of Universal Declaration of Human Rights and Article 7(b) of International Convention on Economic, Social and Cultural Rights. Right to health, a fundamental human right stands enshrined in socio-economic justice of our Constitution and the Universal Declaration of Human Rights. Concomitantly right to medical benefit to a workman is his/her fundamental right. The Act seeks to succour the maintenance of health of an insured workman. The interpretative endeavour should be to effectuate the above. Right to medical benefit is, thus, a fundamental right to the workman.*
>
> ***6.*** *Moreover, even in the realm of interpretation of Statutes, Rule of Law is a dynamic concept of expansion and fulfilment for which the interpretation would be so given as to subserve the social and economic justice envisioned in the Constitution. Legislation is a conscious attempt, as a social direction, in the process of change. The fusion between the law and social change would be effected only when law is introspected in the context of ordinary social life. Life of the law has not been logic but*

> *has been experience. It is a means to serve social purpose and felt necessities of the people. In times of stress, disability, injury, etc. the workman needs statutory protection and assistance. The Act fastens in an insured employment, statutory obligation on the employer and the employee to contribute in the prescribed proportion and manner towards the welfare fund constituted under the Act (Sections 38 to 51 of the Act) to provide sustenance to the workmen in their hours of need, particularly when they become economically inactive because of a cause attributable to their employment or disability or death occurred while in employment. The fact that the employee contributed to the fund out of his/her hard-earned wages cannot but have a vital bearing in adjudicating whether the injury or occupational disease suffered/contracted by an employee is an employment injury. The liability is based neither on any contract nor upon any act or omission by the employer but upon the existence of the relationship which employer bears to the employment during the course of which the employee had been injured. The Act supplants the action at law, based not upon the fault but as an aspect of social welfare, to rehabilitate a physically and economically handicapped workman who is adversely affected by sickness, injury or livelihood of dependents by death of a workman."*

**40.** Further, the Hon'ble Apex Court in the case of ***Transport Corporation of India Vs. Employees' State Insurance Corp. & Anr. [(2000) 1 SCC 332]*** taking note of judgment rendered in ***Buckingham and Carnatic Co. Ltd. v. Venkatiah*** has been pleased to hold at paragraph 27 and 28 as under:

> ***"27.*** *Before parting with the discussion on this point, it is necessary to keep in view the salient fact that the Act is a beneficial piece of legislation intended to provide benefits to employees in case of sickness, maternity, employment*

*injury and for certain other matters in relation thereto. It is enacted with a view to ensuring social welfare and for providing safe insurance cover to employees who were likely to suffer from various physical illnesses during the course of their employment. Such a beneficial piece of legislation has to be construed in its correct perspective so as to fructify the legislative intention underlying its enactment. When two views are possible on its applicability to a given set of employees, that view which furthers the legislative intention should be preferred to the one which would frustrate it. It is difficult to appreciate how it could be contended by the appellant with any emphasis that an employee working at its head office in Secunderabad would be governed by the beneficial sweep of the Act as admittedly the head office employees are covered by the Act, but once such an employee, whether working on the administrative side or connected with the actual transportation of goods, if transferred to the Bombay branch even with his consent, cannot be governed by the beneficial provisions of the Act.*

***28.*** *Dealing with this very Act, a three-Judge Bench of this Court in the case of* ***Buckingham and Carnatic Co. Ltd. v. Venkatiah*** *[AIR 1964 SC 1272 : (1964) 4 SCR 265] speaking through Gajendragadkar, J., (as he then was) held, accepting the contention of the learned counsel, Mr Dolia that:*

> *"It is a piece of social legislation intended to confer specified benefits on workmen to whom it applies, and so, it would be inappropriate to attempt to construe the relevant provisions in a technical or a narrow sense. This position cannot be disputed. But in dealing with the plea raised by Mr Dolia that the section should be liberally construed, we cannot overlook the fact that the liberal construction must ultimately flow from the words used in the section. If the words used in the section are capable of two constructions one of which is shown patently to assist the achievement of the object of the Act, courts*

> *would be justified in preferring that construction to the other which may not be able to further the object of the Act."*

