

(2003) 07 KL CK 0038
In the High Court Of Kerala
Case No : M.F.A. No. 1094 of 1991 etc.

E.S.I. Corporation

APPELLANT

Vs

Excel Glasses Ltd.

RESPONDENT

Date of Decision : 09-07-2003

Acts Referred:

Employees State Insurance Act, 1948 — Section 77, 77(1A)

Citation : (2003) 3 KLT 42

Hon'ble Judges : Jawahar Lal Gupta, C.J.;R. Rajendra Babu, J;A.K. Basheer, J

Bench : Full Bench

Advocate : T.V. Ajayakumar, T.D. Rajalakshmi and T.P.M. Ibrahim Khan, for the Appellant; M.V.S. Namboothiry, Antony Dominic, A.M. Shaffique, A.V. Xavier and K. Anand, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, C.J.—Does the proviso to Section 77(1A)(b) of the Employees' State Insurance Act, 1948 debar the Corporation from making any claim after five years from the date on which it had arisen? This question was answered in the negative by a Division Bench of this Court in Vijayan Pillai v. E.S.I. Corporation 1998 1 KLT 373. It was held that "by a legal fiction contained in Clause(b) the cause of action in respect of a claim by the Corporation from the principal employer arises on the date on which the Corporation makes the claim for the first time. The words "five years of the period to which the claim relates" contained in the said proviso shall not be interpreted to mean that five years of the period in relation to which the amount of contribution is due." The correctness of this view was doubted by a Division Bench. It was observed that "the proviso to Clause(b) shows that no claim shall be made by the Corporation after five years of the period to which that claim relates". The Bench further observed that "the effect of the proviso is that no claim shall be made by the Corporation after five years of the period to which the claim relates. The period of limitation is not linked with the date on which the cause of action arises..... It

refers to the period to which the claim relates". Thus, the matter was referred to a Full Bench. The scope of the provision contained in the proviso to Section 77(1A)(b) is the core of the controversy arising in this bunch of five appeals.

2. The factual matrix of these cases may be briefly noticed. In MFA No. 1094 of 1991, the Corporation had passed an order on February 9, 1990. By this order, it had demanded arrears of contribution for the period from April 1, 1976 to March 31, 1979. In MFA No. 680 of 1992, the demand had been made by the Corporation on April 2, 1991 for contribution for the period from April 1, 1984 to September 30, 1985. In MFA No. 1285 of 1995, the demand was made vide notice dated December 28, 1993 for the period from December 1977 to 1990. In MFA No. 482 of 1996, the demand was raised on July 16, 1992 for the period from January 1, 1982 to January 31, 1990. Similarly, in MFA No. 965 of 1999, the respondent was called upon to make the deposit vide order dated November 23, 1992. It related to the period from March 28, 1983 to March 31, 1987. The employers challenged the validity of the demand notices on various grounds. It was inter alia alleged that the claim of the Corporation was barred by limitation. Thus, the notices were challenged before the Insurance Court.

3. The Employees' Insurance Court examined the matter. It was held that in view of the provisions of Section 77, the claim for a period beyond five years preceding the date of the demand was not tenable. Aggrieved by the orders passed by the Court, the Corporation has filed these five appeals. Learned counsel for the parties have been heard. On behalf of the appellant-Corporation, it was contended by Mr. Ajaya Kumar that the Act is a piece of beneficial legislation. Its provisions have to be liberally construed. Any interpretation, which is likely to defeat the objects of the enactment, should be avoided. The provisions of the Act apply automatically to every establishment or factory falling within the ambit of the Act. Under the provisions, the Corporation is entitled to determine the liability of the employer. It can order recovery by issue of a certificate to the Recovery Officer. The amount can be recovered as arrears of land revenue. If a limitation of time is imposed, the object of the enactment shall be defeated. Thus, it was contended that the view taken by the Division in Vijayan Pillai's case (*supra*) deserves to be sustained. These arguments were reiterated by Ms.T.D. Rajalakshmi who appeared for the appellant in some of these appeals.

