

(1981) 07 BOM CK 0019
In the Bombay High Court
Case No : Appeal No. 25 of 1981

Employees" State Insurance Corporation	APPELLANT
Vs	
Asian Paints India Ltd. and another	RESPONDENT

Date of Decision : 31-07-1981

Acts Referred:

Constitution of India, 1950 — Article 38, 39, 41, 42, 43
Employees State Insurance Act, 1948 — Section 45A, 45B, 75, 77(1), 77(1A)

Citation : (1981) 83 BOMLR 479 : (1982) 2 LLJ 416 : (1982) MhLj 315

Hon'ble Judges : R.S. Bonsale, J;C.S. Dharmadhikari, J

Bench : Division Bench

Judgement

1. This is an appeal filed by the Employees" State Insurance Corporation challenging the judgment and findings recorded by the single Judge of this Court in Misc. Petition No. 822 of 1976. It is not necessary to make a detailed reference to the facts of the case because in memorandum of appeal various contentions were raised, during the course of arguments the appellant the Employees" State Insurance Corporation has raised following two contentions only, namely - (1) determination of the liability under S. 45A of the Employees; State Insurance Act (herein after referred to as the Act) does not contemplate any hearing and, therefore, the finding recorded by the learned single Judge in that behalf is vitiated; and (2) the finding recorded by the learned single Judge that the claim made by the Corporation which relates to the period from the year 1962 to 1971 is barred by limitation, is also vitiated because the statute has not laid down any limitation, for recovery of the amount determined under S. 45A of the Act. These are the only contentions raised and argued before us in this appeal.

2. It appears from record that the Corporation made demands for the first quarter to the fourth quarter of the year 1962 and for the last quarter of the years 1967 and 1971 for the contribution, in respect of the overtime wages. The demand included the employees" contribution, as well as employer"s special contribution. The second demand related to the 1st quarter of 1965 to fourth

quarter of 1965 and the last quarter of 1971 and the demand included the payment of employees' contribution as well as employer's special contribution. It was the case of the Corporation that right from the year 1962 to 1975 the employer did not give them any inspection of the accounts and the ledger, etc. Such an inspection was given to them for the first time in October, 1975. There after demand notices were issued to the employer. In reply to these demands, but for the bare denial, the employer did not raise any substantial tribal issue nor it placed any material before the Corporation. Therefore, ultimately on 30th April, 1976 the Corporation determined the liability under S. 45A of the Act, and sought certificate for recovery of the amount under S. 45B, from the Tahsildar on 14th May 1976. It is the recovery certificate which was challenged in the Misc. Petition No. 822 of 1976 before the learned single Judge. The learned single Judge came to the conclusion that no reasonable opportunity was given to the employer to put forward his case and, therefore, the determination of the liability under S. 45A was vitiated it being contrary to the principles of the natural justice. The learned Judge further found that the Deputy Regional Director was not a person authorised to determine the liability and S. 45A of the Act, and therefore, the determination of the liability by him was ab initio void, it being without jurisdiction. The learned single Judge also found that if the provisions of S. 45A are read with provisions of S. 75 and S. 77(1) and 77(1A) of the Act, then the claim made by the Corporation is barred by limitation and in this view of the matter the learned single Judge allowed the Misc. Petition No. 822 of 1976 filed by the employer and quashed the demand made by the Corporation. As already observed it is against this judgment of the single Judge dated 12th September, 1980 the present appeal is filed by the Corporation.

3. Sri. Nain, the learned counsel appearing for the Corporation contended before us that S. 45A does not contemplate any hearing being given to the employer and, therefore, the principles of natural justice cannot be imported while determining the scope and ambit of S. 45A of the Act. He also contended that in any case personal hearing of the employer is not called for in each and every case and only because a personal hearing was not given, though otherwise enough opportunity is given to the employer, it cannot be said that the determination under S. 45A is vitiated for the failure to follow the principles of natural justice. In support of his contention Sri Nain has placed reliance upon the decision of the single Bench of this Court in *Janaki Prasad v. The Regional Director, E.S.I.C. Bombay and others* (Misc. Petn. No. 1214 of 1975 decided on 4th October, 1975) wherein the learned single Judge has distinguished the decision of this Court in *B.M.K. Industries v. Employees' State Insurance Corporation and others*, (1979) Mah. L.J. 202, on the ground that the said decision was based on concession made by the learned counsel appearing for the Corporation. It is not possible for us to accept this contention. It is no doubt true that the learned single Judge in *Janaki Prasad's* case has observed that the decision of the Division Bench of this Court in *B.M.K. Industries' case* was based on concession, however, if the Division Bench decision in *B.M.K. Industries* is

