SUPREME COURT OF INDIA

E.S.I.C.

Vs.

C.C. Santhakumar

C.A.No.4291 of 2000

(Arijit Pasayat and Tarun Chatterjee JJ.)

21.11.2006

JUDGMENT

ARIJIT PASAYAT, J.

All these appeals involve identical questions and are, therefore, taken up together for disposal. Some of the appeals are by the Employees State Insurance Corporation (in short 'the Corporation') while some others are by the employers. The Corporation questions correctness of the judgment rendered by the full Bench of the Kerala High Court while the employers question correctness of the judgment rendered by a Division Bench of the Madras High Court.

Basic question before the two High Courts were as follows:-

Proviso to Section 77(1A)(b) of the Employees State Insurance Act, 1948 (in short the 'Act') provided limitation of 5 years for claiming contribution and restricts the Corporation's right from recovering the arrears of contribution as arrears of land revenue under Section 45 (B) in pursuance of an order under Section 45(A) of the Act. The Corporation claimed ESI Contributions as arrears from various employers. Assailing those orders, some of the employers moved the Employees State Insurance Court (in short the 'E.S.I. Court') in the State of Kerala. The employers in the State of Tamil Nadu, however, filed writ petitions before the Madras High Court. The Writ Petitions were dismissed by learned Single Judge. Writ appeals filed before the High Court did not bring any result. The judgment of the Division Bench affirming that of learned Single Judge is the subject matter of challenge in some of the appeals. Corporation on the other hand has questioned the correctness of the judgment of the full Bench of the Kerala High Court, which held that the limitation prescribed under Section 77 restricting the claim for a period of five years clearly indicated by the fact that the contribution for a period of more than five years cannot be claimed by the Corporation. With reference to the proviso to Section 77(1A)(b) it was held that a period of limitation has to be read into the provision; otherwise the employers would be greatly handicapped and would not be in a position to establish its case as regards the number of employees working under it. In such a situation the employer would be left defenceless. With reference to Regulation 66 of the Employees State Insurance (General) Regulations, 1950 (in short the 'Regulation') it was held that the maintenance of the register in terms of Regulation 66 was for a period of 5 years. That being so, it is clear that the complaint is confined to a period of 5 years and the employer is not bound to preserve its records for the periods prior to that. The Madras High Court on the other hand held that the language of Section 77(1A)(b) is very clear and it did not provide for any period of

limitation for raising the demand or making the assessment. Learned counsel for the employers supported the view of the Kerala High Court. It was submitted that any other view would make the provisions confiscatory; it would also lead to an absurd result that the Corporation can theoretically make a claim even after decade, thereby causing prejudice to the employers. It was submitted that even if it is conceded for the sake of argument that Section 77(1A)(b) does not provide for a period of limitation the concept of claim being raised during a reasonable period of time is inbuilt, otherwise the action would be arbitrary. That being so it was submitted that the view expressed by the Kerala High Court should be accepted and not that of the Madras High Court.

Per contra, learned counsel for the Corporation submitted that the Kerala High Court failed to take notice of the fact that Section 77(1A) operates in different background and has no relation to a dispute raised by an employer to the demand raised for contribution by the Corporation. It was pointed out that the employers in the State of Tamil Nadu instead of moving the E.S.I. Court directly filed writ petitions without availing the alternative remedy available. Since factual disputes were involved regarding the actual number of employees, the writ petitions were not maintainable and the High Court has rightly clarified the position in law though it could have thrown out the writ petitions on the ground that alternative forum of redressal was available.

Learned counsel for the employers submitted that remedy provided in the Statute is really not a efficacious remedy as the employer would be required to deposit 50% of the amount claimed, though the Court had discretion to reduce the amount to be deposited. It cannot be said that an efficacious remedy is available.

In order to appreciate the rival submissions few provisions in the Act need to be noted. They are as follows:

"Section 45A. It was inserted by Act 44 of 1966 and enforced with effect from 17.06.1967. It reads as under:

"Determination of contributions in certain cases (1) Where in respect of a factory or stablishment no returns, particulars, registers or records are submitted furnished or maintained in accordance with the provisions of S.44 or any Inspector or other official of the Corporation referred to in Sub-sec.(2) of Section 45 is prevented in any manner by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under Section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment. Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard. An order made by the Corporation under sub-section (1) shall be sufficient proof of the claim of the Corporation under Section 75 or for recovery of the amount determined by such order as an arrear of land revenue under Section 45B or the recovery under Sections 45C to 45-I."

