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**(1971) 11 RAJ CK 0013**

**In the Rajasthan High Court**

**Case No :** Civil Reference in Civil Appeal No. 3 of 1965

Employees State Insurance Corporation and Others APPELLANT

Vs

The Executive Engineer, P.W.D. ( B. and R.) and Others RESPONDENT

**Date of Decision :** 10-11-1971

**Acts Referred:**
Employees State Insurance Act, 1948 — Section 38, 40, 75, 82, 96
Limitation Act, 1963 — Section 10

**Citation :** (1971) WLN 599

**Hon'ble Judges :** Jagat Narayan, C.J;B.P. Beri, J

**Bench :** Division Bench

## Judgement

Jagat Narayan, C.J.—These six cases have been referred to a Division Bench by a learned Single Judge of this Court on the ground that there was divergence of judicial opinion about the vires of Rule 17 of the Rajasthan Employees Insurance Court Rules, 1959.

2. The Employees'' State Insurance Act, 1948, is a Central Act. u/s 38 of it all employees in factories or establishments to which the Act applies are to be insured compulsorily in the manner provided by the Act. Contributions are payable in respect of an employee both by the employee and by the employer. u/s 40 the employer is liable to pay both the contributions in the first instance. Under Sub-section (2) of Section 40 the current contribution payable in respect of an employee are recoverable from his current wages. The employer is required to make payments of these contributions to the Employees State Insurance Corporation quarterly. In two of these cases the employer namely the Executive Engineer, P.W.D. Buildings & Roads Workshop, Jaipur, failed to make payment of the contributions In respect of the employer''s contributions separate proceedings are taking plan. Two applications were filed by the Employees'' State Insurance Corporation is respect of the employee''s contributions. The Employees'' Insurance Court ea Jaipur disallowed part of the claim made by the Corporation on the ground that it was barred be limitation under Rule 17(1) of the Rajasthan Employees'' Insurance Court Rules, 1959. Rule 17 runs as follows:

Limitation : (1) Every application to the Court shall be brought within three years from the date on which the cause of action arose or as the case may be the claim become due:

Provided that the Court may entertain an application after the said period of three years if it satisfied that the applicant had sufficient reasons for not making the application within the said period.

(2) Subject as aforesaid the provisions of Part II and III of the Indian Limitation Act, 1908 (IX of 1908), shall be so far as may apply to every such applications.

3. The Rajasthan Employees'' Insurance Court Rules, 1959, were framed in exercise of the powers conferred by Clauses (a) to (c) of Sub-section (1) of Section 96 of the Employees'' State Insurance Act, 1948. u/s 96(1)(b) the State Government is authorised to make rules in regard to the procedure to be followed in proceedings before the Employees'' Insurance Courts. Applications for recovery of contributions from the employer the been filed u/s 75(2) of the Act. In that section no period of limitation has been prescribed. A period of limitation has been prescribed under Rule 17(1). Similar rules have been framed under the Employees'' State Insurance Act in all the States in India. The question arose whether Rule 17(1) is within the rule making powers conferred on the State Government under the Act. The Allahabad High Court held in A A.K. Brothers Vs. Employees State Insurance Corporation, that Rule 17 was a procedural rule which was covered by the rule making powers given to the State Government u/s 96(1)(b) of the Act. It was observed that it was well established that rules regarding limitation are highly a law of procedure. In Halsbury''s Laws of England, Third Edition, Volume 24, it is stated at page 81 under paragraph 331-

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

4. Rule 17 merely lays down that an application has to be filed within the prescribed period. That is merely a matter of procedure.

5. This matter was considered by the Employees'' State Insurance Corporation Vs. Madhya Pradesh Government and Others, , Solar Works Vs. Employees'' State Insurance Corporation and Another, , The Employees'' State Insurance Corporation, Bombay Vs. Bharat Barrel and Drum Manufacturing Co. Private Ltd. and Another, and United India Timber Works and Another Vs. Employees'' State Insurance Corporation, High Courts and they held that Rule 17 was ultra vires the rule making powers conferred on the State Government u/s 96(1)(b). We have carefully considered all the above decisions and we are of the opinion that the view taken by the Allahabad High Court is correct. With the exception of the Madhya Pradesh High Court all Courts agree that the law of limitation is a procedural or adjectival law and is not a part of substantive law. It is procedural or adjectival, because it regulates the manner in which substantive rights can be enforced by judicial action, In that sense Rule 17 is clearly a procedural rule.

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6. The reasons why the other High Courts held Rule 17 to be ultra vires shall now be considered by us.

7. One reason is that these Courts were greatly influenced by the fact that u/s 82 of the Act a period of limitation is prescribed for appeals. It was argued that if the Legislature had intended to fix any period of limitation for filing applications u/s 75(2) a provision for it would have been made in the Act. We are of the opinion that the Employees'' State Insurance Scheme was just introduced in the year 1948 and the Legislature probably thought it proper to leave it to the rule making authority to prescribe a period of limitation for filing applications u/s 75(2). The reason is that rules can easily be altered if experience of the working of the rules shows that the period of time prescribed was inadequate. It is more difficult to amend an Act. So far as limitation for appeals is concerned there was no difficulty in prescribing a period of 60 days for such appeals.

8. Another reason given by these Courts for holding the provision to be ultra vires was that in some of the enactments referred to in the judgment of the Full Bench of the Punjab High Court there was a specific mention in the rule making provision conferring power to prescribe a period of limitation. So far as Rajasthan is concerned periods of limitation have been prescribed in rules framed under various enactments without a specific mention of the power to prescribe such periods in the provisions of the Acts conferring the rule making power. Under the Rajasthan Panchayat & Nyaya Panchayat & Nyaya Panchayat (General Rules, 1961 periods of limitation have been prescribed under Rule 12(5), 132(1) and 270. These Rules have been framed u/s 89 of the Raj. Panchayat Act. This does not confer a specific power to prescribe periods of limitation for various applications and appeals.

9. Another reason given in the judgment of the Punjab High Court is that the contributions of the employees collected by the employer constitute a trust for which no period of limitation has been prescribed u/s 10 of the Limitation Act The employer purchases tickets from the Corporation in advance. These stamps are affixed on the contribution card of the employee at the time of payment of wages to him and then a deduction for the price of the stamps is made from his wages. This is so prescribed in regulation 29 of the Employees'' State Insurance (General) Regulations 1950 framed u/s 97 of the Employees'' State Insurance Act, 1948. No trust is created.

10. Another reason given by some courts is that fixation of any period of limitation for the Corporation to realise the contributions from the employer may tend to obstruct the effective working of the scheme of insurance. We do not consider that the working of the scheme will be obstructed if a period of limitation for three years is prescribed as has been done.

11. We are accordingly of the opinion that Rule 17 of the Rajasthan Employees'' Insurance Court Rules, 1959 is intra vires the rule making power conferred on the State Government u/s 96(1)(b) of the Employees'' State Insurance Act, 1948.

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12. No other question arose in the above six cases on which there is any difference of judicial opinion. We accordingly return the above finding to the learned Single Judge for deciding the above six cases.

13. The costs of this Court shall be easy.

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