

(2003) 04 CAL CK 0002
In the Calcutta High Court
Case No : Writ Petition No. 5 of 2000

Kohinoor Tailoring Works and Another	APPELLANT
Vs	
Employees" State Insurance Corporation and Another	RESPONDENT

Date of Decision : 08-04-2003

Acts Referred:

Employees State Insurance Act, 1948 — Section 75, 75(1), 77(1A), 82
Limitation Act, 1963 — Section 5

Citation : 108 CWN 890 : (2004) 1 LLJ 84

Hon'ble Judges : Pranab Kumar Chattopadhyay, J

Bench : Single Bench

Advocate : P.K. Roy, for the Appellant; Subal Maitra, for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Chattopadhyay, J.—The petitioners herein filed an application u/s 5 of the Limitation Act in the Employees" Insurance Court, West Bengal, for condoning the delay in filing the case before the said Court. The learned Judge of the said Employees" Insurance Court rejected the said application filed on behalf of the petitioners on the ground that the application u/s 5 of the Limitation Act is not applicable to any proceeding before the Employees" Insurance Court. The petitioners have challenged the aforesaid decision of the learned Judge of the Employees" Insurance Court in the present writ petition.

2. The facts of this case are briefly mentioned hereinafter:

The petitioner No. 1 is engaged in tailoring business. It has been submitted on behalf of the petitioners that the petitioner No. 1 is not engaged in any business invoking any manufacturing process with or without the aid of power. It has also been submitted on behalf of the petitioners that the total number of persons employed in the establishment of the petitioner No. 1 are below the statutory minimum number as provided under the Employees" State Insurance Act, 1948 (hereinafter referred to as ESI Act.)

3. It has been contended on behalf of the petitioners that several inspections of the petitioner's establishment had been carried out by the insurance inspectors of the Employees' State Insurance Corporation on different dates in the year 1991. According to the petitioners, it was never found in course of the said inspections that the establishment of the petitioner No. 1 ever employed 10 or more persons and as such the establishment of the petitioner No. 1 cannot come within the purview of the said ESI Act, 1948.

4. It is also contended by the learned advocate of the petitioners that the authorities of the Employees' State Insurance Corporation without appreciating the aforesaid fact unilaterally assessed the contributions to be made by the petitioners under the said ESI Act for the various periods as hereunder:

(a) January 1986 to September 1987 Rs. 8,957.00

(b) October 1987 to December 1989 Rs. 12,245.00

(c) January 1990 to August 1991 Rs. 10,154.00

5. The petitioners submitted written objections against the aforesaid illegal assessment. The Regional Director, ESI Corporation thereafter informed the petitioners by a written communication that the establishment of the petitioner No. 1 has been treated as covered finally with effect from January 1, 1986 under Sections 2(12)/1(5) of the ESI Act.

6. It has been urged by the learned counsel of the petitioners that no order or orders were passed by the authorities of the ESI Corporation assessing the contributions to be made by the petitioners and furthermore no reasons for making such assessment have also been communicated by the ESI Corporation to the petitioners herein and as such the mandatory requirement of issuance and service of the order of assessment upon the petitioners has not been complied with by the said Corporation.

7. According to the respondents, on verification of the attendance register of the petitioner No. 1 from October 1986 onwards the inspector of the ESI Corporation found that 11 persons were employed in October 1986 and accordingly, the inspector recommended coverage of the said establishment with effect from October 31, 1986 as a power-using unit. On the basis of the inspection report of the said inspector, the ESI Corporation treated the establishment of the petitioner as covered under the ESI Act with effect from October 31, 1986 and the said decision of coverage under the said Act was admittedly, communicated to the petitioners.

8. It was further submitted on behalf of the respondents that in course of further inspection held in the month of September 1991 the inspector of the said Corporation found from various other records of the petitioners that 10 persons were employed for wages on January 1, 1986 instead of on October 31, 1986 and therefore, the date of coverage of the said establishment was shifted back to January 1, 1986 instead of October 31, 1986 and the final date of coverage was

thereafter intimated to the petitioners by a written communication, dated January 27, 1992.

9. It has been submitted on behalf of the respondents that as the provisions of the said ESI Act, 1948, was applicable to the establishment of the petitioner No. 1, it was incumbent to comply with the statutory requirements of the said Act and the petitioners failed to comply with the said statutory requirements despite repeated requests and demands made by the respondents from time to time.

10. According to the respondents, ESI authorities, notices were issued to the petitioners proposing to determine the contribution payable by them for the period from January 1986 to September 1987, from October 1987 to December 1989 and from January 1990 to August 1991 and giving them the opportunity of hearing, but despite receipt of the said notices the petitioners did not avail of the said opportunity. Accordingly, arrear contributions were determined by the said Corporation.

11. It was further contended on behalf of the petitioners that by letter, dated April 30, 1992, ESI Corporation demanded payment of the sums of Rs. 29,511.40 and Rs. 11,721.33 from the petitioners towards arrear contributions and statutory interest thereon for the aforesaid periods but the petitioners without paying the aforesaid dues of ESI Corporation and without raising any dispute before the Employees' Insurance Court u/s 75 of the ESI Act, straightaway moved a writ petition before this Hon'ble Court being W.P. No. 1456 of 1999 disputing coverage under the said Act and liability to pay the said sums as demanded by ESI Corporation.

