

A.K. Brothers

Vs.

Employees State Insurance Corporation

F.A.F.O. No, 222 of 1961. , against order of Judge. Employees Insurance Court,  
Kanpur

(V.G. Oak and D.D. Seth, JJ.)

10.05.1961. 17.08.1964

## **JUDGMENT**

**Oak, J.**

1. The question of law referred to us is : Whether R. 17 of the Uttar Pradesh Employees Insurance Court Rules, 1952 is ultra vires of the rule-making power of the State ?"

2. This reference arises out of a proceeding under the Employees State Insurance Act, 1948 (hereafter referred to as the Act). Employees State Insurance Corporation, Kanpur filed an application against a firm Messrs A.K. Brothers under Section 75(2) of the Act for the recovery of a certain sum as contribution under the Act. The firm raised various pleas in defense. One of the points raised by the firm was that, the application by the Corporation was barred by time. This plea was overruled by the Employees Insurance Court, Kanpur. That Court passed in favor of the Corporation-applicant a decree for a certain sum.

3. Against that decree, an appeal has been filed before this Court. When the appeal was taken up by a learned Single Judge of this Court, the appellant relied upon R. 17 framed by the State Government under the Act laying down that such applications must be filed within twelve months from the date of accrual of the cause of action. The Corporation urged that R. 17 was ultra vires. On finding that there was no pronouncement on this question by this Court, the learned Single Judge referred the question of law quoted above to a larger Bench.

4. In order to appreciate the various points raised by the learned counsel for the parties, it will be useful to refer to the relevant provisions of the Act. The Employees

State Insurance Corporation is established under Section 3 of the Act. Chapter IV of the Act provides for contribution by the employer and employees. Section 40 lays down that the principal employer must pay contributions in the first instance. Under Section 44, an employer has to furnish returns and maintain registers. Chapter V describes various benefits to employees. Section 68 provides for the Corporation's rights where a principal employer fails or neglects to pay any contribution. Chapter VI deals with adjudication of disputes and claims. Employees Insurance Courts (hereafter referred to as Insurance Courts) are established under Section 74 of the Act. Section 75 enumerates matters to be decided by Insurance Courts. One such matter is a claim for the recovery of contributions from the principal employer. Section 76 deals with institution of proceedings etc. Sub-Section (1) of Section 76 states :

"Subject to the provisions of this Act and any rules made by the State Government, all proceedings before the Employees Insurance Court shall be instituted in the Court. ...."

According to Section 77, proceedings before an Insurance Court can be commenced by application. Section 80 lays down that a beneficiary cannot establish his claim before the Insurance Court unless such claim is filed within twelve months. Section 82 provides for appeals to the High Court. Such an appeal has to be filed within sixty days. Chapter VII provides for penalties. According to Section 94, contributions due to a Corporation have priority over other debts. Section 98 confers power on State Government to make rules. Sub-Section (1) of Section 96 states :

"The State Government may, subject to the condition of previous publication, make rules not inconsistent with this Act in regard to all or any of the following matters, namely :

(a) .....

(b) the procedure to be followed in proceedings before such Courts and the execution of orders made by such Courts.

5. In exercise of the powers conferred by clauses (u) to (c) of Sub-Section (1) of Section 98 of the Act the State Government made rules in February 1952. They were published in the U.P. Gazette dated 23-2-1952 in Part 1-A of the Gazette. Rule 17 relates to limitation. The validity of that rule is now in dispute.

6. A similar rule on the question of limitation was framed by Madhya Pradesh Government. The validity of that rule was challenged before Madhya Pradesh High Court in "*Employees State Insurance Corporation v. Madhya Pradesh Government and others*", <sup>1</sup> It was held by a Division Bench of Madhya Pradesh High Court that, Rule 17 of the Madhya Pradesh Employees Insurance Courts Rules prescribing the period of limitation for an application to the Insurance Court is outside the rule-making power conferred on the State Government under Section 96(1), and is inconsistent with the provisions of the Act, and is consequently ultra vires.

7. Mr. B.N. Asthana, appearing for the respondent, places strong reliance upon that decision. He has adopted the reasoning of that judgment. It is, therefore, necessary to examine the various points covered by that judgment.