4. The counsel for the respondents controverted the claim. Mr. Antony Dominic contended that the provisions of the statute have to be given their true and plain meaning. If so read, the Corporation cannot make a demand for a period of more than five years preceding the date of the order for recovery. This intention is also apparent from the provisions of the Regulations. M/s. A.V. Xavier and K. Anand reiterated these submissions. Learned counsel for both sides referred to various decisions, which shall be noticed.

5. It is in the background of the contentions as raised by the learned counsel for the parties that the question as noticed at the outset has to be considered.

Inevitably a brief reference to the provisions of the Act, the subsequent amendments as well as the "aims and objects" thereof, is essential.

6. The whole statute is divided into eight chapters. The first Chapter consists of Sections 1 to 2A. It gives the title of the Act, the definitions and provides for the registration of factories etc. Chap.II deals with the establishment of the Employees' State Insurance Corporation, the Standing Committee and the Medical Benefit Council. It embodies Sections 3 to 25. Chap.III provides for the establishment of the Insurance Fund, Finances and Audit of accounts. It consists of Sections 26 to 37. Chap.IV consists of Sections 38 to 45. It provides that the employees shall be insured. The principal employer shall be liable to pay contribution. Section 45 delineates the duties and functions of the Inspectors. Sections 45A to 451 lay down the mechanism for determination of contributions and making of recovery etc. Chap. V deals with the benefits, which are admissible to the employees or the dependents etc. It embodies Sections 46 to 73.

7. Chap.VI deals with the machinery for the adjudication of disputes and claims. It provides for the constitution of the Courts, the matters to be decided by such courts, the initiation of proceedings and other allied matters. It consists of Sections 74 to 83. Chap.VII (Sections 84 to 86A) provides for penalties. Chap.VIII contains miscellaneous provisions. It includes Sections 95 and 96, which entitle the Central and State Governments to frame rules. Similarly, Section 97 empowers the Corporation to make Regulations.

8. In the present case, the provisions, which are relevant for these cases are contained in Chaps.IV and VI. Section 38 provides that all employees in factories or establishments to which the Act applies shall be insured in the manner provided in the Act. The contribution shall be payable in respect of the employees at such rates as may be prescribed by the Central Government. Initially, the contribution, which includes the employees' share also, has to be paid by the principal employer. However, it is entitled to recover from each employee, his share of the contribution. Section 41 permits the principal employer, who has made the payment, to recover the amount from the "immediate employer". The method of payment etc. is laid down in Section 43. u/s 44, the principal and immediate employers are required to submit the returns in the prescribed form. If the Corporation has reason to believe that an employer has failed to furnish the return, it can call upon the person in-charge of the factory or establishment to furnish the requisite information. Clause (3) lays down that "every principal and immediate employer shall maintain such registers or records in respect of his factory or establishment" as may be required by regulations made in this behalf." Section 45 entitles the Corporation to appoint Inspectors and fix the areas of their jurisdiction. The functions and duties of the Inspectors have also been laid down.

9. Section 45A needs to be noticed in extenso. It was inserted by Act 44 of 1966 and enforced with effect from June 17, 1967. It has been amended subsequently.

At present, it reads 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 Section 44 or any Inspector or other official of the Corporation referred to in Sub-section (2) of Section 45 is prevented in any manner by the principal or immediate employer or any other person, in exercising his functions or discharging his duties u/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:

Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.

(2) An order made by the Corporation under Sub-section (1) shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount determined by such order as an arrear of land revenue u/s 45B or the recovery under Sections 45C to 45-I." .

Section 45B provides that the contribution payable under the Act may be recovered as arrears of land revenue. Section 45C entitles the Authorized Officer to issue a certificate specifying the amount of arrears. The Recovery Officer, on receipt of such certificate, is entitled to attach the property, arrest the employer and appoint a receiver for the management of the movable and immovable properties of the factory or establishment. The provisions contained in Sections 45D to 45I lay down a detailed procedure for effecting the recovery.

