

Where the infringement has not been made for gain in the course of trade or business, the Court may after recording special reasons for doing so, impose less than minimum imprisonment or fine specified.

The above mentioned penal provisions under the Act show that the penalties, which include imprisonment and monetary fines are such as to provide a deterrent. This seems to have been done in recognition of the fact that profits obtained from copyright infringement may be so high that the award of damages to compensate the right-holder may be relatively small and the finding and destroying of infringing goods and material very difficult. Criminal remedies are used only in case of wilful piracy on a commercial scale.

Regarding the procedure that has to be followed for investigation, inquiry and trial of offences under the Act, unless there is a special provision in the Act regulating any procedural aspect, the Code of Criminal Procedure, 1973 has to be followed.

8. Conclusion :

The law of intellectual property has become an integral part of the economic life in the world at large. The use of ideas and information that are of commercial value are being protected under this law. The revolution taken place in the field of information technology has posed challenges particularly in the area of copyright law. Though the

Copyright Act, 1957 has incorporated adequate measures to protect the right of owners of copyright in general and authors of literary work in particular (the Computer Programme also defined as literary work). It is an indisputable prevailing fact that the authors of literary works are being exploited by publishers in many ways such as not paying remuneration or paying inadequate remuneration or royalties and non-disclosure of total number of copies sold in the market *etc.*,

The video piracy has become an integral part of day-to-day life style in most of the metropolitan cities and our Copyright Law failed to provide relief to the authors of original work. The copyright confers a long lasting right in literary or artistic creation. In case of infringement of such rights law provided certain remedies to the owner. But our experience with the existing law shows that we have not succeeded in this direction and still a lot is left to be achieved. New technologies is certainly bound to pose new problems in the field of video piracy, information technology, computer programmer, literary, dramatic, musical and artistic creation *etc.*

The need is arisen for enforceability of Copyright Act in fullest extent for copyright owners in India and for international community of the world. Our India would stand by the expectations of the world at large in protecting the intellectual property rights and consequently benefiting all people of our nation and the world.

EMPLOYEES' STATE INSURANCE ACT, 1948 – AN IMPORTANT STRATEGY TO COVER ALL THE WORKERS IN INDIA: AN OVER VIEW

By

—Dr. V. VENKATA RAMANA, B.Com., L.L.M., Ph.D.
Associate Professor, University College of Law,
Osmania University, Hyderabad, A.P.

1. Introduction:

Social Insurance is one of the most important strategy of social security. The social

insurance is a compulsory, contributory, employment – related approach whereby benefit eligibility is based on directly or indirectly on the length of employment (or

period of contributions). The periodic cash payment provided upon the occurrence of a specified social security contingency are usually related to current or past earnings or to contribution period. Benefits are financed completely or entirely or largely from specified contributions (generally a percentage of earnings) paid by the employees, their employers or both to a publicly supervised fund by its very nature compulsory social insurance has three main functions compulsory, curative and preventative.

Social Insurance is an important technique by way of the pooling of risk and resources. The organisation and administration of social insurance is a very complex and difficult process. The present methods or systems of Government *i.e.*, development on the basis of taxation. The effectiveness of social insurance principles were recognised by the International Labour Organisation (ILO) in the income security recommendation number 67 of 1944. Which declares that "Income security should be organised as far as possible and the basis of compulsory social insurance, were by insured persons fulfilling prescribed qualifying conditions are entitled, in consideration of the contributions they have made to an insurance institutions, to benefits payable at rates and in contingencies defined by law".

2. *Employees' State Insurance Act, 1948:*

The Employees State Insurance Act is based on the principal of social insurance. The social insurance is essentially the pooling of risks and resources. The important characteristics of social insurance are given below.

- (i) Participation is compulsory, with few exceptions; because of its compulsory nature, social insurance has three functions compensatory, curative and preventive.
- (ii) The financing of social insurance is by contributions which are usually made

by employers and workers; sometimes the Government participates by means of a supplementary contribution or subsidy.

- (iii) Employment injury insurance schemes are usually financed wholly by employers.
- (iv) Contributions are accumulated in special funds out of which benefits are paid.
- (v) Surplus funds not needed to pay benefits are invested to earn income for the schemes, these funds have become a significant source of domestic capital.
- (vi) The insured person or his dependents are entitled to benefits by virtue of the contributions paid by or on behalf of the insured person.
- (vii) Rate of contributions and rate of benefits are often related to the earnings of the insured person.
- (viii) The insurance principle gives expression to the solidarity of workers, each contributing regularly to support colleagues and workers in times of their needs and to the interest of industry in financing a scheme.
- (ix) The right under social insurance stems from membership of the group of persons protected irrespective of the amount of contribution made.
- (x) There is no discrimination as regards age, sex or the state of health.

The Employees State Insurance Act under section 4 provides for the establishment of Employees State Insurance Corporation. The Act is applicable to non-seasonal factories where power is used and where in ten or more persons are employed and to factories where power is not used where in twenty or more persons are employed. The important object of the Act provides certain benefits to

employees in case of sickness, maternity and employment injury and for certain other matters in relation thereto. Freedom from economic fear is a great freedom and all social security legislation attack these fear and seek to annihilate it. It is the function of an ideal welfare state to provide an opportunity to every citizen for earning his livelihood and freedom from fear – fear especially of economic ruin which can involve physical and even moral ruin. The benefits provided under this Act attack these fear and seek to remove it.

