

(1987) 02 BOM CK 0043

In the Bombay High Court

Case No : First Appeal No"s. 767 and 768 to 770 of 1973

J.C. Patel

APPELLANT

Vs

The Employees State Insurance Corporation

RESPONDENT

Date of Decision : 06-02-1987

Acts Referred:

Employees State Insurance Act, 1948 — Section 11, 75, 96
Limitation Act, 1963 — Section 29, 5

Citation : (1987) 89 BOMLR 147 : (1987) MhLj 280

Hon'ble Judges : V.S. Kotwal, J;P.B. Sawant, J

Bench : Division Bench

Judgement

P.B. Sawant, J.—This is a reference made by the learned single Judge and the question referred for consideration of the Division Bench is whether Article 137 of the Limitation Act, 1963 governs applications made u/s 75 of the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act), preferred between the 1st January 1964 (on which date the Limitation Act, 1963 came into force) and January 28, 1968 (on which date Section 11(1A) of the Act came into force, prescribing a limitation of three years for applications made to the Insurance Court).

2. The only relevant facts which need be stated are that the respondent-Corporation made three applications on different dates u/s 75 of the Act to the Insurance Court for recovery of diverse amounts due from the appellants for diverse periods. The first application was made on October 13, 1964 for recovering an amount of Rs. 1,956/- due for the period October 3, 1954 to August 31, 1964; the second was made on September 27, 1965 for recovering a sum of Rs. 1,290/- due for the period September 1, 1964 to August 31, 1965 and the third was made on November 18, 1966 for recovering an amount of Rs. 1,504.50 due for the period September 1, 1965 to October 31, 1966.

3. In the Act there was no period of limitation prescribed for preferring the application u/s 75 of the Act. However, by Rule 17 of the Rules made u/s 96(7) of

the Act, the State Government prescribed a period of one year for making such application. That rule was held ultra vires the Act by a Division Bench of this Court in a decision in *The Employees' State Insurance Corporation, Bombay Vs. Bharat Barrel and Drum Manufacturing Co. Private Ltd. and Another*, on the ground that the Act did not envisage any period of limitation and had also not granted any power to the Government, to prescribe limitation. While dealing with this question, the Court also considered in that case the period of limitation which governed the applications made u/s 75 and held that it is Article 137 of the Limitation Act, 1963 which applied to such applications. In view of the certificate given by this Court under Article 133(C) of the Constitution, the Supreme Court was later seized of the matter and upheld the decision of this Court holding that the said Rule 17 was ultra vires the Act. The Court however did not deal with the question whether Article 137 of the Limitation Act, 1963 applied to the application u/s 75 of the Act. In the meanwhile, the Act was amended by inserting Section 77(7A) by the Amending Act 44 of 1966 which came into force from January 28, 1968. The amending provision prescribed for such application a period of three years from the date on which the cause of action arose. It appears that when the present applications came up before the Insurance Court for decision, the Court allowed the said applications expressly negating the contention advanced on behalf of the appellants that the period of limitation of three years applied to the said applications. The appellants therefore preferred the present appeals".

4. We should have thought that the decision of this Court in *E.S.I. Corporation v. B.B. & Drums Manufacturing Co.* (supra) read with another decision of the Division Bench in *Regional Director, Employees State Insurance Corporation v. Shashikant* [1985] A.C.J. 551 had answered the question which is referred to us. It must however be said that when the learned single Judge made the present reference, he did not have the benefit of the latter decision.

5. As has been pointed out above, the Division Bench of this Court in the decision reported in *E.S.I. Corp. v. B.B. & Drums Manufacturing Co.* [1985] A.C.J. 551 has in terms held that it is Article 137 of the Limitation Act, 1963 which governs the applications filed u/s 75 of the Act. It is therefore implicit in the said decision that the Insurance Court is a Court for the purposes of the said article. However, it appears that there are two decisions of two learned single-Judges of this Court, one of Bal, J. in *Popular Process Studio and Another Vs. Employees' State Insurance Corporation*, and another unreported decision in *Shy am Brothers Printing Press, Nagpur v. Employees' State Insurance Corporation* (1981) F.A. No. 42 of 1971 decided on July 7, 1981 by Deshpande J. (Unrep.) which have taken the view that Article 137 did not apply to such applications because the Insurance Court was not a Court. A decision of the Supreme Court in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, further has taken the view that Article 137 applies to all applications made to the Civil Court. Khatri, J. being of the view that these decisions created a doubtful position whether Article 137 applied to the Insurance Court has referred the question for our decision.

However the decision of the Division Bench in *Regional Director v. Shashikant* (supra) which was not available to Khatri, J, has left nothing to be decided on the point. The question was specifically raised on behalf of the Respondent-Employees" State Insurance Corporation there viz. that the Insurance Court was not a Court and therefore the provisions of Limitation Act did not apply to the application u/s 75 of the Act, and the Court answered the question against the Corporation in paragraph 4 of the judgment after referring to" a decision of the Supreme Court in *Thakur Jngal Kishore*"s case and of the Full Bench of this Court in *Bapusaheb Balasaheb Patil and Others Vs. The State of Maharashtra and Others*, case The Court has in terms held that the Insurance Court for all practical purposes including the purposes of Section 5 of the Limitation Act, was a Court. It is true that the question which was under dispute in that case was whether Section 5 of the Limitation Act applied to the applications u/s 75 of the Act. It is also true that at one stage in paragraph 3 of the judgment the Court has also stated as follows:

Further in this case we are not concerned with the question as to whether provisions of the Limitation Act will apply to the substantive applications filed u/s 75 of the Act. In this appeal, we are mainly concerned with the question as to whether Section 5 of the Limitation Act will apply to the application filed under Rule 26 of the said Rules for restoration of the application and we propose to confine our judgment to this limited area and do not propose to decide any wider question.

6. However, the Division Bench has thereafter gone on to consider the question as to whether the Insurance Court was a Court and as stated earlier, has answered the question in the affirmative. It cannot therefore be contended that the Insurance Court was Court only for the purposes of Section 5 of the Limitation Act and not for the purposes of the other provisions of that Act. It has also to be borne in mind that for deciding the question whether Section 5 of the Limitation Act was applicable to the application u/s 75 of the Act, it was not necessary to go into the question as to whether the Insurance Court was a Court. By virtue of Section 29(2) of the Limitation Act, the provisions of Section 5 of that Act would in any case be applicable to such applications. But the Respondent-Corporation had in terms raised the question and the Court had to record a finding thereon.

7. In view therefore of the decisions of the two Division. Benches of this Court in *E.S.I. Corporation v. Bharat Barrel* and *Regional Director v. Shashikant* the answer to the question referred for our decision is that Article 137 of the Limitation Act governs the application made u/s 75 of the Act, firstly, because Article 137 applies to all applications irrespective of whether they are made under the CPC or not, and secondly because the Insurance Court is a Court within the meaning of the Limitation Act. We therefore answer the question accordingly and send back the matter to the learned single Judge for deciding the applications according to law.