*As we have already seen earlier, the express phraseology of Section 2(9) of the Act defining an "employee" read with Section 38 of the Act clearly projects the legislative intention of spreading the beneficial network of the Act sufficiently wide for covering all employees working for the main establishment covered by the Act even though actually stationed at different branches outside the State wherein the head office of the establishment is located. In any case, the said construction can reasonably flow from the aforesaid statutory provisions. If that is so, any other technical or narrower construction, even if permissible, cannot be countenanced, as that would frustrate the legislative intent underlying the enactment of such a beneficial social security scheme."*

**41.** The Hon'ble Apex Court in the judgment rendered in ***Bombay Anand Bhavan Restaurant Vs. Deputy Director, Employees' State Insurance Corporation & Anr. [(2009) 9 SCC 61],*** at paragraph 20 and 21 has observed as under:

***20.*** *The Employees' State Insurance Act is a beneficial legislation. The main purpose of the enactment as the Preamble suggests, is to provide for certain benefits to employees of a factory in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The Employees' State Insurance Act is a social security legislation and the canons of interpreting a social legislation are different from the canons of interpretation of taxation law. The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in*

*placing this legislation on the statute book. The Act, therefore, must receive a liberal construction so as to promote its objects.*

***21.*** *This Court (sic The High Court), in ESI Corpn. v. Jayalakshmi Cotton and Oil Products (P) Ltd. [1980 Lab IC 1078 (A.P.)] has observed that the ESI Act is a social security legislation and was enacted to ameliorate the various risks and contingencies which the employees face while working in an establishment or factory. It is thus intended to promote the general welfare of the workers and, as such, is to be liberally interpreted.*

**42.** The larger Bench of Hon'ble Apex Court taking into consideration the judgment rendered in ***Regional Director, ESI Corporation & Anr. Vs. Francis De Costa & Anr. (supra); Transport Corporation of India Vs. Employees' State Insurance Corp. & Anr. (supra)*** and ***Bombay Anand Bhavan Restaurant Vs. Deputy Director, Employees' State Insurance Corporation & Anr.,*** as also the intent and purport of the ESI Act, 1948, in the case of ***Bangalore Turf Club Limited Vs. Regional Director, Employees' State Insurance Corporation (supra)*** on the issue of beneficial piece of legislation, at paragraph 16 and 17, has held as under:

***"Discussion***

***16.*** *The primary rule of interpretation of statutes may be the literal rule, however, in the case of beneficial legislations and legislations enacted for the welfare*

*of employees, workmen, this Court has on numerous occasions adopted the liberal rule of interpretation to ensure that the benefits extend to those workers who need to be covered based on the intention of the legislature.*

***17.*** *The ESI Act is a welfare legislation enacted by the Central Government as a consequence of the urgent need for a scheme of health insurance for workers. It would be beneficial to reproduce the Preamble of the ESI Act in this context. It is as under:*

> *"An Act to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto"*

**43.** Recently, the Hon'ble Apex Court in the case of ***The ESI Corporation Vs. M/s Radhika Theatre [2022 LiveLaw (SC) 53]*** taking note of all judgments, as referred hereinabove, while taking into consideration the judgments on the issue of very purport of Act, 1948 has refused to interfere with the demand notice issued by the Corporation by discarding the plea of the employer wherein the High Court has quashed the demand notice 31.08.1994, and has observed that Sub-section (6) of Section 1 therefore, shall be applicable even with respect to those establishments, established prior to 31.03.1989 / 20.10.1989 and the ESI Act shall be applicable irrespective of the number of persons employed or notwithstanding that the number of persons

employed at any time falls below the limit specified by or under the ESI Act.

**44.** For ready reference, paragraph 7 of the judgment is quoted as under:

> *"7.Prior to insertion of Sub-section (6) of Section 1 of the ESI Act, only those establishments/factories engaging more than 20 employees were governed by the ESI Act. However, thereafter, Sub-section (6) of Section 1 of the ESI Act has been inserted on 20.10.1989, and after 20.10.1989 there is a radical change and under the amended provision a factory or establishment to which ESI Act applies would be governed by the ESI Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under the ESI Act. Therefore, on and after 20.10.1989, irrespective of number of persons employed a factory or an establishment shall be governed by the ESI Act. Therefore, for the demand notices for the period after 20.10.1989, there shall be liability of every factory or establishment irrespective of the number of persons employed therein. With respect to such a notice it cannot be said that amended Section 1 inserting Subsection (6) is applied retrospectively as observed and held by the High Court. Only in case of demand notice for the period prior to inserting Sub-section (6) of Section 1 of the Act, it can be said that the same provision has been applied retrospectively. Therefore, the High Court has committed a very serious error in observing and holding that even for the demand notices for the period subsequent 20.10.1989 i.e., subsequent to inserting Sub-section (6) of Section 1 the said provision is applied retrospectively and the High Court has erred in allowing the appeal and setting aside the demand notices even for the period subsequent to 20.10.1989. Sub-section (6) of Section 1 therefore, shall be applicable even with respect to those establishments, established prior to 31.03.1989 / 20.10.1989 and the ESI*