12. The said writ petition was finally disposed of by BASUDEV PANIGRAHI, J., in the following manner:

"Sri Ghosh, the learned advocate appearing for the petitioners at this stage has submitted that his clients are proposing to file dispute u/s 75 of the said Act and shall take a stand that the provisions of this Act shall not be applicable as the unit has consistently engaged less than 10 employees.

In the above situation, if the petitioners are so advised, they shall be at liberty to file a claim u/s 75 of the ESI Act, subject to limitation."

13. The petitioners herein thereafter filed an application u/s 75 of the said Act before the Employees' Insurance Court, West Bengal, being numbered as T.C. No. 109 of 1999 raising the aforesaid disputes. The said application u/s 75 of the ESI Act, 1948, was, however, not filed within 3 years from the date on which cause of action arose, as provided in Sub-section (1-A) of Section 77 of the said Act. In the circumstances, the petitioner made an application u/s 5 of the Limitation Act, 1963, in the said case being T.C. No. 109 of 1999 praying inter alia for condonation of delay in filing the said application u/s 75.

14. The said application for condonation of delay came up for hearing before the learned Judge of the Employees' Insurance Court on December 6, 1999 and

after hearing the parties, the learned Judge of the said Employees' Insurance Court was pleased to reject the said application filed on behalf of the petitioners u/s 5 of the Limitation Act and holding inter alia that application filed u/s 5 of the Limitation Act was not applicable to any proceeding before the Employees' Insurance Court.

15. It is submitted on behalf of the petitioners that due to some serious internal managerial problems the remedy available to the petitioners u/s 75(1)(g) of the said Act could not be utilised and/or availed of and as such the dispute case before the learned Employees' Insurance Court, West Bengal, could not be filed on behalf of the petitioners within the time stipulated u/s 77 of the said Act. The learned advocate of the petitioners specifically urged before this Court that the petitioners were prevented by sufficient cause from filing the dispute case before the learned Employees' Insurance Court within the time stipulated u/s 77 of the said Act. The aforesaid provisions of Sections 76 and 77 of the ESI Act are quoted hereunder:

"75. Matters to be decided by Employees' Insurance Court (1) If any question or dispute arises as to-

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution; or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act; or

(c) the rate of contribution payable by a principal employer in respect of any employee; or

(d) the person who is or was the principal employer in respect of any employee; or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

(f) omitted; or

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act (or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act), such question or dispute (subject to the provisions of Sub-section (2-A), shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) (Subject to the provisions of Sub-section (2-A)- the following claims) shall be decided by the Employees' Insurance Court, namely:

- (a) claim for the recovery of contributions from the principal employer;
- (b) claim by a principal employer to recover contributions from any immediate employer;
- (c) omitted;
- (d) claim against a principal employer u/s 68;
- (e) claim u/s 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and
- (f) any claim for the recovery of any benefit admissible under this Act.

((2-A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a Medical Board or a medical appeal Tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the Medical Board or the medical appeal Tribunal, as the case may be, except where an appeal has been filed before Employees' Insurance Court under Sub-section (2) of Section 54-A in which case the Employees' Insurance Court may itself determine all the issues arising before it.)

((2-B) No matter which is in dispute between a 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 fifty percent of the amount due from him as claimed by the Corporation:

Provided that the Court may, for reasons to be recorded in writing waive or reduce the amount to be deposited under this sub-section.)

(3) No civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by (a Medical Board, or by a medical appeal Tribunal or by the Employees' Insurance Court).

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 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."

16. The learned counsel of the petitioners submits that the delay in filing the application u/s 75(1)(g) of the said Act should be condoned and the said application should be heard on merits by the learned Judge of the Employees' Insurance Court in order to decide whether the petitioner No. 1 is covered by the provisions of the ESI Act, 1948.

17. The learned counsel of the petitioners referred to and relied upon the decision of the Division Bench judgment of the Bombay High Court reported in Employees' State Insurance Corporation v. Shashikant Anikhindi 1983 (2) L.L.N. 787 , and submitted that the Employees' Insurance Court is conferred with the powers of civil Court and the provisions of Section 5 of the Limitation Act shall apply to an application filed before the said ESI Court. In the aforesaid Division Bench judgment, Bombay High Court considered the decision of the Supreme Court in the case of The Commissioner of Sales Tax, U.P. Vs. Madan Lal Das and Sons, Bareilly, and particularly relied upon the observations of the Supreme Court in Para 3 of the said judgment which is quoted here in below

"3. Sub-section (2) of Section 29 of the Limitation Act, 1963, reads as under:

(2) Where any special or local law prescribed for any suit, appeal or application a period of limitation different from the period prescribed by the schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

18. Sri P.K. Roy, learned senior counsel appearing on behalf of the petitioners, relied upon the aforesaid observation of the Supreme Court which has been mentioned in the aforesaid decision of the Bombay High Court.