45B. Recovery of contributions.—Any contribution payable under this Act may be recovered as an arrear of land revenue.

74. Constitution of Employees' Insurance Court.--(1) The State Government shall, by notification in the Official Gazelle, constitute an Employees' Insurance Court for such local area as may be specified in the notification. (2) The Court shall consist of such number of Judges as the State

Government may think fit. (3) Any person who is or has been a judicial officer or is a legal practitioner of five years' standing shall be qualified to be a Judge of the Employees' Insurance Court.

(4) The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area.

(5) Where more than one Court has been appointed for the same local area, the State Government may by general or special order regulate the distribution of business between them.

75. Matters to be decided by Employees'

Insurance Court.--(1) If any question or dispute arises as to—

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act, or (c) the rate of contribution payable by a principal employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

(ee)any direction issued by the Corporation under section 55A on a review of any payment of dependants' benefit, or

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act], such question or dispute '[subject to the provisions of sub-section (2A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (2A), the following claims shall be decided by the Employees' Insurance Court, namely:-- (a) claim for the recovery of contributions from the principal employer;

(b) claim by a principal employer to recover contributions from any immediate employer; xx xx xx xx

(d) claim against a principal employer under section 68;

(e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and

(f) any claim for the recovery of any benefit admissible under this Act.

(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub- section (2) of section 54A in which case the Employees' Insurance Court may itself determine all the issues arising before it. (2B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent, of the amount due from him as claimed by the Corporation:

Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court. "77. Commencement of proceedings.-

(1) The proceedings before an Employees' Insurance Court shall be commenced by application.

(1A) Every such application shall be made within a period of three years from the date on which the cause of action arose.

Explanation For the purpose of this sub- section (a) the cause of action in respect of the claim for benefit shall not be deemed to arise unless the insured person or in the case of dependants' benefit, the dependants of the insured person claim or claim that benefit in accordance with the regulations made in that behalf within a period of twelve months after the claim became due or within such further period as the Employees' Insurance Court may allow on grounds which appear to it to be reasonable;

(b) the cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time;

Provided that no claim shall be made by the Corporation after five years of the period to which the claim relates.

(c) the cause of action in respect of a claim by the principal-employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulations.

(2) Every such application shall be in such form and shall contain such particulars and shall be accompanied by such particulars and shall be accompanied by such fee, if any, as may be prescribed by rules made by the State Government in consultation with the Corporation."

Section 45-A provides that in a case where a factory or establishment fails to furnish the returns or maintain or furnish the registers etc., the Corporation can determine the amount of contributions payable in respect of the employees of that factory or establishment. Such an order can be passed only after giving reasonable opportunity of hearing to the employer or the person in-charge of the factory or establishment. The order passed by the Corporation shall be sufficient proof of the claim of the Corporation under Section 75 or for recovery of the amount determined by such an order as an arrear of land revenue under Section 45-B or under Section 45-C to 45-I.

Section 45B provides that the contribution payable under the Act may be recovered as arrears of land revenue. Section 45C entitles the Authorised Officer to issue a certificate, specifying the amount of arrears. The Recovery Officer, on receipt of such certificate, is entitled to attach the property, arrest the employer and appoint a receiver for the management of the movable and immovable properties of the factory or establishment. The provisions contained in Sections 45-D to 45-I lay down a detailed procedure for effecting the recovery.

The next set of relevant provisions quoted above is contained in Chapter VI. It relates to the adjudication of disputes and claims. Section 74 deals with the constitution of Courts. Section 75(2) inter alia provides that the claim for recovery of the contributions from the principal employer shall be decided by the Employees' Insurance Court. Sub-Section (2B) was added by Act 29 of 1989. By this, it was provided that no matter, which is in dispute between the principal employer and the Corporation in respect of any contribution or any other dues, shall be raised by the principal employer in the Employee's Insurance Court, unless he has deposited with the Court 50% of the amount due from him, as claimed by the Corporation. However, in the proviso, a power has been reserved by which the Court can waive or reduce the amount of deposit.

Section 76 relates to the institution of the proceedings.