10. A perusal of these provisions shows that in a case where a factory or establishment fails to furnish the returns or maintain or furnish the registers etc., the Corporation can "determine the amount of contributions payable in respect of the employees of that factory or establishment." Such an order can be passed only after giving a reasonable opportunity of hearing to the employer or the person in-charge of the factory or establishment. Under Clause (2) of Section 45A, the order passed by the Corporation "shall be sufficient proof of the claim of the Corporation u/s 75....." Thereafter, proceedings for recovery can be started in accordance with the provisions contained in Section 45B onwards.

11. The next set of relevant provisions are contained in Chap.VI. It relates to the adjudication of disputes and claims. Section 74 deals with the constitution of the Courts. Section 75 provides for the matters to be decided by the Court. Section 75(2) inter alia provides that the "claim for the recovery of the contributions from the principal employer" shall be "decided by the Employees" Insurance Court." Clause (2B) was added by Act 29 of 1989. By this, it was provided that "no matter which is in dispute between the principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees" Insurance Court unless he has

deposited with the Court 50% of the amount due from him as claimed by the Corporation." However, in the proviso, a power has been reserved by which the Court can waive or reduce the amount to be deposited. However, it has to record "reasons....."

12. Section 76 relates to the institution of the proceedings. u/s 77, provision for commencement of proceedings has been made. It provides as under:

"77. Commencement of proceedings:- (1) The proceedings before an Employees' Insurance Court shall be commenced by application.

(1A) 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 dependants' benefit, the dependants 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 contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time;

Provided that no claim shall be made by the Corporation after five years of the period to which the claim relates:

(c) the cause of action in respect of 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."

13. A perusal of the above provision shows that the proceedings before an Employees' Insurance Court commence with the filing of an application. The application has to be filed within a period of three years from the date on which the cause of action arises. The explanation fixes the terminus a quo. In Clause (a) of the explanation, provision for the fixation of the date on which the cause of action for the claimant or his dependants arises has been fixed. In Clause (b), the starting point for the accrual of the cause of action for the principal employer has been fixed. It provides that the date on which the Corporation makes the claim from the principal employer for recovering the contributions including interest and damages shall be the crucial date. Similarly, Clause (c) introduces a

fiction. The principal employer does not get the cause of action for recovering the contributions from the immediate employer till the date by which the evidence of the contribution having been paid "is due to be received by the Corporation under the regulations." Thus far, there is no problem.

14. In the present case, the controversy centers on the proviso to Clause(b). The issue is - Does the proviso fix the limit of time for which the Corporation can make a claim from the employer? Learned counsel for the appellant Corporation have contended that the statute being a beneficial statute, the proviso should be given a restricted meaning. Is it so?

15. It is undoubtedly true that the provisions of a beneficial statute have to be liberally construed. In respect of the Labour and Welfare legislations, the courts have leaned in favour of a liberal rather than a literal construction. The colour, content and context have always been kept in view by the courts. In such a case, the declared objective of the statute is an important guiding factor.

16. Clause (b) was substituted and the proviso was introduced by Act 29 of 1989. Thus, a brief reference to the aims and objects of the Statute as stated in the Bill for amendment of the Act deserve to be noticed.

17. In the year 1975, the Corporation had set up a sub-Committee to make "an indepth study of the various provisions of the Act. This Committee had submitted its report to the Corporation in 1978. Another Committee was set up by the Ministry of Labour in 1981 to review of the working of the Employees" State Insurance Scheme. This Committee had submitted its report in 1982. The Corporation had considered the reports of both the Committees and broadly endorsed their recommendations. The two Committees together had made a number of recommendations involving amendments of the Act." It was observed that "the Employees" State Insurance Act, 1948 provides for grant of cash benefits to the employees in the recognised contingencies of sickness, maternity and employment injury. It also provides for medical benefit, in kind, to the employees and their families. The Act is at present applicable to non-seasonal factories and certain other establishments. The provisions of the Act are being extended, area wise, in a phased manner. As on 31.12.1988, the Act covered about 61.68 lakhs employees in 580 industrial centres in the country. The total number of beneficiaries including family members for medical care are about 2.73 crores."

