M/s. Bharat Barrel and Drum Mfg. Co. Ltd. and Another

Vs

The Employees State Insurance Corporation

Civil Appeal No. 563 of 1967

(C.A. Vaidialingam, P. Jagmohan Reddy JJ)

23.09.1971

JUDGMENT

JAGANMOHAN REDDY, J. -

1. In exercise of the powers under Section 96(1)(b) of the Employees' State Insurance Act 1948, (hereinafter referred to as 'the Act') relating to "the procedure to be followed in proceedings before such Courts and the execution of orders made by such Courts", the Government of Bombay made the following Rule :

> "17. Limitation. - (1) Every application to the Court shall be brought within twelve months from the date on which the cause of action arose or as the case may be the claim became due :
>
> Provided that the Court may entertain an application after the said period of twelve months if it is satisfied that the applicant had sufficient reasons for not making the application within the said period.
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> (2) Subject as aforesaid the provisions of Parts II and III of the Indian Limitation Act, 1908 (IX of 1908), shall so far as may be applied to every such application."

2. The vires of this Rule was challenged by the Employees' State Insurance Corporation (hereinafter referred to as 'the Corporation') when it filed an application on October 7, 1963, against the appellant in the Employees' Insurance Court (hereinafter referred to as 'the Insurance Court') claiming payment of the contributions due from it for the period September 1, 1957 to July 31, 1963. In those proceedings the appellant had taken the plea that the application was barred under Rule 17 as it was not presented within twelve months from the date when the cause of action arose or as the case may be when the amount became due. As the plea raised before it was important the Insurance Court made a reference under Section 81 of the Act on the following question for the decision of the High Court of Bombay :

(1) Whether Rule 17 of the Employees' State Insurance Rules is ultra vires the rule-making power of the State Government under Section 96(1) of the Employees' State Insurance Act ?

(2) If yes, what, if any, limitation applies to application filed by the Corporation to the Employees' Insurance Court ?

3. The High Court of Bombay having considered the several cases and the contentions and

submissions made before it held that the clear and unambiguous terms of Section 96(1)(b) exclude the grant of the power to any State Government to make a rule prescribing a period of limitation on claims enumerated in Section 75(2). It was further of the view that where two interpretations of the terms of Section 96(1)(b) were possible that interpretation should be accepted which excludes the grant of such a power, because it appeared to it clear from the scheme of the Act and the provisos thereof that the Legislature did not intend to confer such power on the State Governments. It therefore, answered the first question in affirmative namely that Rules 17 is ultra vires the rule-making power of the State Government under Section 96(1)(b) of the Act. On the second question it held that an application filed in a Court before January 1, 1964, for relief under Section 75 of the Act was not subject to any period of limitation, but an application filed on or after January 1, 1964, would, however, be covered by Article 137 of the Limitation Act of 1963, which provides a limitation of three years from the date when the right to apply accrues. This appeal has been filed against that decision by certificate under Article 133(1)(c) of the Constitution.

4. This question has been the subject-matter of the decisions in Employees' State Insurance Corporation v. Madhya Pradesh Government and Others (AIR 1964 MP 75 : 1963 Jab LJ 370 : 1963 MPLJ 444 : (1963) 7 Fac LR 171 : (1963) 2 Lab LJ 230); M/s. Solar Works, Madras v. Employees' State Insurance Corporation, Madras and Another (AIR 1964 Mad 376 : (1963) 2 Lab LJ 597 : 77 Mad LW 134 : (1964) 2 Mad LJ 223 : ILR (1964) 1 Mad 906 : (1964) 9 Fac LR 232); M/s. A. K. Brothers v. Employees' State Insurance Corporation (AIR 1965 All 410 : 1964 All LJ 946 : (1965) 1 Lab LJ 1 : (1964) 9 Fac LR 345 : ILR (1965) 1 All 133); United India Timber Works, Yamunanagar and Another v. Employees State Insurance Corporation, Amritsar (AIR 1967 Punj 166 : 1966 Cur LJ 427 : 68 Punj LR 566 : ILR (1966) 2 Punj 291 : (1966) 31 FJR 54 : (1967) 2 Lab LJ 558 : (1967) 14 Fac LR 439); Roshan Industries Private Ltd., Yamunanagar v. Employees' State Insurance Corporation (AIR 1968 Punj 56 : 31 FJR 390 : 1968 Lab IC 167 : (1968) 1 Lab LJ 77 : 15 Fac LR 387); E. S. I. C., Hyderabad v. A. P. State Electricity Board, Hyderabad. (1970 Lab IC 921) All the High Courts in these cases except that of Allahabad held that the rule is ultra vires the powers conferred on the State Government under Section 96(1)(b) inasmuch as it not empowered to make rules prescribing periods of limitation for applications to be filed before the Court, though in Madhya Pradesh case (supra) it was also said that :