read as a whole, it is difficult to hold that the judgment in the said case is based on concession made by the learned counsel. The concession made by the learned counsel was restricted to the Corporation giving fresh opportunity of being heard only and not regarding the construction or interpretation of S. 45A of the Act. After making a detailed reference to the various provisions of the Act, as well as to the decision of the Supreme Court and other High Courts in the field in B.M.K. Industries" case this Court ultimately make to the conclusion that the power which the Corporation is expected to exercise while determining the liability under S. 45A of the Act, quasi-judicial in nature and, therefore, is obliged to follow the principles of natural justice. While coming to the conclusion a reliance was also placed on the decision of Supreme Court in Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation, The word "determination" itself indicates that some opportunity will have to be given to the employer before the claim is determined. The amount cannot be determined unless notice is given to the employer to show cause, though ultimately determination of the claim is based on the information available to the Corporation. The determination contemplated by S. 45A is neither arbitrary nor fanciful. Determination will have to be based on the material available. In this view of the matter this Court in B.M.K. Industries Limited, has rightly come to the conclusion that while determining the liability under S. 45A of the Act principles of natural justice will have to be followed. Therefore, it is not possible for us to approve the decision of single Judge in Janaki Prasad's case which runs counter to the decision of the Bench in B.M.K. Industries case as well as the decision of the Supreme Court in Royal Talkies case. However, what will be the scope of the hearing must depend upon the facts and circumstances of each case. As observed by this court in B.M.K. Industries" case the principles of the natural justice are not embodied rules nor they can be imprisoned within us straitjacket or rigid formula. What particular rules of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of the case. In all cases the principles of natural justice did not necessarily imply personal hearing. This obviously must also depend upon the facts and circumstances of each case. To say the least this appears to be a well-settled principle of law. In this context a reference could usefully be made to a decision of the Supreme Court in Shrikrishnadas Tikara Vs. State Government of Madhya Pradesh and Others, and particularly to the following observations in para 8 of the judgment :

"The fact that in the second notice by the Collector a personal hearing was offered, does not mean that the failure personally to hear the petitioner was a contravention of the cannon of natural justice in the first case. It is well established that the principles of natural justice cannot be putrefied or fitted into rigid moulds. They are flexible and turn on the facts and circumstances of each case. Has there been any unfair deal by the authority ? Has the party affected been hit below the belt ? Has he had a just opportunity to state his plea ? Having regard to the feature of the present case, we are hardly satisfied that the order

is bad on this score."

Therefore, we have no hesitation in coming to the conclusion that before determining the liability under S. 45A of the Act, the employer will have to be given a reasonable opportunity of being heard in consonance with the principles of natural justice. What should be the nature of this opportunity of hearing must depend upon the facts and circumstances of each case.

4. So far as the finding recorded by the learned single Judge holding that the Deputy Regional Director was not a person authorised to determine the claim under S. 45-A of the Act, is concerned, it was not possible for Sri Nain, to show as to how said offer had jurisdiction to determine the claim. It appears from the judgment of the learned single Judge that though he had given enough opportunity to the counsel appearing before him for the Corporation, it was not possible for the Corporation to produce any authorisation in favour of the Deputy Regional Director in that behalf. Even before us such an authority is not produced, From the notification produced before us it is quite obvious that only Regional Director and the Assistant Regional Director are authorised to determine the liability under S. 45-A of the Act. In these circumstances it cannot be said that the finding recorded by the learned single Judge in that behalf is in any way illegal or incorrect. Therefore, having regard to the facts and circumstances of the present case and the fact that it is not possible for the Corporation to show as to how the said finding is in any way incorrect, we have no other alternative but to confirm the said finding.