18. It was in view of this position that the proposal for amendments in the Act was made. The proposed amendment was contained in Clause 30. With regard to this clause, it was observed as under:

"Clause 30 seeks to amend Section 77 and to provide that a cause of action in respect of a claim of the Corporation will be deemed to have arisen on the date on which the claim is made by the Corporation for the first time provided that the Corporation shall not make any claim after five years from the date on which it had arisen."

A perusal of the above clearly shows that the amendment was made not only to fix the terminus a quo but also to lay down an embargo on the right of the Corporation to make a claim. It was specifically declared that "the Corporation shall not make any claim after five years from the date on which it had arisen."

19. It is a recognised rule of interpretation that the object and the subject of the statute have to be harmonized. The Court should adopt an object-oriented approach without doing violence to the plain language of the statute. The courts have to adopt a purposive construction. The rule of construction was clearly enunciated in *Heydon's case* (1976 ER 637). In a nutshell, it provided for consideration of four factors, viz., (i) what was the law before the enactment; (ii) what was the mischief for which "the common law did not provide"; (iii) what remedy the Parliament had provided; and (iv) the true reason for the remedy. The Court has to adopt the interpretation, which will promote the true intent of the Legislature.

20. As noticed above, prior to the introduction of Act 29 of 1989, the statute did not place any limitation on the right of the Corporation to raise a demand on the employer. Resultantly, the Corporation could make the claim at any time. This was unjust and unfair. To remedy this mischief, the provision fixing the time limit for the making of a claim by the Corporation was introduced. In a nutshell, it was provided that every application shall be made by the party concerned within a period of three years from the date of the accrual of the cause of action. The starting point was fixed. Still further, it was provided that the Corporation shall not be able to make a claim "after five years from the date on which it had arisen."

21. It was contended on behalf of the appellants that any limitation on the right of the Corporation would be destructive to the purpose of the statute. This contention is wholly fallacious. It cannot be accepted. In our view, the provision contained in the proviso is clear and categorical. It unambiguously says that "no claim shall be made by the Corporation after five years of the period to which the claim relates." The words are plain and clear. These have to be given a meaning and content. The declared aim and object have to be achieved.

22. It is undoubtedly true that the provision restricts the powers of the Corporation, which were untrammelled by any limitation of time hitherto. However, the Parliament was entitled to take the view that even the "employer" needed some relief. If the industry has to compete globally, it must be given protection. Things must be made reasonable so that even foreign investment may be attracted.

23. Under the law, every legal remedy is to repair the loss caused by a legal injury. However, the remedy must be sought within a reasonable time. The Law of Limitation has a good logic. It fixes the life span of the remedy. Its purpose is to check judicial and even quasi-judicial lawlessness. It is founded on public policy. Its purpose is to stall the stale claims. The sword must not hang on the

head of a person forever. The suspense must not be allowed to last beyond a specific period.

24. The language of the provision being clear, the words have to be given their true and apparent meaning. In the present case, the plain words of the statute are in complete harmony with the declared objective. When the two are construed together and harmonised, the inevitable inference is that the Corporation is debarred from making a claim after five years from the date on which the amount had become due.

25. This intention is not only manifest from the plain words but also becomes apparent from the statutory provisions. To illustrate, it may be mentioned that u/s 44(3), the employer is required to "maintain such registers or records in respect of his factory or establishment as may be required by regulations made in this behalf." Sections 95 and 96 empower the Central and State Governments to make rules. Section 97 empowers the Corporation to make regulations, which should be consistent with the provisions of the Act and the Rules. These regulations also provide for the registers to be maintained by the employer. In exercise of the powers under the Act, the regulations have been made. These regulations are called the Employees' State Insurance (General) Regulations, 1950. These regulations were published vide notification dated October 17, 1950. Regulation 32, as amended in the year 1985, inter alia provides that "every employer shall maintain a register in Form 7 in respect of every employee of his factory or establishment." Clauses (2) and (3) of this regulation provide as under:

"2. Every employer shall preserve every register maintained under this regulation after it is filled, for a period of five years From the date of last entry therein,

3. The employer shall give a reasonable opportunity to any of his employees, if he so desires, to see entries in respect of such employee in this register once a month."