> "Even if it be taken that clause (b) of Section 96(1), as it is worded, is vide enough to cover a rule of limitation, that cannot authorize the Government to frame a rule regulating limitation for the recovery of contributions ......."

because according to it the validity of the rule does not necessarily depend on the ascertainment of "whether it confers rights or merely regulates procedure, but by determining whether it is in confirmity with the powers conferred by the statute and whether it is consistent with the provisions of the statute". These decisions also held that the scheme of the Act was such that the Legislature did not and could not have intended to confer any power upon the State Government to make rules prescribing a period of limitation for application under Section 75(2).

5. The question which directly confronts us is whether the power to prescribe periods of limitation for initiating proceedings before the Court is a part of, and is included, in the power to prescribe "the procedure to be followed in proceedings before such Courts". The answer to this question would involve the determination of the further question whether the law relating to limitation is procedural or substantive or partly procedural and partly substantive. If it is procedural law does it make any difference whether it relates to the time of filing application for initiation of proceedings before the Court or whether it relates to interlocutory applications or other statements filed before it

after the initiation of such proceedings. The contention on behalf of the appellant is that the law relating to limitation is merely procedural, as such it makes no difference whether it relates to the time of filing an application or it deals with the time for filing interlocutory applications or other statements. There is also it is submitted no indication in the scheme of the Act that it is otherwise or that there is any impediment for the Government to prescribe under the rule-making authority the period of limitation for applications under section 75(2). Before we consider the scheme of the Act it may be necessary to examine the scope and ambit of the "terms procedure" as used in Section 96(1)(b).

6. The topic of procedure has been the subject of academic debate and scrutiny as well as of judicial decisions over a long period but inspite of it, it has defined the formulation of a logical test or definition which enables us, to determine and demarcate the bounds where procedural law ends and substantive law begins, or in other words it hardly facilitates us in distinguishing in a given case whether the subject of controversy concerns procedural law or substantive law. The reason for this appears to be obvious, because substantive law deals with right and is fundamental while procedure is concerned with legal process involving actions and remedies, which Salmond defines "as that branch of law which governs the process of litigation", or to put it in another way substantive law is that which we enforce while procedure deals with rules by which we enforce it. We are tempted in this regard to cite a picturesque aphorism of Therman Arnold when he says "Substantive law is canonised procedure. Procedure is unfrocked substantive law". (XLV Harvard, Law Journal, 617 at 645)

7. The manner of this approach may be open to the criticism of having over-simplified the distinction, but nonetheless this will enable us to grasp the essential requisites of each of the concepts which at any rate "has been found to be a workable concept to point out the real and valid difference between the rules in which stability is of prime importance and those in which flexibility is a more important value. (American Jurisprudence, Vol. 51 (Second Edn.), 605) Keeping these basic assumptions in view it will be appropriate to examine whether the topic of limitation belongs to the Branch of procedural law or is outside it. If it is a part of the procedure whether the entire topic is covered by it or only a part of it and if so what part of it and the tests for ascertaining them. The law of limitation appertains to remedies because the rule is that claims in respect of rights cannot be entertained if not commenced within the time prescribed by the statute in respect of that right. Apart from Legislative action prescribing the time, there is no period of limitation recognised under the general law and therefore any time fixed by the statute is necessarily to be arbitrary. A statute prescribing limitation however does not confer a right of action nor speaking generally does not confer on a person a right to relief which has been barred by efflux of time prescribed by the law. The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asseting them in a Court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dermientibus, jura subveniunt (the laws give help to those who are watchful and not to those who sleep). Therefore the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims. While this is so there are two aspects of the statutes of limitation the one concerns the extinguishment of the right if a claim or action is not commenced with a particular time and the other merely bare the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation. Where a statute prescribing the