5. So far as the question of limitation is concerned, we have heard the counsel appearing for both sides in detail. According to Shri Nain the learned counsel appearing for the Corporation the limitation prescribed by S. 77(1A) is applicable only to the application filed under S. 75 of the Act before the Employees Insurance Court. The provisions of S. 77(1A) are not applicable to the proceedings instituted under S. 45A of the Act. According to Shri Nain, the area and the field covered by S. 45A is wholly different than the one covered by Chapter VI which deals with the adjudication of the disputes and claims. According to the learned council if the provisions of S. 45A and 45B are read harmoniously together with other provisions of the Act, then it is clear that the limitation prescribed by S. 77(1A) cannot be imported into the provisions of S. 45A of the Act and, therefore, the learned single Judge has committed an error in coming to the conclusion that the limitation prescribed by S. 77(1A) of the Act will also apply to the proceedings under S. 45A of the Act In support of this contention Shri Nain has placed reliance upon the decision of Kerala High Court *E.S.I.C. v. Ramdas Reddiar*, 1980 I L.L.J. 166 and the decision of the Karnataka High Court in *Regional Director, E.S.I. Corporation. M/s. Fibre, Bangalore Pvt. Ltd.* 1980 II L.L.J. 30.

6. On the other hand Shri Sawant, the learned counsel appearing for the respondent-employer contended before us that the learned single Judge was right in coming to the conclusion that the limitation prescribed by S. 77(1A) of

the Act will also apply to the determination of the claims under S. 45A of the Act. According to Shri Sawant if the various provisions of the Act are read together and harmoniously, the determination contemplated by S. 45A is a mere provisional one. The order passed under S. 45A is merely treated as a sufficient proof of the claim of the Corporation under S. 75 of the Act and, therefore, unless recourse is taken to the adjudication proceedings under Chapter VI and particularly to S. 75 of the Act, there is no final determination of the claim qua a particular employer. This being a scheme of the Act, the limitation prescribed by S. 77(1A) of the Act, must apply even to the determination of the claim under S. 45A of the Act. In support of this contention, Shri Sawant has placed strong reliance upon the decision of the Supreme Court in *The Employees State Insurance Corporation, Bhopal Vs. The Central Press and Another*, , a decision of the Calcutta High Court in *Employee's State Insurance Corporation Vs. Malhoutra (K.L.) and Another*, , two decisions of the Madras High Court in *M. S. Dhananjayan v. The Regional Director, Employees' State Insurance Corporation, Madras and another*, 1972 II L.L.J. 338 , *Free India Private Ltd. Vs. Regional Director, Employees' State Insurance Corporation*, a decision of the Delhi High Court in *Hindustan Lever Limited v. Employees' State Insurance Corporation, New Delhi and others*, 1973 I L.L.J. 259 and a decision of the Madras High Court in *T.I. Diamond Chain Ltd. v. E.S.I.*, (1973) I. L.R. 337.

7. The Division Bench of this Court of which one of us (Dharmadhikari, J.) was a party in *B.M.K. Industries* had an occasion to consider the scope and ambit of the provisions of S. 45A of the Act. In the said decision the Division Bench after making a detailed reference to the various provisions as well as the scheme of the Act, came to the conclusion that the provisions of S. 45A cover a distinct and different area and field, than the one which is covered by Chapter VI of the Act. The said section comes into operation when the normal procedure prescribed by the Act cannot be adhered to because the Factory or the establishment concerned has not submitted returns, furnished the particulars nor maintained registers or records as required by law or the Inspector or other Officer of the Corporation is obstructed by the Principal or the immediate employer or any other person, in exercising his functions or discharging his duties under S. 45. Thus special provision has been made in S. 45A so as to enable the Corporation to determine the amount of contribution where the employer refuses to cooperate or fails to abide by the relevant provisions of law. The words used in S. 45A, contemplate passing of an order by the Corporation determining the amount of contribution payable by the employer. The order is to be based on the information available, to the Corporation. Thus the statute itself has laid down the classes of cases which are covered by S. 45A of the Act which discloses a definite legislative policy. This provision was considered necessary to cope with the abnormal circumstances/or situations arising out of the acts of commission or commission on the part of the defaulting employers. To remove the lacuna and to provide for speedy procedure and remedy S. 45A was introduced by the amending Act. 44 of 1966. It is pertinent to note that by the said amending Act,