8. It was urged by Mr. Asthana that, if such a claim is allowed to be defeated by a rule of limitation, an employer can defeat the Act simply by refusing to furnish a return in time, as required by Section 44 of the Act. There are two answers to this contention. Firstly, even if an employer refuses to furnish a return within time, it is always open to the Corporation to collect the necessary information from other sources. Secondly, the Act provides penalties for acts of commission and omission. According to Section 85 of the Act, if a person fails or refuses to submit a return required by the regulations, or makes a false return, he is liable to imprisonment extending to three months and fine. It is not, therefore, altogether safe for an employer to decline to furnish a return.

9. Relying on Sections 68 and 94 of the Act, it was urged by Mr. Asthana that, since those proceedings did not contemplate any rule of limitation, there cannot be any limitation for an application under Section 75 of the Act. Section 68 deals with the Corporation's right to recover from the employer under certain circumstances. Sub-Section (2) of Section 68 lays down that the amount recoverable under this Section may be recovered as if it was an arrear of land revenue. We do not know whether the liability involved in the present case is covered by Section 88 of the Act. But assuming that the present case is covered by Section 68 of the Act, and further assuming that there is no limitation for the recovery of arrears of land revenue, it does not follow that there cannot be any limitation for proceedings under Section 75 of the Act. If there are two alternative remedies, it is conceivable that there is some limitation as regards one remedy, but no limitation as regards the alternative remedy. Section 94 merely lays down a principle that contributions due to a Corporation should

get priority over ordinary debts. This is merely a rule of priority. Section 94 does not lay down that, even time barred debts would be enforced by Insolvency Courts.

10. Sections 80 and 82 of the Act lay down two periods of limitation for two types of proceedings. The proceeding under Section 80 is a claim by a beneficiary; while the proceeding under Section 82 is an appeal to the High Court. The mere fact that Parliament thought it fit to lay down two specific periods of limitation for two types of proceedings does not lead to the conclusion that, it is impossible for some appropriate authority to lay down a period of limitation for some other proceeding under the relevant rule-making power.

11. Mr. Grover, appearing for the appellant, relies upon clause (b) of Sub-Section (1) of Section 96. Clause (b) enables a State Government to make a rule laying down the procedure to be followed in such proceedings. Mr. Asthana contended that a rule prescribing limitation is not a matter of procedure at all. This point was disposed of by Dixit, C.J. in the case from Madhya Pradesh thus :

"Now, in some cases while dealing with the question whether the Limitation Act, 1908 has or has not retrospective effect, it has no doubt been held that 'limitation' is a branch of the law of procedure. But in those cases a new rule of limitation was held to be retrospective, not because the law of limitation is merely a law of procedure in no way affecting the right of any kind of any party, but because the law was intended to be retrospective ..... It is, therefore, not correct to say that the rule of limitation which enjoins a party to bring an action within a particular period is nothing but a matter of procedure simpliciter."

It is well established that rules regarding limitation are largely a law of procedure. In Halsbury's Laws of England, Third Edition, Volume 24, it is stated on page 181 under paragraph 331 :

"Those provisions of statutes of limitation which bar the remedy and not the right are rules of procedure only, and form part of the *lex fori*."

Rule 17 merely lays down that an application has to be filed within twelve months.

That is merely a matter of procedure.

12. On going through the various provisions of the Act, we do not find any provision inconsistent with Rule 17 framed by U.P. Government. It is true that the Act itself contains certain rules about limitation as regards certain proceedings, and the Act has not prescribed any specific period of limitation under Sections 75 and 76. But Section 96 empowers the State Government to frame rules for such proceedings subject to the provisions of the Act. Section 96(1)(b) empowers the State Government to lay down rules of procedure for such proceedings. Rules 16 framed by the State Government deals with the place of suing. Mr. Asthana conceded that, that is a matter of procedure. If the place of suing is a matter of procedure, we find no, difficulty in holding that the rule as regards limitation is also a matter of procedure.

13. The impugned rule is covered by Section 96(1)(b) of the Act. We do not find any conflict between the rule and any provision of the Act. It, therefore, follows that the rule in question is valid. Our answer to the question referred to the Bench is that, Rule 17 of the U.P. Employees Insurance Court Rules, 1952 is not ultra vires.

14. Let the papers be returned to the learned Single judge with this answer.

Reference answered.

Cases Referred.

1. AIR 1964 Mad Pra 75