The benefits to the insured person are provided in the Section 46 of the Act, the benefits are:

- (a) Sickness Benefits;
- (b) Maternity Benefits;
- (c) Disablement Benefits;
- (d) Dependents Benefits;
- (e) Medical Benefits, *etc.*

Section 10 of the Act provides for Medical Benefit Council to be constituted by the Central Government to be consisted of the authorities specified therein. All contributions paid under the Act and monies received on behalf of the corporation is required to be paid into the fund called “Employees State Insurance Corporation Fund” which is required to be held and administered by a corporation created under the Act. The Section 28 of the Act lists the purpose for which the fund may be spent. Section 38 of the Act makes an obligation to insure by all employees in factories or establishments to which these Act applies. The Section 39 provides for contribution to be made by the employer and the employee respectively and the principal employer is to pay the contribution in the first instance. The contribution payable under the Act, if not paid, can be recovered as arrears of land revenue. Except medical benefits all the other benefits are payable in cash and the medical

benefits is provided in kind. And insured employee is only entitled to draw benefits under the ESI Act and he is prohibited from claiming similar benefits under Workmen’s Compensation Act or State Acts relating to maternity benefits. Where the ESI scheme is covered there the Workmen’s Compensation Act and Maternity Acts are not applicable. All these benefits payable under the ESI Act are not transferable or assignable. In no case the benefit payable shall be liable for attachment or sale in execution of any decree or order of any Court. The Act prohibits any commutation of periodical payments into a lumpsum except that which is permitted by regulations. But, the Workmen’s Compensation Act allows to commute the periodical payments into a lumpsum.

The Supreme Court has enlarged the meaning of an employee under Section 2(9) of the ESI Act in holding that the employees employed for construction of additional building required for expansion of a factory will fall within the definition of an ‘employee’ in Section 2(9) hence they are covered under the Act, the casual employees engaged by publishers for folding cover and inside pages of a weekly and monthly magazine have also been held as employees under the ESI Act¹.

It is very important to mention the ESI Act is applicable to all concerned rendering services through other concerns to its employees. This ESI Act, 1948 is a complete code and will be applicable to all the employees of a concern employed in different units. Where the main business of concern was to attend to the defects, including servicing and repairing of air-conditioner machines, not only at the office premises but to take such work in complete sense at the place of the customers, on their request or demand and the employer was engaging more than the

1. *Regional Director Employees State Insurance Corporation, Madras and others v. South India Floor Mills Pvt. Ltd. and others*, 1986 LLR 65.

required number of employees as defined under the Act, it has been held that it cannot be said that the petitioner should only be governed or come under the provisions of ESI Act but he would also be covered by the provisions of the Factories Act².

The question whether the ESI will cover the employees who are infact not working at the place establishment or shop as covered under the ESI Act? Has been examined in the case of *Hindu Jea Band v. Regional Director, ESIC*³.

With regard to the coverage of ESI to the apprentices employed in a factory was also examined by the Court in the case of *Employees State Insurance Corporation and other v. Tata Engineering and Locomotive Company, Ltd. and another*,⁴ and held that the apprentices who are mere trainees for a particular period for a distinct purpose and the employer is not bound to employ them after the training period, or not employees under Section 2(9) of the ESI Act. With regard to the clubbing of establishments at different places for the coverage of ESI benefits was examined in the case of *S.P. Varma v. ESI Corporation*,⁵ and held that were a firm manufactured its products in a workshop employed 13 persons in another workshop for polishing the products at a different place employed 7 persons, the two workshop together constituted a factory to which ESI Act was held to be applicable. Separate buildings, even though located at some distance when used for one continuous manufacturing process will constitute a single factory under ESI Act.

In a case *TI Cycle of India, Madras v. Regional Director Employees State Insurance Corporation*,⁶

and *Hindu Jea Band v. Regional Director ESI*,⁷ the Supreme Court held that the Part time employees on daily rate basis for playing of Band etc., will be deemed as employees to be covered under the ESI Act.

For deciding disputes between the insured employees and ESI Corporation, the Employees State Insurance Court examine constituted under the Section 74 and as per the sections from 75 to 83 of the ESI Act.

There are also many cases decided by ESI Courts in different States, High Courts and Supreme Court relating to the ESI matter providing justice to the insured employees, for various benefits provided in the ESI Act.

Conclusion:

The object of the ESI Act is to apply universally to all workers, but the scope is very limited. It is not covering all the industrial workers. The Act is not extended so far to the unorganised workers who are in rural areas. The ESI Act is very discriminatory between organised and unorganised workers. Though recently some Social Security schemes have been introduced for the benefit of the Rural Workers in providing and guaranteeing the work under Mahatma Gandhi Rural Employment Guarantee Act, 2002 but, the Government has not taken wholeheartedly in covering the rural workers inspite of passing more than sixty years of independence. The Social Security benefits will have to be provided to all the people in the country including unorganised workers. Then only the India can achieve the goal of social justice and social security, which are enshrined in the Indian Constitution.

2. *T.V. Punji v. Regional Director, Employees State Insurance Corporation and others*, 1982 Lab.IC NOC 102 (Cal.)

3. 1986, LLR p.95.

4. 1975, (48) FJR 206(SC).

5. (1973) (41) FJR 17(ALL. HC).

6. 1977 Lab. IC 1335.

7. 1987, Lab. IC. 894.