S. 77(1A) was also introduced in the statute book. If this provisions are read with S. 75 of the Act, then the difference between two provisions is obvious. Section 45A of the Act merely contemplates a summary method for determination of the contribution in the cases resulting from the deliberate defaults on the part of the employers. Therefore, in our view the said provision will have to be construed and understood in this background and in consonance with the aims and objects of the legislation. It is not necessary to restate the intention behind this legislation over again in view of the decision of this Court in the Associated Cement Cos. Ltd. v. The Regional Director, Employees' State Insurance Corporation, Bombay (First appeal No. 490 of 1980, decided on 14th April, 1981). The Supreme Court had also an occasion to consider the scheme of the Act in AIR 1972 1935 (SC) as well as in Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation, As observed by the Supreme Court in Royal Talkies case the enactment is post-independence measure and shares the passion of the Constitution for social justice. Articles 38, 39, 41, 42, 43 and 43A of the Constitution show concern for workers and their welfare. It is a legislation for providing social security measure which is in the nature of social insurance and constitute an important step to achieve the goal of welfare State by improving the living and working conditions and offering the employees protection from future uncertainties. As a matter of national policy and in tune with the directive principles of state Policy as incorporated in the Constitution, the Legislature has made various provisions providing for insurance as a measure of social security. Therefore, various provisions of the Act will have to be construed in this background. To such cases the rule of construction which is applicable, is laid down by Lord Barons in Heydons case which has now attained status of a classic. Four things are to be discerned and considered while interpreting such provisions, namely : (1) What was the common law before the making of the Act; (2) What was the mischief and defect for which the common law did not provide; (3) What remedy the Parliament had resolved and appointed to cure the disease, and (4) What is the reasons the remedy. While interpreting such remedial enactments, a construction which will suppress the mischief and advance the remedy will have to be preferred. If the amendment introduced by the Act 44 of 1966 and particularly provisions of S. 45A and 77(1A) of the Act are read in this context, it is quite clear that prior to this amendment the law did not prescribe any period of limitation nor did it provide or make any provision for determination of the contribution in cases covered by S. 45A of the Act. Section 45B of the Act which provides for recovery of contribution, was also introduced in statute book by the amending Act 44 of 1966. Therefore, if the provisions of the Act, i.e., S. 45A and S. 45B are read with chapter VI, which deals with the adjudication of disputes and claims, it will have to be seen as to whether in all cases it is necessary that the dispute relating to the determination of the claim should be resolved by the Employees' Insurance Court under S. 75 of the Act. It is contended by Shri Sawant, the learned counsel appearing for the employer that the determination contemplated under S. 45A of the Act is merely provisional and does not get finality unless the claim is adjudicated upon under

Chapter VI of the Act. In substance it is his contention that for getting finality to the provisional determination of the claim under S. 45A, it is obligatory on the part of the Corporation to file an application under S. 75 of the Act before the Employees' Insurance Court. Unless such an application is filed and the claim is adjudicated upon there is no finality to the claim determined under S. 45A of the Act. In view of this it is further contended by Shri Sawant that as the adjudication of the claim is only contemplated under Chapter VI, the limitation prescribed by S. 77(1A) must also apply to the claim sought to be determined under S. 45A of the Act. Thus according to the learned counsel since the adjudication of the disputes and the claims could only be under Chapter VI, the limitations prescribed under S. 77(1A) of the Act must apply to all the claims irrespective of the fact whether they are determined under S. 45A of the Act or are adjudicated under Chapter VI. It is also contended by Shri Sawant that no period is prescribed by the Act or Regulations for which the employer is obliged to preserve the accounts of registers, etc. If no period is prescribed for the preservation of maintenance of these account books or registers, etc., then according to learned counsel, the intention of the legislature in enacting S. 77(1A) of the Act is to prohibit stale claims by the Corporation. According to the learned counsel as there is nothing in the Act to indicate as to for how many years the registers, etc., should be preserved or maintained, it will not be possible for the employer to meet the stale claim made by the Corporation if the relevant registers and account books are destroyed in the usual course of business. Therefore, according to Shri Sawant the Legislature in its wisdom has laid down the period of limitation under S. 77(1A) of the Act so that stale claims are not raised by the Corporation. If this is the scheme of Chapter VI, then according to the learned counsel there is no reason as to why the limitation prescribed should not apply to the provisional determination under S. 45A.

