

## ESIC is payable irrespective of the number of employees engaged

In the case of the *ESI Corporation Vs Radhika Theatre*, a division bench consisting of Justice M.R. Shah and Justice C.T. Ravikumar of the honourable Supreme Court ruled that the Employees State Insurance Act ('ESI Act') must be implemented without regard to the number of individuals employed or even if the number of individuals employed at any point falls below the threshold specified by the ESI Act or its regulations.

### Introduction

The Employees State Insurance Corporation (ESI Corporation), appealed a decision by the Telangana High Court that set aside an order passed by the Employees' Insurance (EI) Court. The EI Court had confirmed a demand notice issued by the ESI Corporation to the respondent, who was operating a cinema theatre with less than 20 employees, for failing to pay ESI contributions. The respondent had argued that it was not covered by the provisions of the ESI Act, which came into effect in 1989. However, the EI Court had confirmed the demand notice. The respondent then contended before the High Court that Section 1(6) of the ESI Act, which was inserted in October 1989, could not be made applicable retrospectively. In response, the ESI Corporation (appellant) argued that the ESI Act was a social welfare legislation, and thus, greater emphasis needed to be placed on it, regardless of the number of individuals employed. The High Court allowed the appeal, agreeing with the cinema theatre's argument that the aforementioned section could not be applied retrospectively.

### Issues

1. Whether a factory or establishment established before October 1989 (i.e. before the insertion of section 1(6)) will be subject to the ESI Act for demand notices issued after that date, even if the number of individuals employed at any time falls below the limit specified by the ESI Act?
2. Whether the demand notices for the period after 20 October 1989 i.e., from the date on which section 1(6) of the ESI Act was inserted, could have been applied retrospectively?

### Analysis

The Supreme Court ('SC') held that the ESI Act should be interpreted in a manner that favours the beneficiaries since it is a social welfare legislation.

SC referred to previous decisions under the ESI Act and concluded that a liberal interpretation should be given to the Act to provide social security to employees. It explained that prior to the insertion of sub-section (6) of section 1 of the ESI Act in 1989, only establishments or factories employing more than 20 employees were governed by the Act. However, after the amendment, any

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factory or establishment would be governed by the ESI Act regardless of the number of persons employed. Thus, it held that the demand notices issued by the ESI Corporation for the period after October 1989 were valid.

SC found that the Telangana High Court erred in setting aside the demand notice for this period and that the amended section 1(6) was applied retrospectively. It clarified that only in the case of demand notices for the period prior to the insertion of section 1(6) of the ESI Act could it be said that the provision was applied retrospectively. As a result, the SC set aside the High Court's order and restored the demand notice issued by the appellant for the period after October 1989.

Thus, the SC held that section 1(6) of the ESI Act shall be applicable even to those establishments that were established before October 1989 and that the ESI Act shall be applicable irrespective of the number of persons employed.

## Weblink

[https://main.sci.gov.in/supremecourt/2022/18754/18754\\_2022\\_4\\_1512\\_41177\\_Judgement\\_20-Jan-2023.pdf](https://main.sci.gov.in/supremecourt/2022/18754/18754_2022_4_1512_41177_Judgement_20-Jan-2023.pdf)

## Therefore

In the light of the above judgement of the honourable Supreme Court, it shall now be interpreted that the payment of ESIC contribution is mandatory, once it becomes applicable to a factory or an establishment regardless of the number of the employees engaged at any point of time.