limitation extinguishes the right, it affects substantive rights while that which purely pertains to the commencement of action without touching the right is said to be procedural. According to Salmond the law of procedure is that branch of the law of actions which governs the process of litigation, both Civil and Criminal. "All the residue" he says "is substantive law, and relation not to the process of litigation but to its purposes and subject-matter". It may be stated that much water has flown under the bridges since the original English theory justifying a statute of limitation on the ground that a debt long overdue was presumed to have been paid and discharged or that such statutes are merely procedural. Historically there was a period when substantive law was inextricably intermixed with procedure; at a later period procedural law seems to have reigned supreme when forms of action ruled. In the words of Maine "so great is the ascendancy of the Law of Actions in the infancy of Courts of Justice, that substantive law has at first the look of being gradually secreted in the interstices of procedure". (Maine, Early Law and Custom, 389) Even after the forms of action were abolished Maitland in his Equity was still able to say "The forms of action we have buried but they still rule us from their graves", to which Salmond added "In their life they were powers of evil and even in death they have not wholly ceased from troubling". (21 LQR 43) Oliver Wendal Holmes had however observed in "The Common Law" "wherever we trace a leading doctrine of substantive law far enough back, we are likely to find some forgotten circumstances of procedure at its source". It does not therefore appear that the statement that substantive law determines rights and procedural law deals with remedies is wholly valid, for neither the entire law of remedies belongs to procedure nor are rights merely confined to substantive law, because as already noticed rights are hidden even "in the interstices of procedure". There is therefore no clear cut division between the two.

8. A large number of decisions have been referred before us both English and Indian some of antiquity, in support of the proposition that the law prescribing the time within which an action can be commenced is purely procedural and therefore when a statute empowers the Government to make rules in respect of procedure it confers upon it also the right to prescribe limitation. To this end have been cited the cases of Manol Francisco Lonex and Others v. Lieut. Godolubin James Burslem ((1843) IV MIA 300) and Ruckmaboye v. Lulloobhoy Mottichund. ((1849-54) V MIA 234) An examination of these cases would show that what was being considered was whether the law of limitation was part of the tax for which foreigners and persons not domiciled in the country have to follow if they have to have recourse to actions in that country. In the latter case the Privy Council observed at Page 265 :

> "The arguments in support of the plea are founded upon the legal character of a law of limitation or prescription, and it is insisted, and the Committee are of opinion, correctly insisted, that such legal character of the law of prescription has been so much considered and discussed among writers upon jurisprudence, and has been so often the subject of legal decision in the Courts of law of this and other countries, that it is no longer subject to doubt and uncertainty. In truth, it has become almost an axiom in jurisprudence, that a law of prescription, or law of limitation, which is meant by that denomination, is a law relating to procedure having reference only to the lax fori."

These observations as well as those in the earlier cause must be understood in the light of the principles governing conflict of laws. What was in fact being examined was whether they are part of the procedural law in the sense that the Municipal laws will be applicable on the question of limitation for the commencement of actions because if limitation was purely a question of substantive law that would be governed by the law of the country of the domicile of the person who is having recourse to the Courts of the other country. In other words the substantive rights of the

parties to an action are governed by a foreign law while all matters pertaining to procedure are governed exclusively by the lax fori.

9. The cases cited at the Bar of the various High Courts in this country show that they were construing the rules prescribing limitation in respect of proceedings in Court, i.e., proceedings after the institution of the suit or filing of the appeal. In Sennimalai Goundan v. Palani Goundan and Another, (AIR 1917 Mad 957) the question was whether the High Court by framing a rule under Section 122 Civil Procedure Code could make Section 5 of the Limitation Act applicable to applications under sub-rule (2) of Rule 13 of Order IX. While holding that it could, Courts-Trotter, J. as he then was made this pertinent observation :

> "Whatever may be the case of the statute prescribing say three years for an action to be brought, I am quite clear that the Articles in the Act limiting applications of this nature which are almost entirely interlocutory deal clearly with matters of procedure .........."