8. On the other hand it is contended by Shri Nain that so far as the Corporation is concerned, the determination of the claim under S. 45A is final and it is not necessary for the Corporation to take recourse of the provisions of S. 75 of the Act for enforcement of the liability determined under S. 45A. It is open to the Corporation to recover the amount determined S. 45A by taking recourse to S. 45B of the Act. The amount determined under S. 45A is final and is only subject to the challenge by the employer under S. 75 of the Act and in that sense only it could be termed as provisional. In substance, therefore, the controversy before us is a very narrow one. If it is held that it is obligatory on the part of the Corporation to seek adjudication of the claim under S. 75 of the Act, then obviously the limitation prescribed under S. 77(1A) of the Act must apply. On the other hand if it is held that it is not obligatory, then obviously the limitation prescribed by S. 77(1A) of the Act will not apply to the determination of the claims under S. 45A of the Act. Therefore, for properly appreciating this narrow controversy, it will be worth while if a detailed reference is made to the provisions of Ss. 45A, 45B and 77(1A) of the Act. The provisions of the said sections read as under :

"45A : Determination of contributions in certain cases : (1) Where in respect of a factory or establishment 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-s. (2) of S. 45 is obstructed by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under S. 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.

(2) An order made by the Corporation under sub-s. (1) shall be sufficient proof of the claim of the Corporation under S. 75 or for recovery of the amount determined by such order as an arrear of land revenue under S. 45B.

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

77 : Commencement of proceedings : (1) The proceedings before an Employees' Insurance Court shall be commenced by application. (1-A) 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 a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependents' benefit, the dependents of the insured person claims 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 contribution from the principal employer for recovering contribution from the principal employer or 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 fee, if any, as may be prescribed by rules made by the (State) Government in consultation with the Corporation".

9. As already observed before the introduction of S. 45A of the Act there was no provision in the Act for determination of the claim in the cases referred to in S. 45A itself. The procedure prescribed by S. 45A could be adhered to in the cases resulting from the deliberate defaults on the part of the employer. To some extent the procedure prescribed is an abnormal one. The Legislature has provided for a special remedy to deal with such special cases. The determination of claim is left to the Corporation which is based on the information available to it. By sub-s. (2) of S. 45A the order of determination made by the Corporation

under sub-s. (1) of S. 45A is treated as sufficient proof of the claim of the Corporation under S. 75. It is also made enforceable and the determined amount can be recovered as arrears of land revenue under S. 45B. If, therefore, the provisions of S. 45A are read with the S. 45B of the Act, then so far as the Corporation is concerned, the determination made can safely be termed as final determination of the claim payable by the employer. It is not final so far as the employer is concerned if he chooses to challenge it by filing an application under S. 75 of the Act. If the employer fails to challenge the said determination by filing an application under S. 75 of the Act, then the determination made by the Corporation under S. 45A of the Act, is final against him also and the amount determined could be recovered under S. 45B of the Act. If the contention raised by Shri Sawant, that in all cases adjudication of the claim must be under S. 75 of the Act is accepted, then in our opinion S. 45A will become redundant. That will also amount to providing a premium on the deliberate defaults of the employer. Section 45A is a remedy provided by the Legislature to deal with special cases and, therefore, these provisions will have to be construed to advance the remedy and not to defeat it. This is a beneficial piece of legislation meant for providing security-measures to the employees. Though the benefits are provided for the employees, the initial liability is fastened on the employer to pay the contribution. Therefore, the employer as well as the Corporation are mere trustees, and not beneficiaries. Since it was noticed that unscrupulous employers were not carrying out their obligations under the Act in furnishing returns and particulars or maintaining registers or records, etc., which resulted in non-recovery of the contribution, the Legislature enacted S. 45A of the Act. Till the amending Act 44 of 1966, there was no limitation prescribed even for the application under S. 75 of the Act. Section 77(1A) only prescribes a period of limitation for the application under S. 75 of the Act and not for all the claims under the Act. Therefore, importing the period of limitation prescribed by S. 77(1A) of the Act into S. 45A of the Act will practically result in frustration of the very intention of the Legislature. To some extent it will also amount to premium upon the deliberate acts of commission or omission on the part of the employer.