Under Section 77, the pivotal provision in these cases for commencement of proceedings has been made. A perusal of Section 77 shows that the proceedings before an Employees' Insurance Court commence with the filing of an application. The application has to be filed within a period of three years from the date on which the cause of action arises. In Clause (a) of the Explanation, provision for the fixation of the date on which the cause of action for the claimant or his dependants arises has been fixed. In Clause (b), the starting point for the accrual of the cause of action for the principal-employer has been fixed. It provides that the date on which the Corporation makes the claim from the principal-employer for recovering the contributions including interest and damages shall be the date of cause of action.

In the present case, the controversy centres on the proviso to Clause (b) of Section 77(1A). The crucial question is, "Does the proviso to Clause (b) of Section 77(1A) fix the limit of time, in which the Corporation can make a claim from the employer, on the basis of the orders passed under Section 45?"

Section 45A is a part of Chapter IV. Section 77 (1A) (b) proviso is contained in Chapter VI. The question is whether there is any connecting link between Chapter IV and Chapter VI.

Sections 38 to 45-I are contained in Chapter IV while Chapter VI relates to Sections 74 to 83. Sections 45A and 45B in Chapter IV were introduced by Act 44 of 1966 with effect from

17.06.1967, in order to curb the default by the employers and to provide for an efficient method of recovery. The mode of recovery is provided under Sections 45-C to 45-I. On the other hand, Section 75 in Chapter VI relates to the commencement of proceedings before the E.S.I. Court. Proviso to Clause (b) of Section 77(1A) was introduced by the Act 29 of 1989 with effect from 20.10.1989. A combined reading of the provisions indicates that no claim shall be made by the Corporation beyond five years, to which the claim relates. The relevant Section in Chapter IV, which deals with the order passed by the Corporation is Section 45A. Similarly, the relevant Section in Chapter VI, which deals with the resolving of disputes between the employer and the Corporation by the E.S.I. Court, is Section 77 (1A).

A reading of Chapter IV, as a whole, makes it clear that there is no limitation prescribed. Section 38 imposes the obligation on the employer to pay contribution and, upon his failure, he is liable to pay interest on a recurring basis until it is paid. Section 40 imposes an obligation to pay on the principal employer in the first instance. This means, even if the employees were those of the contractors, it is the principal employer who has to pay. Section 44 mandates the employer to furnish proper returns so that the Corporation can scrutinize, assess and pass an order for a claim. Section 44 does not provide for any limitation and, originally, it did not prescribe any mode of recovery. Therefore, Act 44 of 1966 was introduced. Under this Act, Sections 45A and 45B were brought into force. Thereafter Sections 45-C to 45-I were introduced, prescribing the mode of recovery. The apparent purpose of introduction of these Sections is to curb default by the employers and also to provide for an efficient method of recovery without any delay.

Section 45A provides for determination of contributions in certain cases. When the records are not produced by the establishment before the Corporation and when there is no cooperation, the Corporation has got the power to make assessment and determine the amount under Section 45A and recover the said amount as arrears of land revenue under Section 45B of the Act. This is in the nature of a best judgment assessment as is known in taxing statutes. When the Corporation passes an order under Section 45A, the said order is final as far as the Corporation is concerned. Under Section 45A(1), the Corporation, by an order, can determine the amount of contributions payable in respect of the employees where the employer prevents the Corporation from exercising its functions or discharging its duties under Section 45, on the basis of the material available to it, after giving reasonable opportunity. But, where the records are produced, the assessment has to be made under Section 75(2)(a) of the Act. Section 45A (2) provides that the order under Section 45A(1) shall be used as sufficient proof of the claim of the Corporation under Section 75 or for recovery of the amount determined by such order as arrears of land revenue under Section 45B. In other words, when there is a failure in production of records and when there is no cooperation, the Corporation can determine the amount and recover the same as arrears of land revenue under Section 45B. But, on the other hand, if the records are produced and if there is cooperation, the assessment has to be made and it can be used as a sufficient proof of the claim of the Corporation under Section 75 before the E.S.I. Court. So, the limitation of three years for filing an application before the Court, introduced by Act 44 of 1966, can only relate to the application under Section 75 read with 77(1A). The order under Section 45A need not be executed by the Corporation before the E.S.I. Court under Section 77. As such, the amendment to Section 77(1A)(b) proviso by Act 29 of 1989 providing five year limitation has no relevance so far as orders passed by the Corporation under Section 45A are concerned. Where an order is passed under Section 45A, it is the duty of the employer and not the Corporation to approach the E.S.I. Court. Since no application need be filed by the Corporation after an order is passed under Section 45A, the limitation prescribed under Section 77 does not get attracted. The non-payment of contribution is a continuing cause, which is clear from the fact that

the employer is enjoined to pay the interest under Section 39(5)(A), which was introduced by Act 29 of 1989, until the date of its actual payment.