> *Act shall be applicable irrespective of the number of persons employed or notwithstanding that the number of persons employed at any time falls below the limit specified by or under the ESI Act."*

**45.** Thus, it is evident from the aforesaid judicial pronouncements that the ESI Act is a welfare piece of legislation enacted by the Central Government as a consequence of the Scheme of health and disablement during employment to workers.

**46.** Now coming to the facts of the instant case. The appellant-club has been established and carrying out its activities by engaging the employees and by virtue of that club has been considered to be under the purview of Act, 1948.

**47.** The authority under the Act, 1948 has issued several notices for deposit of the amount under the corpus considering the club to be under the fold of Act, 1948. The matter came before this Court by filing W.P.(C) No. 3313 of 2008, in which, an *ad interim* order was passed by the learned Single Judge on 03.05.2010 staying the operation of impugned demand notice for the period 01.09.2000 to 31.03.2007 and April, 2007 to August, 2009.

**48.** During pendency of the writ petition, the Hon'ble Apex Court has decided the issue in the case of ***Bangalore Turf Club Limited Vs. Regional***

***Director, Employees' State Insurance Corporation (supra)*** that the club will also come under the fold of Act, 1948.

**49.** The learned Single Judge, taking into consideration the aforesaid adjudication, has declined to interfere with the impugned demand notice. However, taking into consideration the submission advanced by learned counsel for the petitioner-club, the petitioner-club was directed to pay the liability involved in the present case, i.e, the principal and the interest, in 12 equal monthly installments commencing from March, 2023 with a rider that in case of even one default from the side of the petitioner, the entire amount will become realizable and it will be open to the respondents to take all further steps under the provisions of the Act.

**50.** The first installment will commence from 15.03.2023. Against the order passed by the learned Single Judge the present intra-court appeal has been preferred by the respondents-ESIC.

**51.** The ground has been taken that there cannot be liability from 01.09.2000 to 31.03.2007 since the very issue as to club is coming under the fold of Act, 1948 or not has finally been settled by the larger Bench of Hon'ble Supreme Court in the case of ***Bangalore***

***Turf Club Limited Vs. Regional Director, Employees' State Insurance Corporation (supra)*** on 31.07.2014. It has further been submitted that so long as the litigation was pending, there cannot be any liability otherwise the said liability will be said to be retrospective in nature.

**52.** The other ground has been taken that since the employees of the petitioner-club have not availed any medical/insurance benefits from the respondents-ESIC and further during the relevant period of time, the employees of petitioner-club were given medical benefit with collaboration of Tata Main Hospital, on which, the petitioner-club has to incur a huge amount of money, as such submission has been for that period petitioner-club may be exempted from the liability.

**53.** This Court, in view of discussion made hereinabove coupled with judicial pronouncements that the Act, 1948 since is a welfare piece of legislation, as such contribution is irrespective of the fact whether the employee get or do not get the said benefit requires to refer the judgment passed by the Hon'ble Apex Court in ***Regional Director, E.S.I., Corporation Vs. Kerala State Drugs & Pharmaceuticals Ltd. & Ors [1995 Supp (3) SCC***

***148]*** wherein at paragraph 2 and 3 it has been held as under:

> ***"2.*** *We are afraid that the two courts misconceived both the object of the Act and the purpose of the insurance scheme under it. The contribution which is levied on the employer in respect of the employees engaged by him directly or through another agency is for the benefit of all workmen in general who are covered by the Act. The contribution is irrespective of the fact whether the employees get or do not get the said benefit. That is also evident from the definition of "insured person" given in Section 2(14) of the Act which reads as follows:*
>
> *"2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,—*
>
> *****
>
> *(14) 'insured person' means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act."*
>
> ***3.*** *There is thus no quid pro quo between the persons insured and the benefit available under the Act. As regards the finding that the workmen were unidentifiable, what is forgotten is that under the Act, once an establishment comes to be covered by the Act, the employer becomes liable to pay the contribution in respect of the employees in his employment directly or indirectly. The contribution which had become payable for the relevant period has to be paid even if the employees concerned are no longer in employment. Whether the employees are unidentifiable today or not is, therefore, irrelevant so long as the contribution was liable to be paid on their behalf, when they were in employment."*