9-A. Such a limitation will restrict the right of the Corporation in the matter of determination of claims under S. 45A of the Act. It is a well-settled rule of interpretation, that if the language is ambiguous then while construing the provisions relating to the limitation, a construction should be preferred which preserves the right of remedy to the one which bars or defeats it. A Court ought to avoid an interpretation upon a status of limitation by implication or inference as may have an analysing effect, unless it is driven to do so by the irresistible force of the language employed by the Legislature. See *Lala Balmukund (Dead) through Lrs. Vs. Lajwanti and Others*, It will be seen that under S. 45A, of the Act, Corporation gets a right to determine the claim, in a case where there is omission on the part of employer to maintain records in accordance with S. 44, etc. It is well-settled that even in cases of time barred debts the Limitation Act, only takes away the remedies by action in the Court of law, and leaves the right

otherwise untouched. If a creditor whose debt is barred by statute has any means of enforcing his claim other than by action or set off, the Limitation Act does not prevent him from recovering the debt by these means. The statute barred debts are dues, though payment of them cannot be enforced by action. The limitation prescribed but does not extinguish the claim. The limitation merely bars the remedy without extinguishing the right. This position is not disputed by Shri Sawant. Therefore, only because the enactment does not lay down any period for preservation of records, it is not possible for us to import the period of limitation prescribed in S. 77(1A) into S. 45A. In this context a reference could usefully be made to the decision of the Supreme Court in *M/s. Bharat Barrel & Drum Mfg. Co. Ltd., v. Employees' State Insurance Corporation*,. Section 77(1A) though introduced by the same Amending Act. The Legislature in its wisdom, has not made it applicable to S. 45A of the Act. What Legislature has not chosen to do directly cannot be permitted to be done indirectly or by implication. It cannot be forgotten that the Act is an outcome of world wide policy to provide remedy for the wide spread evils arising out of poverty. It is a piece of social security, and employers cannot be allowed to take advantage of their wrong for defeating the just claims of the employees.

10. As already observed the area and the field covered by section 45A is separate and distinct than the one covered by S. 75 of the Act. Determination of the claim under S. 45A is in the nature of an order which is enforceable under S. 45B. Sub-section (2) of S. 45A makes this position further clear. Sub-section (3) of S. 45A is in two parts. The first part lays down that the order passed under S. 45A(1) shall be sufficient proof of the claim of the Corporation under S. 75. This only means that if a dispute is raised by the employer by filing an application under S. 75, the determination of the claim already made by the Corporation under S. 45A shall be treated as sufficient proof of the claim, made by the Corporation. This does not mean that in all cases when an order is passed under S. 45A(1) of the Act, the Corporation is obliged to approach the Employees' Insurance Court under S. 75. The Corporation required to approach the Court S. 75 in all cases, then the determination of the claim under S. 45A(1) if wholly unnecessary. The second part of the sub-s. (2) 45A in clearest terms lays down that the order passed by. If the Corporation under sub-s. (1) of S. 45A is enforceable and the amount determined by such order can be recovered as an arrears of land revenue under S. 45B. If it was intended by the Legislature that the order passed under sub-s. (1) of S. 45A should be treated as provisional in all cases and the claim is not crystallised unless adjudication proceedings are instituted before the Employees' Insurance Court under S. 75 of the Act, then the second part of sub-s. (2) of the S. 45A was wholly unnecessary. There is inherent evidence in Sub-s. (2) of the S. 45A, even to indicate that the order passed under sub-s. (1) of S. 45A regarding the determination of the amount is enforceable on its own strength under S. 45B. Therefore, it is not possible for us to accept the contention of Shri Sawant that in all cases it is obligatory on the part of the Corporation to approach the Employees' Insurance Court under S. 75

of the Act.