Prior to the incorporation of Section 45A under Act 44 of 1966, the only resort available to the Corporation was Section 75, for recovery of contribution through the Court. Since this procedure was found to be impracticable and delayed process involved, a special provision was contemplated whereunder adjudication is to be made by the Corporation itself. By reason of incorporation of Section 45A with effect from 17.06.1967, it became possible for the Corporation to have determination of the question, binding on the principal employer, without resorting to the E.S.I.Court. In regard to the order under Section 45A, the same is enforced, as envisaged under Section 45B, which was similarly brought into the Act, by which the contribution may be recovered as arrears of land revenue. With regard to the decision reached by the E.S.I. Court in the application under Section 75, the said decision is enforced, as envisaged in sub-section (4) of Section 75 as if it is a Civil Court. The mode of recovery under Section 45B of the Corporation and the mode of recovery as per Section 75(4) by the E.S.I. Court as the Civil Court are entirely different as both Sections 45 and 75 operate in different spheres.

In this context, it would be worthwhile to refer to Chapter V also. Chapter V contains Sections 46 to 73. The relevant Section is 68, which reads as follows:

"68. Corporation's rights where a principal employer fails or neglects to pay any contribution :- (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 may, on being satisfied that the contribution should 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 an arrear of land-revenue (or under section 45-C to Section 45-I)"

Section 68 of the Act in Chapter V deals with the Corporation's rights, where an employer fails to pay any contribution. Sub-section (2) to Section 68 provides that the amount recoverable under this Section may be recovered as if it were an arrear of land revenue or under Sections 45-C to 45-I. The said Chapter does not impose any fetter or limitation for the Corporation to recover the amounts by coercive process. In view of the addition of the words in Section 68 "or under Section 45-C to 45-I" to sub-section (2) of Section 68 by Act 29 of 1989 with effect from 20.10.1989, the said claim could be recovered under Section 45-C to 45-I of the Act. There is no limitation prescribed in the language of Section 68. Section 60 prescribes that the benefits are not assignable to anyone else. Section 71 provides that the benefits under the Act are payable to the employee up to the date of his death. Thus, the Legislature, in its wisdom, did not want to impose by fetter or limitation on the

Corporation to recover the amounts by coercive process under Chapter V. Section 68 of the Act has been elaborately dealt with by this Court in Bharat Barrel and Drum Mfg. Co. Ltd. and Anr. v. E.S.I. Corporation (1971 (2) SCC 860). It was inter alia observed as follows:

"Chapter VI deals with the 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. Sections 76 and 77 deal with the institution and commencement of proceedings and Section 78 with the powers 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."

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.

In the above judgment this Court has clearly held that Section 68 of the Act empowers the Corporation to resort to coercive process, to recover the contribution from the employer as if it were an arrear of land revenue and the said right is not restricted by any limitation. This is a crucial Section.

Similarly, no limitation is provided in Chapter VII. It deals with the imposition of penalty or levy of damages upon failure to pay contributions. It consists of Sections from 84 to 86A.

When the Act itself does not provide for any limitation on the Corporation's right to claim, the employers cannot rely upon Regulations 32 to 66, dealing with the period for maintenance of registers, to imply any limitation.

Section 45A of the Act contemplates a summary method to determine contribution in case of deliberate default on the part of the employer. By amendment Act 29 of 1989, Sections 45-C to 45-I were inserted in the Principal Act, for the purpose of effecting recovery of arrears by attachment and sale of movable and immovable properties or establishment of the principal or immediate employer, without having recourse to law or E.S.I Court. Therefore, it cannot be said that a proceeding for recovery as arrears of land revenue by issuing a certificate could be equated to either a suit, appeal or application in the Court. Under Section 68(2) and Sections 45- C to 45-I, after determination of contribution, recovery can be made straightaway. If the employer disputes the correctness of the order under Section 45A, he could challenge the same under Section 75 of the Act before the E.S.I. Court.

On a plain reading of Sections 45A and 45B in Chapter IV and 75 and 77 in Chapter VI of the Act, as indicated above, there cannot be any doubt that the area and the scope and ambit of Sections 45A and 75 are quite different.