**54.** Further the Hon'ble Apex Court in the judgment rendered by Hon'ble Apex Court in the case of

***Employees' State Insurance Corpn. Vs. Harrison Pvt. Ltd [(1993) 4 SCC 361]*** at paragraph 3 has held as under:

> ***"3.*** *We are afraid that the ground given by both the courts is not justifiable.* ***Under the Act, it was the duty of the respondent-Company to get the necessary details of the workmen employed by the contractor at the commencement of the contract since the primary responsibility of payment of the contribution is on the principal employer.*** *On the admitted fact that the respondent-Company had engaged the contractor to execute the work,* ***it was also the duty of the respondent-Company to*** *get the temporary identity certificates issued to the workmen as per the provisions of Regulations 12, 14 and 15 of the Employees' State Insurance (General) Regulations, 1950 and to* ***pay the contribution as required by Section 40 of the Act****. Since the respondent-Company failed in its obligation, it cannot be heard to say that the workers are unidentifiable. It was within the exclusive knowledge of the respondent-Company as to how many workers were employed by its contractor. If the respondent-Company failed to get the details of the workmen employed by the contractor, it has only itself to thank for its default. Since the workmen in fact were engaged by the contractor to execute the work in question and the respondent-Company had failed to pay the contribution, the appellant-Corporation was entitled to demand the contribution although both the contribution period and the corresponding benefit period had expired.* ***The scheme under the Act for insuring the workmen for conferring on them benefits in case of accident, disablement, sickness, maternity etc. is distinct from the contract of insurance in general.*** *Under the Act, the scheme is more akin to group insurance. The contribution paid entitles the*

*workman insured to the benefit under the Act. However, he does not get any part of the contribution back if during the benefit period, he does not qualify for any of the benefits.* ***The contribution made by him and by his employer is credited to the insurance fund created under the Act and it becomes available for others or for himself, during other benefit periods, if he continues in employment.*** *What is more, there is no relation between contribution made and the benefit availed of. The contribution is uniform for all workmen and is a percentage of the wages earned by them. It has no relation to the risks against which the workman stands statutorily insured. It is for this reason that* ***the Act envisages automatic obligation to pay the contribution once the factory or the establishment is covered by the Act, and the obligation to pay the contribution commences from the date of the application of the Act to such factory or establishment****. The obligation ceases only when the Act ceases to apply to the factory/establishment. The obligation to make contribution does not depend upon whether the particular employee or employees cease to be employee/employees after the contribution period and the benefit period expire.* ***(Emphasis supplied)***

**55.** The Hon'ble Court in the case of ***Gasket Radiators Pvt. Ltd vs. Employees' State Insurance Corporation & Anr. [(1985) 2 SCC 68],*** has held that the payment of contribution by an employer towards premium of an employee's compulsory insurance under the Employees' State Insurance Act falls directly within Entries 23 and 24 of List III and further the liability imposed is neither a tax nor a fee.

**56.** For ready reference, paragraph 6 and 7 of the judgment is quoted as under:

> ***"6.*** *We are afraid that the very approach of the appellant to the problem at issue suffers from a basic defect. The appellant's argument proceeds on the fundamental misconception that the payment of contribution directed to be made by the employer under the Employees' State Insurance Act or other similar payment or benefit under various other social welfare legislations must either be labelled as a tax or a fee in order to attain legitimacy or not at all. The idea that such payment, contribution or whatever name is given to it should be so pigeon-holed and fitted in stems from a misunderstanding of the scheme of our Constitution in regard to social welfare legislation. Apart from the preamble which promises to secure to all its citizens, "justice, social, economic and political", the State is enjoined by the Directive Principles of State Policy to secure a social order for the promotion of the welfare of the people. In particular Articles 41, 42 and 43 enjoin the State to make effective provision for securing the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of any undeserved want, to make provision for securing just and humane conditions of work and maternity relief and to secure by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. It is in pursuance of these Directive Principles that we find Entries 23 and 24 in List III of the Seventh Schedule of Constitution. Both Parliament and the Legislature of any State, subject to conditions with which we are*

