
(1969) 07 MAD CK 0023
In the Madras High Court

Chari and Ram

APPELLANT

Vs

The Employees State Insurance Corporation and Another

RESPONDENT

Date of Decision : 17-07-1969

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)
Limitation Act, 1963 — Section 17

Citation : (1970) 2 MLJ 92

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—Both the appeals are by the employees. C.M.A. No. 63 of 1967 is against the order passed by the District Judge, Madurai, in O.P. No. 2 of 1965 filed by the appellants stating that they were not obliged to respect a demand for contributions made by the Employees' State Insurance Corporation under the Employees' State Insurance Act, 1948. C.M.A. No. 64 of 1967 is against the order in O.P. No. 4 of 1965 filed by the Corporation against the firm for contribution. The period during which the firm was liable to contribute is agreed and is not in dispute. Even so the amount is payable by the firm to the Corporation. I am not, therefore, touching that aspect of the case and the facts thereto as, in the view that I intend taking finally, it may not be necessary. However, the period during which, the contribution is asked for is between 15th July, 1953 30th June, 1961. There is some variation in the pleadings, in this case, as to the amount which the Corporation claims in their petition and the amount which the firm says it is not liable. Ultimately, however, the parties have agreed that a sum of Rs. 2,801.41 is the amount which the firm will be liable, if at all it is made liable, and the Corporation will be entitled to recover, if it is entitled to recover.

2. The primary question, however, is one of limitation. The Corporation wrote to the appellant in June, 1964, calling upon them to furnish returns from 30th September, 1953. The Corporation also demanded that the firm was liable to pay employers' special contribution from 15th July, 1953, as also employee's

contributions from 28th October, 1953. The firm, for the first time, submitted the returns under Chapter IV of the Employees State Insurance Act only after the date of demand made by the Corporation and referred to above. The Corporation thereafter filed this application in 1965, for recovery of the said amount and firm also filed an independent application questioning the right of the Corporation to recover the same. The lower Court was of the view that the claim of the Corporation was sustainable and within time and granted a decree in the sum of Rs. 2,801.41, and dismissed O.P. No. 2 of 1965. It is in those circumstances the firm has come up in civil miscellaneous appeals questioning the legality and propriety of the order of the learned District Judge.

3. As the quantum is not in dispute, the only question is whether the claim of the Corporation is barred by limitation. Learned Counsel appearing for the respondent would state that Section 17 of the Limitation Act is attracted in the instant case, and as the appellant did not file the returns as contemplated in Chapter IV of the Act, they failed in their legal and statutory obligations and therefore such act of theirs would enlarge the period of limitation within the meaning of the proviso to Section 17. On the other hand it is contended that Section 17 is not applicable to the instant case at all and the only Article of the Limitation Act which if at all could be pressed into service is Article 137, and that Article prescribes only three years as the period within which recovery can be made and therefore the claim made in O.P. No. 4 of 1965 is barred and that O.P. No. 2 of 1965 has to be allowed.

4. It is not seriously disputed that for the recovery of the amounts, by way of contributions under the Employees' State Insurance Act, 1948, there is no specific period prescribed under the Limitation Act XXXVI of 1963. This being the very foundation for the application of Section 17, I am unable to agree with learned Counsel for the respondent that Section 17 could be invoked in this case. Section 17 (1) begins by saying:

Where, in the case of any suit or application for which a period of limitation is prescribed by this act....

5. There is no prescription, and hence Section 17 cannot be invoked for the benefit of the respondent's contentions.

6. I am inclined to agree with the contention of learned Counsel for the appellants that Article 137 is the only Article which could be pressed into service and which governs the rights and liabilities of the parties in the instant case. Article 137 provides for a period of three years for any application for which no period of limitation is provided elsewhere in the Act, and, that period runs when the right to apply accrues. In the instant case, the Corporation by its communication in June, 1964 and referred to in paragraph 4 of the pleadings in O.P. No. 2 of 1965, called upon the firm to contribute from July or September, 1953. Therefore, the right to apply accrued to them even on that date in 1953. No application having been filed by the respondent Corporation within three

years from that date their claim is barred by limitation. Section 75 is the section which entitles the Corporation to come to the Employees Insurance Court for recovery of the claim for contribution from the employer. This is an application within the meaning of Article 137 of the Limitation Act. Such an application not having been filed within three years from the date of accrual of the right, it is obviously barred by limitation.

7. The Supreme Court had to consider a similar question in *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, . There the question arose as to what is the period of limitation in the matter of recovery of amounts payable by the person entitled u/s 33-C (2) of the Industrial Disputes Act. That Act also did not provide any period of limitation. Interpreting the said section, vis-a-vis the provisions of the Limitation Act, the Supreme Court was of the view that, in the absence of prescription as to time for the laying of an action for recovery of the amounts due under section. 33-C (2) of the Industrial Disputes Act, Article 181 of the old Limitation Act would apply. There also it was a period of three years. Referring to the ratio in the Supreme Court decision, the Bombay High Court had to consider a similar matter which has arisen before me, and, the learned Judge of the Bombay High Court in *The Employees' State Insurance Corporation, Bombay Vs. Bharat Barrel and Drum Manufacturing Co. Private Ltd. and Another*, , made it very clear thus:

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

8. I respectfully adopt reasoning and hold that the application by the Corporation is barred.

9. This Court also, in a batch of writ petitions, *Gemini Studios v. Regional Director, E.S.I. Corporation* W.P. Nos. 843, 3093 and 4594 of 1965, following the observations of the Bombay High Court, held that it is Article 137, which ought to apply to cases which have no prescription.

10. It is, therefore, clear that application filed by the Corporation in O.P. No. 4 of 1965 for the recovery of contributions payable by the firm for the period commencing from 15th July, 1953 to 30th June, 1961, is obviously barred on the date when the application was made in the year 1965. The Court below erred in upholding that it was in time. In this view, therefore, the contention of the firm and the relief asked for by it in O.P. No. 2 of 1965 is well founded.

11. In the result, both the Civil Miscellaneous Appeals are allowed with costs.