Still further, as per Regulation 66, the employer is required to maintain an Accident Book. The provision provides as under:

"66. Maintenance of accident book:- Every employer shall,-

(i) keep a book readily accessible (hereinafter called "the Accident Book") in Form 15, in which the appropriate particulars of any accident causing personal injury to an insured person may be entered;

(ii) preserve every such book when it is completed for a period of five years from the date of the last entry thereon:

Provided that it shall not be necessary to enter in the said Accident Book particulars of any employment injury caused by an Occupational Disease specified in Schedule III to the Workmen's Compensation Act, 1923."

A perusal of the above provisions shows that the registers as well as the accident book have to be preserved "for a period of five years from the date of the last

entry therein." In other words, it is clear that an employer is not required to maintain the record with regard to an employee for a period of more than five years. The obvious reason is that it is difficult to preserve records for an unlimited period. A reasonable period had to be prescribed.

26. If the proviso to Section 77(1A)(b) was to be construed as suggested by the counsel for the appellant, it would be open to the Corporation to make a claim at any time. If that is permitted, the employer would be greatly handicapped as it would not have the records for a period beyond five years. In such a situation, the employer would be left defenseless. The provision in the Regulations is indicative of the true Legislative intent that the claim of the Corporation should be confined to a period of five years and that the employer is not bound to preserve the records for the prior period.

27. Thus, on a plain reading of the statutory provision contained in Section 77 and the Regulations as noticed above, it is clear that the Corporation can make a claim within five years from the date on which it had arisen. This construction is in consonance with the declared objective of the amendment, which was made in the year 1989.

28. Learned counsel for the appellant referred to the decision of a Division Bench of this Court in Vijayan Pillai's case (supra). Reliance was placed on the following observations in paragraph 4:

"4. The cause of action in respect of a claim is the basis for reckoning the period of limitation for filing an application before the E.I. Court u/s 77 Clauses (a), (b) and (c) of the Explanation to Sub-section (1A) of the said Section deal with three different kinds of claims and accrual of causes of actions therefore. Clause (a) deals with a claim for benefit by insured person or for dependants' benefit by dependants of insured person, Clause (b) deals with a claim by Corporation for recovering contribution and Clause (c) deals with a claim by principal employer for recovering contributions from an immediate employer. In the present case, we are concerned with Clause (b) which provides that the cause of action in respect of a claim by the Corporation recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time. Proviso to this clause mandates that no claim shall be made by the Corporation after five years of the period to which the claim relates. On behalf of the appellants it was argued that the Corporation had claimed contribution in respect of the period from 1.4.1979 to 31.3.1982 and hence the claim made in Ext.A1 dated 1.11.1988 by the Corporation is time barred. In other words, the contention is that the Corporation cannot make any claim for contribution after five years of the period to which the contribution relates. We cannot countenance this contention because the proviso refers to the claim arising out of a cause of action and not a claim arising out of the contribution due. By a legal fiction contained in Clause (b) the cause of action in respect of a claim by the Corporation from the principal employer arises on the date on which the corporation makes the claim

for the first time. The words "five years of the period of which the claim relates" contained in the said proviso shall not be interpreted to mean "five years of the period in relation to which the amount of contribution is due". If such an interpretation is given, the Clause (b) would become redundant. What is meant to be understood is to decide when the cause of action in respect of a claim by the Corporation had arisen. Once the date of arising of cause of action is known then the Corporation cannot make any claim after five years from the date on which it had arisen. In the present case, the cause of action arose for the first time with the issue of Ext.A1 notice dated 1.11.1988. That means in case the Corporation proposes to file application invoking Section 77(1A) it cannot make a claim arising out of this cause of action after 1.11.1993. But the present application has been filed by the employer u/s 75 of the Act for determining the dispute as to whether the appellants are liable to pay the contribution demanded. In this context, the following observation of the Supreme Court in M/s. Goodyear India Ltd. Vs. Regional Director, Employees State Insurance Corporation and others, , while dealing with an identical question is quite apposite.