This was also the view of the Full Bench in Krishnamachariar v. Srirangammal and Others, (ILR 47 Mad 824) which was followed by the Bombay High Court in Bandredas v. Thakurdev. (ILR 53 Bom 453) It was contended in Velu Pillai v. Sevuga Panmal Pillai, (AIR 1958 Mad 392 : 71 Mad LW 216 : (1958) 1 Mad LJ 300 : ILR 1958 Mad 82) that rule 41(A)(2) of the appellate side Rules of the Madras High Court providing for the presentation of a petition to the High Court within 90 days from the date of the order passed in an execution proceedings was ultra vires, because the High Courts were not entitled by rules to regulate or enlarge the periods in the Limitation Act in respect of the proceedings to which the Limitation Act apply. This contention was negatived on the ground that such a power was inherent in Section 122 of the Civil Procedure Code. The argument of the petitioner that he had a vested right to go up in revision at any time and that the decision of the Full Bench in Krishnamachariar v. Srirangammal and Others (supra) does not affect his right, was rejected on the ground that Section 122 Civil Procedure Code empowers the High Courts to make rules regulating their own procedure and the procedure of the subordinate Courts subject to their superintendence.

10. There were earlier decisions of the Allahabad High Court and Lahore High Court as also a decision of the Bombay High Court rendered under Section 602 of the old Civil Procedure Code referred to by Krishnan, J., in his referring order in Krishnamachariar's case (supra) which took the view that the High Court has not the power by rule under Section 122 or the corresponding Section 602 of the old Civil Procedure Code to make rules for altering the period of limitation prescribed by the Indian Limitation Act, see Narsingh Sahai v. Sheo Prasad, (1918 ILR 40 All 1 (FB)) and Chunilal Jethabhai v. Debvabhai Amulakh. (1908 ILR 32 Bom 14 (FB)) Again a similar question arose as to whether Clause 27 of the Letters Patent of the Labour High Court (there are similar clauses in the Letters Patent of the other High Courts) could validly empower the making of Rule 4 prescribing a period for filing an appeal under Clause 10 of the Letters Patent. Clause 27 of the Letters Patent empowered the High Court from time to time to make rules and orders for regulating the practice of the Court etc. This Court in Union of India v. Ram Kanwar and Others, ((1962) 3 SCR 313 : AIR 1962 SC 247 : (1962) 2 SCJ 670) approved the view of a Full Bench of the Punjab High Court in Punjab Co-operative Bank Ltd. v. Official Liquidators, Punjab Cotton Press Company Ltd. (in liquidation), (AIR 1941 Lab 57) where it was held that Rule 4 is a special law within the meaning of Section 29(2) of the Limitation Act. Subba Rao, J. as he then was said at page 320 :

> "Rule 4 is made by the High Court in exercise of the legislative power conferred

upon the said High Court under Clause 27 of the Letters Patent. As the said rule is a law made in respect of special cases covered by it, it would certainly be a special law within the meaning of Section 29(2) of the Limitation Act."

In that case no question was raised as to whether Rule 4 was dealing with a procedural matter or dealt with a substantive right. These cases are of little assistance and if at all they lay down the principle that interlocutory proceedings before the Court do not deal with substantive rights and are concerned with mere procedure and can be dealt with by rules made under the power conferred on the High Court to regulate the procedure. It is therefore apparent that whether the fulfilment of a particular formality as a condition of enforceability of a particular right is procedural or substantive has not been, as we had already noticed free from difficulty. What appears to be a self-evident principle will not become so evident when we begin to devise tests for distinguishing procedural rule from substantive law. It appears to us that there is a difference between the manner in which the jurisprudential lawyer consider the question and the way in which the Judges view the matter. The present tendency is that where a question of initation arises, the distinction between so-called substantive and procedural statutes of limitation may not prove to be a determinating factor but what has to be considered is whether the statute extinguishes merely the remedy or extinguishes the substantive right as well as the remedy. Instead of generalising on a principal the safest course would be to examine each case on its own facts and circumstances and determine for instance whether it affects substantive rights and extinguishes them or whether it merely concerns a procedural rule only dealing with remedies, or whether the intendment to prescribe limitation is discernible from the scheme of the Act or is inconsistent with the rule-making power, etc.