*not concerned, have power to make laws with respect to any of the matters enumerated in List III. It is pursuant to the power entrusted in respect of Entries 23 and 24 of List III that Parliament has enacted the Employees' State Insurance Act. In our understanding, Entries 23 and 24 of List III, of their own force, empower Parliament or the Legislature of a State to direct the payment by an employer of contributions of the nature of those contemplated by the Employees' State Insurance Act for the benefit of the employees. These contributions or for example contributions to provident funds or payments of other benefits to workers are not required to be and cannot be labelled as taxes or fees for the sole and simple reason that they are neither taxes nor fees. List I and List II contain several entries in respect of which taxes may be levied by Parliament, by the Legislature of any State and by both. Entry 97 is a residuary clause which enables Parliament to legislate in respect of any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists. Entry 96 of List I enables Parliament to levy fee in respect of any of the matters in that list, but not including fee taken in any court. Similarly Entry 66 of List II enables the Legislature of a State to levy fee in respect of the matters in that list, but not including fees taken in any court. Again Entry 47 of List III enables Parliament and the Legislature of a State to levy fees in respect of any of the matters in that list but not including fees in any court. The payment of contribution by an employer towards the premium (what else is it?) of an employee's compulsory insurance under the Employees' State Insurance Act falls directly within Entries 23 and 24 of List III and it is wholly unnecessary to seek justification for it by recourse to Entry 97 of List I or Entry 47 of List III in any circumlocutous fashion. We see no reason*

*to brand or stamp the contribution as a tax or fee in order to seek to legitimise it. Legitimation need not be sought fictionally from Entry 97 of List I or Entry 47 of List III when legitimation is directly derived for the charge from Entries 23 and 24 of List III.*

**7.** *Even if the charge is to be construed as a fee as the High Court has done, it appears to us to be justifiable on that basis too. It is not disputed and indeed it is not capable of any controversy that services and benefits are indeed meant to be and are bound to be conferred on the employees and through them on the employer, in due course, when the scheme becomes fully operative in all areas. For a start the scheme is confined to a few areas and though special contribution is levied from all employers wherever they be, in the case of employers who straightaway receive the benefits of the insurance scheme, their rate of contribution is higher while in the case of employers, who do not yet receive the benefits of the scheme, their rate of contribution is lower. So far as the latter are concerned, the scheme is analogous to a deferred insurance policy which parents often take out on the lives of their children, but which are to be effective only from a future date after the children attain a certain age, though premium is liable to be paid right from the start. Merely because the benefits to be received are postponed, it cannot be said that there is no quid pro quo. It is true that ordinarily a return in presenti is generally present when fee is levied, but simultaneity or contemporaneity of payment and benefit is not the most vital or crucial test to determine whether a levy is a fee or not. In fact, it may often happen that the rendering of a service or the conferment of a benefit may only follow after the consolidation of a fund from the fee levied. Hospitals, for instance, cannot be built in a day nor medical facilities provided right from the*

*day of the commencement of the scheme. It is only after a sufficient nucleus is available that one may reasonably expect a compensating return. The question of how soon a return may be expected or ought to be given must necessarily depend on the nature of the services required to be performed and benefits required to be conferred. In K.C. Sarma v. Regional Director, E.S.I. Corporation [AIR 1962 Assam 120 : (1962-63) 23 FJR 511] it was observed:*

*"... it appears that the employers' special contribution is not a tax but a fee. This contribution goes to a fund known as the Employees' State Insurance Fund which is to be utilised for the benefits to be given to the employees under the Act. The cost of these benefits will not be met from the general revenues of the State, but will be borne entirely from the aforesaid fund only . . . the employers' contribution under the Act constitutes only a fee and not a tax.... The Government cannot go on levying employers' contribution under Section 73-A of the Act without giving a service in return. But from this it does not follow that the service must be given as soon as the contribution is made. The object of the Act is that the benefits which it provides should become available to the employees in all factories throughout India (except Jammu and Kashmir) as soon as circumstances make it practicable. There are various steps that the Government have to take before such benefits can be given to employees. Statutory bodies have to be set up, various officers have to be appointed and arrangements have to be made for providing medical help. All these require time and money and in some areas the time required may be more than in other areas. Chapter V-A is for meeting the needs of the transitory period. When the whole Act is brought into force in the whole of India (excluding*