"It would thus be seen that the cause of action for contribution would arise only after the decision by the Insurance Court in the proceedings is laid u/s 75 of the Act. Until then, the cause of action cannot be said to have arisen. In other words, there is no bar of limitation",

A perusal of the above observations shows that the Bench had placed reliance on the decision of the Apex Court in Goodyear India Ltd. v. Regional Director, E.S.I.C. In this case, their Lordships were dealing with a case wherein the Corporation had made a demand for the period from January 28, 1968 to October 31, 1979, The notice of demand had been issued on December 1, 1982. Thus, the claim related to a period prior to the passing of the amendment Act 29 of 1989. In paragraph 10, it was specifically observed by their Lordship as under:

"10. It would thus be seen that the cause of action for contribution would arise only after the decision by the Insurance Court in the proceedings is laid u/s 75 of the Act. Until then, the cause of action cannot be said to have arisen. In other words, there is no bar of limitation. it is seen that the Act was subsequently amended by Section 30 of the Amendment Act 28 (29) of 1989. which came into effect with effect from October 20, 1989. It provides application can be made within three years from the date of arising of the cause of action. This amendment has no application to the proceedings in this case since the cause of action had arisen prior to the amendment. Under these circumstances, there is no bar of limitation for the payment of the contribution as contended."

29. The above observations show that their Lordships had held that "there is no bar of limitation" for the reason that the "amendment has no application to the proceedings in this case since the cause of action had arisen prior to the amendment." Thus, it is implicit in the decision of their Lordships of the Supreme Court that by the amendment in 1989, a bar of limitation had been prescribed.

30. Still further, a reference to the observations of the Division Bench in Vijayan Pillai's case (supra) shows that the contention regarding the claim of the Corporation being barred by limitation was rejected for the reason that "the proviso refers to the claim arising out of a cause of action and not a claim arising out of the contribution due." It has been further observed that if the bar of five years period is related to "the period in relation to which the amount of contribution is due" the provision contained in CJ.(b) "would become redundant." Regretfully though respectfully, it is not possible to accept the interpretation as placed by the Bench on the provision. In our view, Clause (b) fixes the terminus a quo for the initiation of the proceedings by the principal employer. As already observed, it lays down that the principal employer's cause of action for filing an application would arise when a claim for contribution is made by the Corporation for the first time. Having laid down the starting point for the cause of action for the principal employer, the proviso places an embargo on the right of the Corporation and lays down that it shall not make a claim after five years of the period to which the claim relates. Thus, it affords a two-fold protection to the employer. Firstly, he is not required to make a petition to the Court till a claim is made. Secondly, the Corporation is debarred from making a claim for a period beyond five years. Thus, the distinction made by the Bench between "cause of action" and "claim" appears to be wholly imaginary. It is untenable.