11. Apart from the implications inherent in the term procedure appearing in Section 96(1)(b) the power to prescribe by rules any matter falling within the ambit of the term must be the "procedure to be followed in proceedings before such Court". The word 'in', emphasised by us, furnishes a clue to the controversy that the procedure must be in relation to proceedings in Court after it has taken seisen of the matter, which obviously it takes when moved by an application presented before it. If such be the meaning the application by which the Court is asked to adjudicate on a matter covered by Section 75(2) is outside the scope of the rule-making power conferred on the Government.

12. In the East and West Steamship Company, George Town, Madras v. S. K. Ramalingam Chettiar, ((1960) 3 SCR 820 : AIR 1960 SC 1058 : (1963) 1 SCJ 808 : (1960) 2 SCA 544) one of the questions that was considered by this Court was whether the clause that provides for a suit to be brought within one year after the delivery of the goods or the date when the goods should have been delivered, only prescribes a rule of limitation or does it also provide for the extinction of the right to compensation after certain period of time. It was observed by Das Gupta, J., at page 836 :

> "The distinction between the extinction of a right and the extinction of a remedy for the enforcement of that right, though fine, is of great importance. The Legislature could not but have been conscious of this distinction when using the words 'discharged from all liability' in an article purporting to prescribe rights and immunities of the ship-owners. The words are apt to express in intention of total extinction of the liability and should, specially in view of the international character of the legislation, be construed in that sense. In is hardly necessary to add that once the liability is extinguished under this clause, there is no scope of any acknowledgment of liability thereafter."

13. What we have to consider is, apart from the question that the Government on the terms of

Section 96(1)(b) is not empowered to fix periods of limitation for filing applications under Section 75(2) to move the Court, whether on an examination of the Scheme of the Act, Rule 17 affects substantive rights by extinguishing the claim of the Corporation to enforce the liability for contributions payable by the appellant.

14. An examination of the purpose and intendment of the Act and the scheme which is effectuates, leaves no doubt that it was enacted for the benefit of the employees and their dependants, in case of sickness, maternity and 'employment injury', as also to make provision for certain other matters. Section 40 makes the employer liable in the first instance to pay the contribution of the employer as well as the employee to the Corporation subject to the recovery from the employee of the amount he is liable to contribute. This liability on the employer is categorical and mandatory. He is further required under Section 44 to submit to the Corporation returns as specified therein. Chapter V comprised of Sections 46 to 73, deals with the benefits which includes among others, sickness and disablement benefit of the employee, his eligibility for receiving payments and the compensation payable to his dependents. If the employee fails or neglects to pay the contributions as required, the Corporation has the right to recover from him under Section 68, the amounts specified in that Section as an arrear of land revenue. Section 94 provides that the contributions due to Corporation are deemed to be included in the debts under the Insolvency Acts and the Company's Act, and are given priority over other debts in the distribution of the property of the insolvent or in the distribution of the assets of a Company in liquidation. Chapter VI deals with adjudication of disputes and claim, of which Section 74 provides for the constitution of the Insurance Court; Section 74 specifies the matters to be decided by that Court; Section 76 and Section 77 deal with the institution and commencement of proceedings and Section 78 with the powers of the Insurance Court. Section 80 deals with the non-admissibility of the claim, if not made within twelve months after the claim is due while Section 82(3) prescribes the period within which an appeal should be filed against the order of the Insurance Court. These provisions in our view unmistakably indicate that the whole scheme is dependent upon the contributions made by the employer not only with respect to the amounts payable by him but also in respect of those payable by the employee. No limitation has been fixed for the recovery of these amounts by the Corporation from the employer; on the other hand Section 68 empowers the Corporation to resort to coercive process. If any such steps are proposed to be taken by the Corporation and the employer is aggrieved he has a right to file and apply to the Insurance Court and have his claim adjudicated by it in the same way as the Corporation can prefer a claim in a case where the liability to pay is disputed. Section 75(2)(d) clearly envisages this course when it provides that "the claim against a principal employer under Section 68" shall be decided by the Employees' Insurance Court. It may be useful to read Sections 68 and 75(2)(d) which are given below :