> *Jammu and Kashmir), it would not be necessary to retain this Chapter. Then all contributions will be made under Chapter IV. It may be noted that Chapter V-A was inserted, as pointed out above, by an Amending Act only in 1951. The object of the amendment was to make an equitable distribution of contributions by all employers. It was not considered fair that only employers of those regions to which the benefit provisions were extended should alone make contributions and thereby help to set up a corporation. The benefit provisions will sooner or later be extended to all areas. Therefore, the amendment provides that employers of regions to which the benefit clauses are not extended must also make their contributions though at a lesser rate."*

**57.** Submission has been made by learned counsel for the appellant that since the medical benefit has been given to the concerned employees in collaboration with Tata Main Hospital hence the benefit as has already been extended there is no reason for discharge of liability again as claimed by the ESI authority.

**58.** Further, in view of clarity of law regarding the Club coming under the fold of establishment since has come in the year 2014 after coming of judgment rendered in ***Bangalore Turf Club Limited Vs. Regional Director, Employees' State Insurance Corporation (supra),*** submission has been made

that on these grounds the petitioner-club is not liable to make payment towards interest.

**59.** The aforesaid ground has been discarded by learned Single Judge on the ground that the Act, 1948 has been enacted for the purpose of achieving benefits to the industrial workers taking into consideration the law laid down by Hon'ble Apex Court in this regard.

**60.** The said view, according to our considered view, suffers from no error, for the following reasons:

I. The Act, 1948 is by way of beneficial piece of legislation and once any Act is a piece of social legislation which intends to confer specified benefit on workmen to whom it applies it would be inappropriate to attempt to construe the relevant provisions in a technical or a narrow sense. The beneficial piece of legislation is to be construed beneficially so that the very object and intent of the Act be achieved, as has been decided by Hon'ble Apex Court in the case of ***Transport Corporation of India Vs. Employees' State Insurance Corp. & Anr. (Supra)***, wherein by taking note of judgment rendered in ***Buckingham and Carnatic Co. Ltd. v. Venkatiah*** (supra), it has been held that

it is a piece of social legislation intended to confer specified benefits on workmen to whom it applies, and so, it would be inappropriate to attempt to construe the relevant provisions in a technical or a narrow sense.

II. It has further been held that if the words used in the section are capable of two constructions one of which is shown patently to assist the achievement of the object of the Act, courts would be justified in preferring that construction to the other which may not be able to further the object of the Act.

III. Admittedly, the Act has come in the year 1948 and while clarifying the issue as to whether the club is establishment or not and whether it is coming under the fold of Act, 1948 or not, the larger Bench of Hon'ble Apex Court in ***Bangalore Turf Club Limited Vs. Regional Director, Employees' State Insurance Corporation (supra)*** has in specific term held that the club comes under the fold of Act, 1948 and as such once it has been clarified by the Hon'ble Apex Court, it is not available for the appellant-club to take the ground that the same will not be applicable with retrospective effect

since the Hon'ble Apex Court has only reiterated the very object and intent of the Act, 1948 while dealing with the provision of the Act, 1948.

Thus, it means that whatever was available at the time of enactment of the Act, 1948 has only been reiterated and hence there is no question of application of prospective application of the judgment rather the club comes under the fold of Act, 1948 has only been clarified by the Hon'ble Apex Court in ***Bangalore Turf Club Limited Vs. Regional Director, Employees' State Insurance Corporation (supra)***.

The law is well settled that once the law has been enacted by the Hon'ble Apex Court the principle of prospectivity will not be applicable rather the same will be applicable from the date when the said Act was enacted, as it is only clarifactory in nature and at the time of enactment of Act it was already there.

Therefore, this Court is of the view that the ground of prospective application of Act, 1948, which has been taken by learned counsel for the appellant, is having no substance.

IV. Recently, similar issue fell for consideration before the Hon'ble Court in the case of ***The ESI***

***Corporation Vs. M/s Radhika Theatre (Supra)*** wherein also the issue crept up in a situation of insertion of sub-section (6) of Section 1 of the Act, 1948 since before insertion only those establishments/factories who have more than 20 employees were covered under ESI Act, 1948. Thereafter, after insertion of Section 1(6) in the Act, 1948 on 20.10.1989 there is radical change and as per that any factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under the ESI Act or the manufacturing process therein ceases to be carried on with the aid of power.