31. Mr. Ajaya Kumar also referred to an unreported decision of the Bombay High Court in Regional Director v. Fabril Gasosa delivered on August 28, 1996. In this case, the demand was "for payment of contributions for the period from July 1982 to September 1983." The notice had been issued in pursuance to the inspection of the premises of the respondent in January 1984, On receipt of the notice, the respondent had sought time. Thereafter, another notice was issued on September 4, 1986. There was long correspondence. In January 1990 the Corporation had issued a show cause notice as to why action should not be taken u/s 45A of the E.S.I. Act. The respondent was also given opportunity for personal hearing. However, the respondent, had neither shown cause nor appeared for personal hearing. On May 8, 1990 an order determining the contributions for the period from July 1982 to March 1984 was passed. Thereupon the respondent had filed an application on May 24, 1990 u/s 75(1)(g) of the Act. The said application was decided by the Court vide order dated February 25, 1994. The Insurance Court had upheld the contention of the respondent that "the demand for the period 1982-83, i.e., July 1982 to September 1983 is barred by limitation and consequently could not be recovered." So far as the second period from October 1983 to March 1984 was concerned, the objection was rejected. The finding on the preliminary issue was challenged before the Bombay High Court. In the background of this factual position, the learned Judge had observed as under:

"A perusal of Explanation (a) to Section 77(1A) would show that the said Explanation refers to the commencement of the cause of action other than the Corporation. Insofar as the Corporation is concerned, the cause of action before the amendment was Explanation (b). The said Explanation has been substituted

by the new Explanation (b) to which a proviso has been added. The said proviso is, therefore, to Explanation (b) of Section 77(1A). As already held earlier, the Explanation is for the purpose of the commencement of the cause of action. Explanation (a) applies to claimants other than the Corporation and Explanation (b) after amendment applies to the Corporation only. The bar of limitation as set out in Section 77(1A) is referable to the cause of action in Explanations (a) and (b). The proviso to Explanation (b) is, therefore, for the purpose of the cause of action for commencement of proceedings and the limitation spelt out in Section 77(1A). The proceedings to be commenced are u/s 75. The addition of the proviso, therefore, makes no difference whatsoever to the interpretation given to Section 45A and Section 77 of the Act."

32. The reasoning adopted by the learned single Judge is the same as that by the Division Bench in the case of Vijayan Pillai. For the reasons already stated, we are unable to accept the view taken by the learned Judge of the Bombay High Court.

33. Counsel for the appellants also referred to the decisions of the Andhra Pradesh, Karnataka and Madras High Courts reported in Hyderabad Race Club Vs. ESI Corporation, , Regional Director, E.S.I.C. v. CIGIEL Ltd. (2002 (II) LLJ 635), Regional Director, E.S.I. Corporation v. Henry Wolsey & Co. (2001 (1) LLN 437), Standard Literature Co. (P) Ltd. v. E.S.I. Corporation Ltd., Chennai, (2000 LAB. IC 2971) & M/s Standard Literature Co. (P) Ltd. Vs. The Employee's State Insurance Corporation Limited and another, .

34. These decisions either relate to cases wherein the demand had been made prior to the amendment of 1989 or have taken the same view as the Division Bench in Vijayan Pillai's case. It does not appear to be necessary to examine these decisions in detail as even the counsel for the appellant had not spelt out any clear rationale for the view that the proviso does not impose any limitation of time.

35. On the other hand, Mr. Antony Dominic, appearing for the respondents pointed out that a contrary view had been taken EID Parry (I) Ltd. v. E.S.I. Corporation (2002 (3) LLN 164). He had referred to the following observations in paragraph 10:

"10. Proviso to Clause (b) of Explanation to Sub-section (1A) of Section 77 of the Act, extracted above, specifically lays down that Corporation cannot make a claim after 5 years of the period to which the claim relates. In this case, for the first time the respondent made the claim on 22 February, 1998 in Exts.P3 and P4 Notices, From the details mentioned in Para 9 above, it is easy to see that claim from February, 1992 to 22 February, 1993 from out of the claim for Rs. 17,114 from February, 1992 to December, 1993 in Ex t.P3, and the entire claim in Ext.P4 is made beyond 5 years of the period to which the claim relates."

36. Thus, the plea of the employer was sustained. It is true that the learned Judge had followed the view of the Madras High Court in Henry Wolsey's case.

The Madras High Court Act had reversed this decision on appeal. However, the decision is in accord with the plain words of the statute.