Section 68(1). - If any principal employer fails or neglects to pay any contribution which under this Act he is liable to pay in respect of any employee and by reason thereof such person becomes disentitled to any benefit or entitled to a benefit on a lower scale, the Corporation should have been paid by the principal employer, pay to the person the benefit at the rate to which he would have been paid by the principal employer, pay to the person the benefit at the rate to which he would have been entitled if the failure or neglect had not occurred and the Corporation shall be entitled to recover from the principal employer either -

(i) the difference between the amount of benefit which is paid by the Corporation to the said person and the amount of the benefit which would have been payable on the basis of the contributions which were in fact paid by the employer; or

(ii) twice the amount of the contribution which the employer failed or neglected to pay;

whichever is greater.

(2) The amount recoverable under this Section may be recovered as if it were on arrear of land revenue.

Section 75(2). - The following claim shall be decided by the Employees' Insurance Court, namely :

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(d) Claim against a principal employer under Section 68.

It is contended by the learned advocates for the appellant that Section 68 is a crucial provision as it indicates that the right of the Corporation to enforce its claim for payment has been preserved subject to the provision that the omission or neglect by the principal employer to make contribution deprives the employee of any benefit either totally or at a reduced scale. It is only in these circumstances he submits that the Corporation can recover the amount by coercive process but in any other case the Corporation's claim to recover by an application to the Insurance Court can be made subject to a period of limitation by a rule made under Section 96(1)(b). We are unable to appreciate the logic of this submission because the benefit of an employee can be negatived or partially admitted for instance either by reason of the employer not showing him in the return as an employee of his or showing him as drawing a lesser wage than what he is entitled to or as it may happen mostly, when he fails to make the payments even according to the returns made by him. In all these cases the employee's benefits will be affected because the basis of the scheme of conferring benefit on the employee is the contribution of both the employer and the employee. It is clear therefore that the right of the Corporation to recover these amounts by coercive process is not restricted by any limitation nor could the Government by recourse to the rule-making power prescribe a period in the teeth of Section 68. What Section 75(2) is empowering is not necessarily the recovery of the amounts due to the Corporation from the employer by recourse to the Insurance Court but also the settlement of the dispute of a claim by the Corporation against the principal employer which implies that the principal employer also can, where the disputes the claim made and action is proposed to be taken against him by the Corporation under Section 68 to recover the amounts said to be due from him. While this is so there is also no impediment for the Corporation itself to apply to the Insurance Court to determine a dispute against an employer where it is satisfied that such a dispute exits. In either case neither Section 68 nor Section 75(2)(d) prescribes a period of limitation. It may also be mentioned that Section 77 which deals with the commencement of the proceedings, does not provide for any limitation for filing an application to the Insurance Court even though it provides under sub-section (2) of that Section that every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, that may be prescribed by rules made by the State Government in consultation with the Corporation. This was probably an appropriate provision in which the legislature if it had intended to prescribe a time for such applications could have provided. Be that as it may in our view the omission to provide a period of limitation in any of these provisions while providing for a limitation of a claim by an employee for the payment of any benefit under the regulations, shows clearly that the legislature did not intend to fetter the claim under Section 75(2)(d). It appears to us that where the Legislature clearly intends to provide specifically the period of limitation in respect of claims arising thereunder it cannot be considered to have left such matters in respect of claims under some similar provisions to be provided for by the rules to be made by the Government under its delegated powers to