V. The Hon'ble Apex Court in the light of aforesaid fact has been pleased to hold that on or after 20.10.1989 the irrespective of number of persons employed, a factory or an establishment shall be governed by the Act. Therefore, for the demand notices for the period on or after 20.10.1989 there shall be liability over every factory or establishment irrespective of number of persons employed therein.

VI. It is, thus, evident from the aforesaid factual aspect governing the case of ***The ESI Corporation Vs. M/s Radhika Theatre (Supra)*** (supra) that the Hon'ble Apex Court by taking into consideration the very purport of the Act, which is beneficial in nature and which intend to provide benefit to the employees in case of sickness, maternity and employment injury and certain other matters in relation thereto, has been pleased to hold that if an establishment is coming under the fold of ESI Act then the number of employees working in the said establishment or factory will have no consequence rather even if the numbers are less than 20 and the concerned establishment and factory is coming under the fold of ESI Act then the liability will be upon the said factory/establishment.

VII. Herein also, almost similar is the situation since the Act has been enacted on 19th April, 1948 bringing all the establishments and factories including club, which comes under the fold of establishment, and hence it was the bounden duty of the appellant-club to deposit the subscription of the employee so that it may

come in the corpus of the ESI fund in order to achieve the very object and intent of the Act, 1948 for taking beneficial measure in case of sickness, maternity and employment injury and certain other matters in relation thereto.

VIII. However, litigation was pending and the same was adjudicated in the year 2014 by the larger Bench of Hon'ble Apex Court in the case of ***Bangalore Turf Club Limited Vs. Regional Director, Employees' State Insurance Corporation (supra)*** but that does not mean that whatever liability was upon the appellant-club based upon the Act, 1948 will only be applicable after the judgment having been pronounced by the Hon'ble Apex Court in that case.

The same would have been accepted if there was no provision under the Act, 1948 but that is not the situation herein since the coverage under the Act, 1948 is from the date when the Act was enacted and merely because the Act has been interpreted by the Hon'ble Apex Court as such its applicability will not be wiped out from the date of its applicability.

IX. It further appears that learned Single Judge has formulated four issues for its consideration. On the first issue i.e., ***the petitioner is not entitled for any direction to apply this judgement prospectively i.e giving coverage under Employees' State Insurance Corporation Act with effect from the date of passing of this judgement, on account of the so-called balancing of equities between the parties,*** the learned Single Judge has given the finding by taking into consideration the very purport of the Act, which is by way of beneficial piece of legislation enacted for the purpose of extending the benefit in case of sickness, maternity and employment injury and certain other matters in relation thereto. Further, the learned Single Judge has taken into consideration the judgment rendered by Hon'ble Apex Court in the case of ***Employees' State Insurance Corpn. Vs. Harrison Pvt. Ltd (supra)*** and ***Regional Director, E.S.I., Corporation Vs. Kerala State Drugs & Pharmaceuticals Ltd. & Ors (supra)*** and held that since the Act, 1948 is a welfare piece of legislation, as such contribution is irrespective

of the fact whether the employees get or do not get the said benefit.

X. The Hon'ble Apex Court in the said case has been pleased to hold at paragraph 2 and 3, as referred in preceding paragraph, that the contribution which is levied on the employer in respect of the employees engaged by him directly or through another agency is for the benefit of all workmen in general who are covered by the Act. The contribution is irrespective of the fact whether the employees get or do not get the said benefit.

XI. Further, consideration has been given by the learned Single Judge to the judgment passed by Hon'ble Apex Court in the case of ***Employees' State Insurance Corpn. Vs. Harrison Pvt. Ltd (supra)*** wherein the Hon'ble Apex Court has been pleased to hold that it was the duty of the respondent-Company to get the necessary details of the workmen employed by the contractor at the commencement of the contract since the primary responsibility of payment of the contribution is on the principal employer.

Further, it was hold that it was also the duty of the respondent-Company to pay the

contribution as required by Section 40 of the Act. It has been reiterated that the scheme under the Act for insuring the workmen for conferring on them benefits in case of accident, disablement, sickness, maternity etc. is distinct from the contract of insurance in general. The contribution made by him and by his employer is credited to the insurance fund created under the Act and it becomes available for others or for himself, during other benefit periods, if he continues in employment.