37. Mr. Dominic further submitted that a time barred claim can never be enforced. He referred to the decision of their Lordships of the Supreme Court in *Slate of Kerala v. V.R. Kalliyankutty* (1999 (2) KLT 146). Their Lordships were *inter alia* pleased to observe:

"An amount due normally refers to an amount which a creditor has a right to recover. The word due always imports a fixed and settled obligation or liability; but with reference to the time for its payment there is considerable ambiguity in the use of term;... A wide interpretation of amount due which destroys an important defence available to a debtor in a suit against him by the creditor, may attract Article 14 against the Act. It would be ironic if an Act for speedy recovery is held as enabling a creditor who has delayed recovery beyond the period of limitation to recover such delayed claims."

A perusal of the above observations shows that only such claims, which are within limitation, can be recovered. The law helps the vigilant. The courts do not grant the reliefs, which have become stale and time barred. In view of the above conclusion recorded by their Lordships, the claim as made by the Corporation cannot be sustained.

38. Learned counsel for the appellants also contended that the provisions of a social legislation have to be liberally construed. Since the 1948 Act is a beneficial provision, the power of the Corporation should be liberally construed. They referred to the decisions in *Transport Corporation of India Vs. Employees' State Insurance Corpn. and Another*, and *State of Maharashtra Vs. Marwanjee P. Desai and Others*, . On the other hand, learned counsel for the respondents pointed out that the plain words of a statute have to be given their true meaning. Reference was made to the decision in *Regional Director, Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries*, and *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, .

39. There is no quarrel with the proposition. The principles of interpretation of statutes are well settled. In the present case, we find that the provisions of the Statute and the Regulations are clear and unambiguous. The words are plain and have to be given their true meaning. The meaning as given in the foregoing paragraphs promotes the declared purpose as disclosed in the "Aims and Objects."

40. No other point was raised.

41. In view of the above, it is held that:

1. It is undoubtedly true that the provisions of a beneficial statute have to be liberally construed. In respect of the Labour and Welfare legislations, the courts have leaned in favour of a liberal rather than a literal construction. The colour, content and context have always to be kept in view by the courts. In such a

case, the declared objective of the statute is an important guiding factor.

2. Even Law of Limitation has logic. It fixes the life span of the remedy. Its purpose is to check judicial and even quasi-judicial lawlessness. It is founded on public policy. Its purpose is to stall the stale claims. The sword must not hang on the head of a person forever. The suspense must not be allowed to last beyond a specific period.

3. In the present case, a plain reading of the statutory provision contained in Section 77 and the Regulations shows that the Corporation can make a claim within five years from the date on which it had arisen. This construction is in consonance with the declared objective of the amendment, which was made in the year 1989. If the proviso to Section 77(1A)(b) were construed as suggested by the counsel for the appellant, it would be open to the Corporation to make a claim at any time. If that is permitted, the employer would be greatly handicapped, as it would not have the records for a period beyond five years. In such a situation, the employer would be left defenseless. The provision in the Regulations is indicative of the true Legislative intent.

4. Regretfully though respectfully, it is not possible to accept the interpretation as placed by the Division Bench on the provision in Vijayan Pillai's case. In our view, Clause(b) fixes the terminus a quo for the initiation of the proceedings by the principal employer. It lays down that the principal employer's cause of action for filing an application would arise when a claim for contribution is made by the Corporation for the first time. Having laid down the starting point for the cause of action for the principal employer, the proviso places an embargo on the right of the Corporation and lays down that it shall not make a claim after five years of the period to which the claim relates. Thus, it affords a two-fold protection to the employer. Firstly, he is not required to make a petition to the Court till a claim is made. Secondly, the Corporation is debarred from making a claim for a period beyond five years. Thus, the distinction made by the Bench between "cause of action" and "claim" is wholly untenable.

In view of the above, we find that the view taken by the Employees' Insurance Court that the claim of the Corporation has to be confined to a period of five years preceding the date of the demand is unassailable. Resultantly, the Appeals are dismissed. However, the parties are left to bear their own costs.