prescribe the procedure to be followed in proceedings before such Court. What is sought to be conferred is the power to make rules for regulating the procedure before the Insurance Court after an application has been filed and when it is seised of the matter. That apart the nature of the rule bars the claim itself and extinguishes the right which is not within the pale of procedure. Rule 17 is of such a nature and is similar in terms of Section 80. There is no gain-saying the fact that if an employee does not file an application before the Insurance Court within 12 months after the claim has became due or he is unable to satisfy the Insurance Court that there was a reasonable excuse for him in not doing so, his right to receive payment of any benefit conferred by the Act is lost. Such a provision affects substantive rights and must therefore be dealt with by the Legislature itself and is not to be inferred from the rule-making power conferred by regulating the procedure unless that is specifically provided for. It was pointed out that in the Constitution also where the Supreme Court was authorised with the approval of the President to make rules for regulating generally the practice and procedure of the Court, a specifie power was given to it by Article 145(1)(b) to prescribe limitation for entertaining appeals before it. It is therefore apparent that the Legislature does not part with the power to prescribe limitation which it jealously retains to itself unless it intends to do so in clear and unambiguous terms or by necessary intendment. The view taken by the Madhya Pradesh, Madras, Punjab and Andhra Pradesh High Courts in the case already referred to are in consonance with the view we have taken. In the decision of the Punjab High Court, Dua, J. as he then was, expressed the view of the Full Bench with which Falshaw, C.J. and Mahajan J., agreed. After examining the provisions of the Act he observed at pages 170-171 :

> "At this stage, I consider it appropriate to point out, what is fairly well-recognised, that what is necessarily or clearly implied in a statute is as effectual as that, which is expressed because if often speaks as plainly by necessary inference as in any other manner. The purposes and aims of an Act as discernible from its statutory scheme are accordingly important guide posts in discovering the true legislative intent. One who considers only the letter of an enactment goes but, skin deep into its true meaning; to be able to fathom the real statutory intent it is always helpful to inquire into the object intended to be accomplished.
>
> Considering the entire scheme of the Act before us, it is quite clear that fixation of any period of limitation for the Corporation to realise the contributions from the employer may tend seriously to obstruct the effective working and enforcement of the scheme of insurance."

It may be of interest to notice that Falshaw, C.J., had earlier taken a different view in Chanan Singh v. Regional Director, Employees State Insurance Corporation, (AIR 1963 Punj 422 : (1963-64) 24 FJR 371 : ILR (1963) 2 Punj 11 : (1963) 7 Fac LR 64 : 1963 Kur LJ 277) but said that he had no hesitation in agreeing with Dua, J.'s view because he realised that his earlier view was based on an over simplification. In the latest case the Andhra Pradesh high Court also following the earlier decision of Madhya Pradesh, Madras and Punjab held that the State Government had exceeded its power to frame Rule 17 as no such power to prescribe limitation under the provisions of Section 96(1)(b) or under Section 78(2) can be said to have been delegated to the State Government. We, however, find that Section 78(2) does not delegate any power to the Government, to make rules but only requires the Insurance Court to follow "such procedure as may be prescribed by rules made by the State Government", which rules can only be made under Section 96 of the Act. In the view we have taken it is unnecessary to examine the question whether legislative practice also leads to the same conclusion though in the Madras and the Punjab decisions that was also one of the grounds given in support of their respective conclusions. The contrary view expressed by a Bench of the

Allahabad High Court is in our opinion not good law. We may before parting with this case point out that the Legislature has since chosen to specifically prescribe three years as limitation period by addition of sub-section (1-A) to Section 77 while deleting Section 80. Section 77(1-A) provides that "every such application shall be made within a period of three years from the date on which the cause of action arose". By this amendment the claim under clause (d), as well as the one under clause (f) of sub-section (2) of Section 75, which provides for the adjudication of a claim by the Insurance Court for the recovery of any benefit admissible under the Act for which a separate limitation was fixed under Section 80, is now to be made within three years from the date of the accrual of the cause of action. This amendment also confirms the view taken by this Court that the power under Section 96(1)(b) does not empower the Government to prescribe by rules a period of limitation for claims under Section 75. In the result this appeal is dismissed with costs.

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