11. In support of his contention, Shri Sawant has placed reliance upon a decision of the Supreme Court in Central Press case. Relaying upon the observations of the Supreme Court in paras 3 and 4, it is contended by Shri Sawant that the ratio of this decision is that it is obligatory on the part of the Corporation in all cases, to approach the Employees' Insurance Court under S. 75 of the Act. It is not possible for us to accept this interpretation of Shri Sawant. The relevant observations of the Supreme Court in paras 3 and 4 of the said decision read as under :

"The powers of the Corporation are given in S. 45A of the Act, introduced by Act 44 of 1966, whereby the Corporation may, on the basis of the information available to it, determine the amount of contributions payable and make necessary demands. Apparently, the scheme of the Act, after the amendment, is that the Corporation itself should in a case where there is omission on the part of the employer to maintain records in accordance with S. 44 of the Act, determine the amount of contributions on the strength of such information as it may collect. It can then make the demand. If the employer refuses to comply with the demand so made, the matter can come up before the Employees' Insurance Court under S. 75 of the Act. The Court should give the Corporation a direction to perform its duty where it considers that this should be performed by the Corporation. It cannot decline to perform its own duty because the Corporation has failed to discharge its function.

The matter having come up before that Court, the claims by the Corporation were rejected erroneously merely on the ground that there was difficulty in determining the basis of wages in a particular factory so as to enable a calculation of the amount of contribution to be made by the employer. It seems that the notification of the Central Government under S. 99A of the Act, also introduced by Act 44 of 1966, was intended to overcome such a difficulty in determining the wages of the employees. After having considered the provisions of S. 99A of the Act, we doubt whether this provision can be availed of for the purpose of supplying a defect or overcoming difficulty in adjudication of a dispute for which the Employees' Insurance Court is given ample powers. Moreover, the Corporation has itself to collect the information initially and make a provisional demand on the basis of the information under S. 45A in such a case.

12. In para 3 the Supreme Court has only observed that if the Employer refuses to comply with the demand so made the matter can come before the Employees' Insurance Court under S. 75 of the Act. Obviously this means that it will come up before the Employees Insurance Court at the instance of the Employer who refuses to comply. That was a case where the Employees' Insurance Court was required to adjudicate dispute under S. 75(1) of the Act and the Employees' Insurance Court refused to do so. In that context these observations were made by the Supreme Court. The phrase "provisional demand" as used in para 4 of the decision clearly indicates that the demand is provisional because it is

challenged by the employer before the Employees' Insurance Court. It is provisional because it is under challenge. But from this it can not be said that in all cases it is obligatory upon the Corporation to approach the Employees' Insurance Court. It is not possible for us to place such a construction or interpretation upon the provisions of S. 45A of the Act. Similar view seems to have been taken by the Full Bench of the Karnataka High Court in Regional Director, E.S.I. Corporation v. M/s. Fiber Bangalore Pvt. Ltd. as well as the Kerala High Court in E.S.I.C. v. Ramdas Reddiar.

13. Once it is held that in all cases it is not obligatory on part of the Corporation, to approach the Employees' Insurance Court under S. 75 of the Act, after determination of a claim under S. 45A, then obviously limitation prescribed by S. 77(1A) of the Act cannot apply to the determination of the claim made under S. 45A of the Act. Even if an application is filed by the employer under S. 75 of the Act, disputing the determination made by the Corporation under S. 45A, the limitation prescribed under S. 77(1A) of the Act will not apply to such proceedings or claim. The Corporation is not an applicant in those proceedings and hence the limitation prescribed under S. 77(1A) will not apply to such a case also. In this view of the matter that part of the finding recorded by the learned single Judge cannot be sustained and is liable to set aside.

14. Though Shri Swant has made reference to various decisions of other high Courts, referred to herein above, in our opinion none of these decisions are germane for deciding the controversy raised before us. Therefore, it is not necessary to make any reference to the said decisions.

15. In the result, therefore, the appeal is partly allowed. The finding recorded by the learned single Judge that the order of determination is bad as it is not passed by the competent officer is confirmed. However, the finding recorded by the learned single Judge that the claim made is barred by limitation is set aside. As a necessary consequence of this, the Corporation is at liberty to pass a fresh order of determination of the claim under S. 45A of the Act, in accordance with law after giving a reasonable opportunity of being heard to the employer.

16. However, in the circumstances of the case there will be no order as to costs. Appeal partly allowed setting aside finding as regards limitation - Case remanded.