It is for this reason that the Act envisages automatic obligation to pay the contribution once the factory or the establishment is covered by the Act, and the obligation to pay the contribution commences from the date of the application of the Act to such factory or establishment.

XII. The Hon'ble Apex Court yet in another case i.e., in the case of ***Gasket Radiators (P) Ltd. v. ESI Corpn. (supra)*** has been pleased to hold that apart from the preamble which promises to secure to all its citizens, "justice, social, economic and political", the State is enjoined by the Directive Principles of State Policy to secure

a social order for the promotion of the welfare of the people. In particular Articles 41, 42 and 43 enjoin the State to make effective provision for securing the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of any undeserved want, to make provision for securing just and humane conditions of work and maternity relief and to secure by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

XIII. The Hon'ble Apex Court further taking note of the judgment rendered in ***K.C. Sarma v. Regional Director, E.S.I. Corporation (supra),*** wherein it has held that "... it appears that the employers' special contribution is not a tax but a fee. This contribution goes to a fund known as the Employees' State Insurance Fund which is to be utilised for the benefits to be given to the employees under the Act. The cost of these

benefits will not be met from the general revenues of the State, but will be borne entirely from the aforesaid fund only … the employers' contribution under the Act constitutes only a fee and not a tax..... , has held that the employers special contribution is not a tax but a fee. This contribution goes to a fund known as the Employees' State Insurance Fund which is to be utilized for the benefits to be given to the employees under the Act. The cost of these benefits will not be met from the general revenues of the State, but will be borne entirely from the aforesaid fund only.

XIV. This Court, in view of the aforesaid fact coupled with the reason assigned hereinabove and judgment rendered in the case of ***Bangalore Turf Club Limited Vs. Regional Director, Employees' State Insurance Corporation (supra),*** is of the view that the learned Single Judge while taking the view that the judgment rendered in ***Bangalore Turf Club Limited Vs. Regional Director, Employees' State Insurance Corporation (supra)*** cannot be made applicable prospectively suffers from no error.

XV. The learned Single Judge, in view of aforesaid case laws and discussions made, has come to the conclusion that the petitioner is not entitled for any direction to apply the aforesaid judgments on account of so-called balancing of equities between the parties.

XVI. Further, the petitioner-club is also not entitled to any remission or relaxation on the point of payment of interest. Rather the petitioner is bound by the obligations fastened upon the petitioner as per the mandate of the aforesaid Act. Accordingly, decided issue nos. **(i) and (ii) are decided against the petitioner and in favour of the respondents,** which according to our considered view suffers from no error.

XVII. So far no. III i.e., ***entitled for any relief on the point of interest on the payable amount,*** is concerned, the learned Single Judge has come to the conclusion while deciding issue no. I that the appellant-club escaped in making payment as covered under the Act and thereby the very object of the act has been frustrated due to non-deposit of the amount in the ESI fund so as to take the beneficial measure. Therefore, if in such circumstance the learned Single Judge has

come to the conclusion that the writ petitioner-club liable to pay the interest, which according to our considered view cannot be said to suffer from error.

XVIII. Further coupled with the aforesaid fact we are of the view that the said amount which ought to have been deposited in ESI fund has been kept by the appellant-club in their possession for its own use and purpose and as such fund has been made to suffer due to non-deposit on the one hand and on the other the appellant has utilized the same for other purposes i.e., for their own benefits, therefore, also the petitioner-club is liable to pay interest.

XIX. So far as issue no. IV is concerned, i.e. fixation of installments of the amount to be paid the same is also not under question since it has been informed at Bar that out of 12 equal monthly installments 6 installments have been paid by the appellant-club, as there is no need to give any finding on this.

**61.** This Court on entirety of facts, as discussed hereinabove, is of the view that the order passed by learned Single Judge suffer from no error and accordingly requires no interference by this Court.

**62.** Accordingly, the instant *intra-court* appeal fails and is dismissed.

**63.** Pending Interlocutory Application, if any, stands dismissed.

**I Agree** **(Sujit Narayan Prasad, J.)**

**(Navneet Kumar, J.)** **(Navneet Kumar, J.)**

**Jharkhand High Court, Ranchi**
Alankar / **A.F.R.**