

(1981) 09 BOM CK 0067

In the Bombay High Court

Case No : First Appeal No's. 54, 55 and 56 of 1975

Central India Spinning Weaving and Manufacturing Co. Ltd.
(The Empress Mills)

APPELLANT

Vs

Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 25-09-1981

Acts Referred:

Employees State Insurance Act, 1948 — Section 75
Limitation Act, 1963 — Article 137

Citation : (1982) 2 BomCR 263

Hon'ble Judges : V.A. Mohta, J

Bench : Single Bench

Advocate : S.A. Bobde, for the Appellant; V.A. Masodar, for the Respondent

Final Decision : Dismissed

Judgement

V.A. Mohta, J.—These three appeals at the instance of the Central India Spinning, Weaving and Manufacturing Company Limited (The Empress Mills), Nagpur are directed against the common judgment dated 13th December, 1974 by which three applications under the Employees" State Insurance Act, 1948 ("The Act of 1948" for short) have been disposed of. Insurance Case No. 12 of 1966 has been filed by the Employees" State Insurance Corporation ("The Corporation" for short) claiming a sum of Rs. 21,855.83 as unpaid employees, contribution for the period July 1954 till November 1965. The Empress Mills has filed Insurance Case No. 2 of 1969 and Insurance Case No. 9 of 1970 for a declaration that the amount forcibly recovered from it by the Corporation was in fact not payable. Inasmuch as the controversy about liability---factual as well as legal---was common, by agreement of parties, these three cases were consolidated, common evidence was recorded in Insurance Case No. 12 of 1966 and the three matter was disposed of by one judgment.

2. By and large, the factual dispute was whether in respect of the following categories of employees, employees" contribution was payable :---

- i) Loading and Unloading of coal.
- ii) Loading and Unloading and stacking of cotton bales.
- iii) Embossing of Jari on cloth.
- iv) Preparation of designs and samples.
- v) Centralized machinery repair account.

3. The trial Court has rejected the major part of the factual contentions raised on behalf of the Mills holding that in respect of all the five categories the contribution was payable. Inasmuch as before me the controversy is confined only to the aspect of limitation, it is unnecessary to state the factual side of the controversy in details.

4. The point is whether such applications are controlled by any law of limitation Act of 1948 at the relevant time did not prescribe any limitation. Mills, however, relied upon the Limitation Act. The trial Court has rejected the point about applicability of Article 137 of the Limitation Act to the proceedings under the Act of 1948, relying upon the following long line of decisions on the subject:

1) The Employees" State Insurance Corporation, Bombay Vs. Bharat Barrel and Drum Manufacturing Co. Private Ltd. and Another,

2) AIR 1972 1935 (SC)

3) Popular Process Studio and Another Vs. Employees" State Insurance Corporation,

4) Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.,

5. Division Bench of this Court in Bharat Barrel"s case 1967 (1) L.L.J. 625 dealing with the question of limitation in respect of applications before the Employees" Insurance Court has observed as under :---

"The question is what period of limitation, if any, applies to applications filed by the Corporation to an Employee"s Insurance Court. The answer depends upon whether the application of the Corporation was made before 1 January, 1964 or thereafter. This is because the Limitation Act of 1963 came into force on 1 January, 1964 and replaced the Indian Limitation Act of 1908. Under the Indian Limitation Act of 1908 no period of limitation was prescribed for an application like the one made to an Employees" Insurance Court. Section 2(10) of the Indian Limitation Act of 1908 defined a suit as not including an appeal or an application. No period of limitation prescribed for filing of a suit can, therefore, have any relevance to an application filed before an Employees" Insurance Court. The only article in the Act which might have applied to such an application was Article 181 which provided a period of limitation of three years. However, as pointed out by the Supreme Court in the aforesaid decision in Bombay Gas Company Ltd. v. Gopal Bhiva and others, 1963(2) L.L.J. 608 at 614 :---

"...It is well-settled that Article 181 applies only on applications which are made under the Code of Civil Procedure....."

