

Entitled to higher compensation

ARE the benefits conferred by the 1995 amendment to the Workmen's Compensation Act available to workmen, whose claims for compensation in respect of accidents occurred prior to the amendment are pending adjudication?

Yes, says the Supreme Court in a recent significant decision. (New India Assurance Co.Ltd v. V K Neelakantan and others - Civil Appeals Nos 16904-09 of 1996 arising out of SLP(C) Nos.21637-642 of 1996).

In this case, the compensation awarded by the Commissioner for Workmen's Compensation, Kozhikode, to the heirs of six workmen who had died in an accident in 1981, was under challenge by the New India Assurance Co Ltd., which was to pay the compensation on behalf of the employer. The Kerala High Court upheld the award. The insurance company challenged the order of the Kerala High Court in appeals before the Supreme Court.

Though the deceased workmen were drawing wages at the rate of Rs 1,800 per month, the compensation under the Act had been assessed deeming the wages to be Rs 1,000 per month. While the appeals were pending the Act was amended in 1995 by Amendment No 30 whereby the deemed income was increased from Rs 1,000 to 2,000. Consequently, the court issued notice to the insurance company to show cause why the compensation was not increased in accordance with the new provision.

The company argued that, since the accident had taken place in the year 1981, the law operating on that date was applicable and as such the heirs of the workmen are not entitled to the benefits of the amendment. The Apex Court did not agree with this.

The Act is a special piece of legislation for the benefit of the labour. Keeping in view the scheme of the Act, the only interpretation which can be given to the amendment is this: if any benefit is conferred on the workmen and the said benefit is available "on the date when the case is finally adjudicated", the

same should be extended to the workmen.

The court, therefore, held that the compensation payable to the heirs of the workmen has to be calculated on the basis of the actual wages, Rs 1,800, drawn by them. Since the amount awarded by the commissioner has already been paid to the heirs of the workmen, the court directed that the balance amount (enhanced amount) be paid within two months with 12 per cent interest from June 1991.

Government estopped by promise

WHAT is 'promissory estoppel'? Is this doctrine applicable to a Government, and if yes, how far?

Justice P A Mohammed of the Kerala High Court traces the history and scope of this doctrine in the judgment in OP No. 7355/91, to find out whether the petitioner-firm, M/s Poornima,

principle of justice and of equity.

In substance, it is this: When a man, by his words or conduct, has led another to believe that he may safely act on the faith of the words or conduct and he acts on them - the man will not be allowed to go back on what he has said or done when it would be unjust or inequitable for him to do so.

The old view was that no estoppel could be founded upon a representation other than one as to an existing fact. That is to say, a representation of an existing fact is necessary for the foundation of a true estoppel. But the words or conduct necessary to support a promissory estoppel are essentially different in quality. They consist of a promise or assurance regarding the future conduct of a promiser on which the promisee relies to act to his detriment. They are really promises intended to be binding, intended to be acted upon and in fact acted upon.

The origin and development

doctrine was emphatically negated by the Supreme Court in the India Agencies Case (AIR 1964

It was laid down in that case that the Government's claim to be immune from the applicability of the rule of promissory estoppel and repudiation of a promise made by it on the ground that such promise would fetter its future action. If the Government makes a promise and the promisee acts in reliance on it and alters his position, the Government should not be compelled to renege the promise like any private individual.

Finally, in Godfrey India Ltd (AIR 1986 S.C. 1000) the Supreme Court held that while expressing full agreement with the view in Motilal Mills case, that there can be promissory estoppel against the Legislature in the exercise of its legislative functions, the Government or any authority which is empowered to make a promissory estoppel is not bound to enforce a prohibition.

It is equally true that promissory estoppel cannot be used to compel the Government to exercise its public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the authority to make.

It was also held that the doctrine of promissory estoppel being an equitable doctrine must yield when the equity requires. If it can be shown that the Government that made the promise in regard to the facts as they transpired, it would be inequitable to hold the Government to the promise representation made by it. The court will not raise an equity in favour of the person to whom the promise or representation was made, and enforce the promise or representation against the Government.

The SSI unit in this case has been set up in response to the notification offering a 100 per cent tax exemption and having started production prior to the second notification, is entitled to total exemption from tax for five years from the date of its started production. The tax is to be refunded.

COURT Diary

SCARIA MELEDAM

a small-scale industrial Unit at Kollam, is entitled to total exemption from sales tax offered by the State Government by notification dated April 11, 1979, ignoring a subsequent notification by which the concession under the earlier notification was reduced.

Though the origin of the doctrine of promissory estoppel is to be found in two 19th century decisions of the House of Lords, the doctrine was rediscovered by Lord Denning in 1946 in a famous case - Central London Property Trust Ltd. v. High Trees House Ltd - 1947 KB 130.

Analysing certain earlier decisions, the Judge took the view that a promise gives rise to an estoppel. A promise is binding on the party making it and so he cannot be allowed to act inconsistently with it or go back on it.

The principle of promissory estoppel is distinctly different from a case of estoppel in the strict sense. It is paramourly a

of this doctrine in India can be traced to the various decisions of the Supreme Court. In Motilal Padampat Sugar Mills Co. Ltd v State of UP - AIR 1979 SC 621, the court said the true principle of promissory estoppel is that where one party has, by his words or conduct, made to the other a clear and unequivocal promise, which is intended to create a legal relationship or affect a legal future relationship, knowing or intending that it would be acted upon by the other party to whom the promise is made, and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties.

There was a time when the doctrine of "executive necessity" was regarded as sufficient justification for the Government to repudiate even its contractual obligations, but this