If the period of limitation, prescribed under proviso (b) of Section 77(1A) is read into the provisions of Section 45A, it would defeat the very purpose of enacting Sections 45A and 45B. The prescription of limitation under Section 77(IA)(b) of the Act has not been made applicable to the adjudication proceedings under Section 45A by the legislature, since such a restriction would restrict the right of the Corporation to determine the claims under Section 45A and the right of recovery under Section 45B and, further, it would give a benefit to an unscrupulous employer. The period of five years, fixed under Regulation 32(2) of the Regulations, is with regard to maintenance of registers of workmen and the same cannot take away the right of the Corporation to adjudicate, determine and fix the liability of the employer under Section 45A of the Act, in respect of the claim other than those found in the register of workmen, maintained and filed in terms of the Regulations.

What Section 75(2) empowers is not only the recovery of the amounts due to the Corporation from the employer by recourse to the E.S.I. Court, but also the settlement of the dispute of a claim by the corporation against the employer. While this is so, there is no impediment for the Corporation also to apply to the E.S.I. Court to determine a dispute against an employer where it is satisfied that such a dispute exists. If there is no dispute in the determination either under Section 45A(1) or under Section 68, the Corporation can straightaway go for recovery of the arrears.

Section 77 of the Act relates to commencement of proceedings before the E.S.I. Court. The proviso to sub-Section 77 of the Act cannot independently give any meaning without reference to the main provision, namely, Section 77 of the Act. Therefore, the proviso to Clause (b) of Section 77(1A) of the Act, fixing the period of five years for the claim made by the Corporation, will apply only in respect of claim made by the Corporation before the E.S.I. Court and to no other proceedings.

The Legislature has provided for a special remedy to deal with special cases. The determination of the claim is left to the Corporation, which is based on the information available to it. It shows whether information is sufficient or not or the Corporation is able to get information from the employer or not, on the available records, the Corporation could determine the arrears. So, the non-availability of the records after five years, as per the Regulation, would not debar the Corporation to determine the amount of arrears. Therefore, if the provisions of Section 45A are read with Section 45B of the Act, then, the determination made by the Corporation is concerned. It may not be final so far as the employer is concerned, if he chooses to challenge it by filing an application under Section 75 of the Act. If the employer fails to challenge the said determination under Section 75 of the Act before the Court, then the determination under Section 45A becomes final against the employer as well. As such, there is no hurdle for recovery of the amount determined under Section 45B of the Act, by invoking the mode of recovery, as contemplated in Sections 45C to 45-I.

In Employees' State Insurance Corporation v. F. Fibre Bangalore (P) Ltd. (1997 (1) SCC 625) it was observed that it is not necessary for the Corporation to seek a resolution of the dispute before the E.S.I. Court, while the order was passed under Section 45A. Such a claim is recoverable as arrears of land revenue. If the employer disputes the claim, it is for him to move the E.S.I. Court for relief. In other cases, other than cases where determination of the amount of contributions under Section 45A is made by the Corporation, if the claim is disputed by the employer, then, it may seek an adjudication of the dispute before the E.S.I. Court, before enforcing recovery.

The inevitable conclusion, therefore, is that the view of the Full Bench of the Kerala High Court is not correct and that of the Madras High Court is correct.

That brings us to the other question i.e. whether a concept of reasonable time can be read into the provision even though not specifically provided for? Similar questions have arisen in several other statutes.

In Hindustan Times Ltd. v. Union of India (1998 (2) SCC 242) this court dealt with the power to recover damage under Sections 14(B) of the Employees Provident Fund and Misc. Provisions Act, 1952 (in short the 'Provident Fund Act'). There also the question arose as to whether in the absence of any period of limitation the authority under the Provident Funds Act could recover the damages after a long period of time. It was inter alia held as follows:

"The authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show-cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on plea of power-cut, financial problems relating to other indebtedness or the delay in realization of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape liability; there is no period of limitation prescribed by the legislature for initiating action for recovery o damages under Section 14-B. The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings under Section 14-B would be taken; mere delay in initiating action under Section 14-B cannot amount to prejudice inasmuch as the delay on the part of the Department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest. However, the employer can claim prejudice if there is proof that between the period of default and the date of initiation of action under Section 14-B he has changed his position to his detriment to such an extent that if the recovery is made after a large number of years, the prejudice to him is of an "irretrievable" nature; he might also claim prejudice upon proof of loss of all the relevant records and/or non availability of the personnel who were, several years back in charge of these payments and provided he further establishes that there is no other way he grounds which could lead to "irretrievable" prejudice; further, in such cases of "irretrievable" prejudice, the defaulter must take the necessary pleas in defence in the reply to the show cause notice and must satisfy the authority concerned with acceptable material; if those pleas are rejected, he cannot raise them in the High Court unless there is a clear pleading in the writ petition to that effect."