"Thus an application filed in an Employees' Insurance Court before 1 January, 1964, for a relief u/s 75 of the Employees, State Insurance Act was not subject to any period of limitation. Application filed on or after 1 January, 1964, would, however, be covered by Article 137 of the Limitation Act of 1963 which provides a period of limitation of three years from the time when the right to apply accrues".

Thus, as far as I am concerned, there is a binding decision on the subject in the field. However, it appears that Single Bench of this Court in the case of M/s. Popular Process Studio (supra) came to the conclusion that the aforesaid decision was no more good law in view of the pronouncement made by the Supreme Court in the case of Athani Municipal Council (supra). The Single Bench observed :---

"The finding and orders of the E.I. Court are challenged by the appellants in the present appeals. Mr. Jaykar, learned Advocate for the Corporation, however, submits that it is not now necessary to go into the merits of those findings in so far as it lays down that Article 137 of the Limitation Act, 1963 applies to applications to the E.I. Court, the decision in The Employees' State Insurance Corporation, Bombay Vs. Bharat Barrel and Drum Manufacturing Co. Private Ltd. and Another, is no longer good law and when the applications in question were filed there was no other provision of law prescribing any period of limitation for filing such applications. Mr. Jaykar relies on the decision of the Supreme Court in Town Municipal Council Athani v. Presiding Officer, Labour Court Hubli, Civil Appeals Nos. 170 to 173 of 1908 dated 29-3-1969 (reported in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., The question directly involved in that case was whether Article 137 of the Limitation Act of 1963 is applicable to applications to the Labour Court u/s 33(2) of the Industrial Disputes Act, 1947, but the Supreme Court considered the wider question about the scope of that article and held, disapproving the decision of the Full Bench of this High Court in P.K. Porwal (By Manager) Vs. Labour Court, Nagpur, that like Article 181 of the Indian Limitation Act, 1908, Article 137 of the Limitation Act, 1963, was applicable only to applications to courts under the Code of Civil Procedure."

6. It appears that in The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, the decision recorded in the case of Town Municipal Council, Athani (supra) has been expressly overruled.

7. It is pertinent to note that decision in Bharat Barrel's case (supra) was challenged in Supreme Court and in AIR 1972 1935 (SC) it has been confirmed after noticing the observations recorded by the Division Bench of this Court in the following manner :

"On the second question it held that an application filed in a Court before January

1, 1964 for relief u/s 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".

In *The Employees State Insurance Corporation and another v. Rai Saheb Rekchand Mohota Spg. & Wvg. Mills*, First Appeal No. 51 of 1970, as well as in *Employee State Insurance Corporation v. The Manager R.S.R.M. Mills, Hinganghat*, First Appeal No. 77 of 1968, decided respectively on 22-1-1981 and 16-2-1981, I have taken a view that under the circumstances *Bharat Barrel's* decision is binding on the Single Bench of this Court and consequently, it will have to be held that Article 137 of the Limitation Act applies to such matters.

8. Shri Masodkar, the learned Counsel for the respondents has invited my attention to the decision recorded by Single Bench of this Court, *Deshpande, J.*, in First Appeal No. 42 of 1971 in the case of *Messrs Shyam Brothers Printing Press, Nagpur v. The Employees State Insurance Corporation, Nagpur*, decided on 7-7-1981 in which relying on *Popular Process Studio (supra)* it has been held that Article 137 does not apply. It is unfortunate that attention of the learned Single Judge was not drawn to earlier two judgments in first appeals as well as various other decisions referred to therein including the case of *Kerala State Electricity Board (supra)* despite the fact that same learned Counsel appeared. For these reasons agreeing with the submissions made on behalf of the appellants" learned Counsel Shri Bobde, I am inclined to reiterate the earlier view of the matter that I have taken. Consequently, claim for employees contribution earlier to the period of three years from the date of application will have to be held as barred by time.

9. There is an agreement between the parties that the said amount comes to Rs. 10,452.60 as far as employee's contribution ordered to be paid in Insurance Case No. 12 of 1966 is concerned. The other two matters relate only to the declaration. The liability as well as actual amount paid will have to be determined, for which I remit the matter to the trial Court. Order about interest is confirmed.

10. In the result, all the three appeals are allowed but with no order as to costs.