A "reasonable period" would depend upon the factual circumstances of the case concerned. There cannot be any empirical formula to determine that question. The court/authority considering the question whether the period is reasonable or not has to take into account the surrounding circumstances and relevant factors to decide that question.

In State of Gujarat v. Patel Raghav Natha (1969 (2) SCC 187) it was observed that when even no period of limitation was prescribed, the power is to be exercised within a reasonable time and the limit of the reasonable time must be determined by the facts of the case and the nature of the order which was sought to be varied. This aspect does not appear to have been specifically kept in view by the Division Bench. Additionally, the points relating to applicability of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977, and even if it is held that the Act was applicable, the reasonableness of the time during which action should have been initiated were also

not considered. It would be hard to give an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic stands now like the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the decision of the Judge usually determines what is "reasonable" in each particular case; but frequently reasonableness "belongs to the knowledge of the law, and therefore to be decided by the courts". It was illuminatingly stated by a learned author that an attempt to give a specific meaning to the word "reasonable" is trying to count what is not a number and measure what is not space. It means prima facie in law reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or ought to know. (See: Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar (1987 (4) SCC 497) and Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. (1989 (1) SCC 532). As observed by Lord Romilly, M.R. in Labouchere v. Dawson (41 LJ Ch 472) it is impossible a priori to state what is reasonable as such in all cases. You must have the particular facts of each case established before you can ascertain what is reasonable under the circumstances. Reasonable, being a relative term is essentially what is rational according to the dictates of reason and not excessive or immoderate on the facts and circumstances of the particular case.

These aspects were highlighted in Collector and Others v. P. Mangamma and Others (2003 (4) SCC 488).

As observed in Veerayee Ammal v. Seeni Ammal (2002 (1) SCC 134), it is "looking at all the circumstances of the case; a "reasonable time" under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea".

According to Advanced law Lexicon by P. Ramanatha Aiyar 3rd Edition, 2005 reasonable time means as follows:

"That is a reasonable time that preserves to each party the rights and advantages he possesses and protects each party from losses that he ought not to suffer.

"Reasonable Time" is defined to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case.

If it is proper to attempt any definition of the words "reasonable time", as applied to completion of a contract, the distinction given by Chief Baron Pollock may be suggested, namely, that a "reasonable time" means as soon as circumstances will permit.

In determining what is a reasonable time or an unreasonable time, regard is to be had to the nature of the instrument, the usage or trade or business, if any, with respect to such instrument, and the fact of the particular case.

The reasonable time which a passenger is entitled to alighting from a train is such time as is usually required by passengers in getting off and on the train in safety at the particular station in question.

A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than "directly" such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea. Reasonable time always depends on the circumstances of the case. (Kinney) It is unreasonable for a person who has borrowed ornaments for use in a ceremony to detain them after the ceremony has been completed and the owner has demanded their return. (AIR 1930 Oudh 395).

The expression "reasonable time" means so much time as is necessary under the circumstances to do conveniently what the contract or duty requires should be done in a particular case". [See: Joseph Severance v. Benny Mathew (2005(7) SCC 667)]

In all these cases at hand the factual aspects have not been examined, because the grievance appears to have been focused on the applicability of Section 77 (1A)(b).

In the circumstances we dispose of all these appeals with the following directions :

(1) The employers shall move the E.S.I. Court within a period of two months, if not already done; (2) They shall deposit 25% of the amount claimed with the E.S.I. Court along with the application in terms of Sections 75 & 76 of the Act before the E.S.I. Court.

(3) The E.S.I. Court shall determine the quantum of contribution, if any, payable and consider the question as to whether demands were raised within a reasonable period of time or not after considering the question of prejudice, if any, for the delayed action taken by the Corporation. (4) The approach of the E.S.I. Court and the Authorities should be that of a watch dog and not of a blood hound, even though the legislation is a beneficial one.

We make it clear that we have not expressed any opinion on the merits of the case. Appeals are accordingly disposed of but without any order as to costs.