19. Sri Roy also submitted that from the provisions of Sections 78 and 82 of the ESI Act it would be clear that the Employees' Insurance Court has all the powers of a civil Court and that Sections 5 and 12 of the Limitation Act, 1963, are applicable.

20. Sri Roy referred to and relied upon the decision of the Supreme Court reported in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, wherein the Supreme Court specifically observed as hereunder:

"The changed definition of the words "applicant" and "application" contained in Sections 2(a) and 2(b) of the 1963 Limitation Act indicates the object of the Limitation Act to include petitions original or otherwise under special laws. The interpretation which was given to Article 181 of the 1908 Limitation Act on the principles of *ejusdem generis* is not applicable with regard to Article 137 of the 1963 Limitation Act. Article 137 stands in isolation from all other Articles in Part I of the third division. Article 137 includes petitions within the word "application". These petitions and applications can be under any Special Act."

21. Learned counsel of the petitioners further referred to and relied upon the decision of the Supreme Court reported in *Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s*, wherein the Hon"ble Supreme Court has *inter alia* held that:

"The plea of limitation based on this section is one which the Court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens."

22. Another decision of the Supreme Court reported in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, , has been (sic) referred to and relied upon by Sri Roy. In the said judgment the Hon"ble Supreme Court has held that even an Assistant Registrar of Co-operative Societies discharges duties which would otherwise have fallen on the ordinary civil and revenue Courts of the land. In the instant case, the Employees' Insurance Court has not merely the trappings of a Court but in many respects are given the same powers as are given to civil Courts.

23. Sri Roy also referred to and relied upon the following decisions:

(1) *J.C. Patel v. Employees' State Insurance Corporation* 1987 (1) LLN 681.

(2) *The Reid Co-operative Timber Works Ltd., Madras Vs. Employees' State Insurance Corporation*,

- (3) The Commissioner of Sales Tax, U.P. Vs. Madan Lal Das and Sons, Bareilly, .
- (4) Asia Resorts Ltd. Vs. Usha Breco Ltd.,
- (5) Employees" State Insurance Corporation v. Central Press 1977 (1) LLN 628.
- (6) Sarojini Tea Co. (P.) Ltd. Vs. Collector of Dibrugarh, Assam and another, .
- (7) Punjab National Bank v. Sahu Jain Charitable Society 2001 (3) CHN 40.
- (8) Agarwal Hardware Industries v. Employees" State Insurance Corporation 1976 (2) LLN 412,
- (9) Raison Tailors v. Employees" State Insurance Corporation 1983 (1) LLN 683
24. Sri Roy submitted that in J.C. Patel, v. Employees" State Insurance Corporation (supra), the Hon"ble Bombay High Court has held that:
- ".... Article 137 of the Limitation Act governs the application made u/s 75 of Employees" State Insurance Act firstly, because Article 137 applies to all applications irrespective 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.."
25. Sri Roy further submitted that in Reid Co-operative Timber v. Employees" State Insurance Corporation (supra), the Hon"ble Madras High Court had, inter alia, held that the Employees" Insurance Court is a Court.
26. Sri Roy also submitted that in Employees" State Insurance Corporation v. Central Press (supra) the Hon"ble Supreme Court has held that the Employees Insurance Court has not only a mandatory duty cast upon it u/s 75(2) of the ESI Act but it is armed with the powers of a civil Court, including summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects u/s 78 of the Act.
27. Referring to the decision reported in Sarojini Tea Co. v. Collector of Dibrugarh (supra) Sri Roy submitted that the Hon"ble Supreme Court in Assam Fixation of Ceiling on Land Holdings Act, 1956, has been pleased to hold that since there is nothing in the Ceiling Act which excludes the applicability of Sections 4 to 24 of the Limitation Act, 1963, to proceedings under the Ceiling Act, the said provisions are applicable in view of Sub-section (2) of Section 29 of the Limitation Act, 1963.
28. According to the learned counsel of the petitioners, in the case of Punjab National Bank v. Sahu Jain Charitable Society (supra) this Hon"ble Court, following the larger Bench decision of the Hon"ble Supreme Court in Kerala State Electricity Board v. T.P. Kunhaliumma (supra), has held that residuary Article 137 of the 1963 Limitation Act applies not only to an application provided for in the CPC but also to other applications under other statutes.
29. Sri Roy also relied upon the decision reported in Agarwal Hardware Industries

v. Employees" State Insurance Corporation (supra) wherein this Hon"ble Court had held, on the question of inherent and ancillary powers of the Employees Insurance Court that it would be reasonable to consider that the said Act in conferring the jurisdiction to adjudicate the dispute specified by Section 75 of the said Act impliedly granted the power of doing all such acts and employ all such means as are essentially necessary for effectively discharging its obligations to adjudicate and that statutory power carries with it the duty in proper cases to make orders for stay.

30. Another decision reported in *Raison Tailors v. Employees" State Insurance Corporation* (supra) was cited on behalf of the petitioners wherein it has been held by the Punjab and Haryana High Court that a tailoring shop employing less than twenty persons does not come within the purview of the Employees" State Insurance Act.

31. The learned counsel of the respondents opposed the aforesaid contentions made on behalf of the petitioners. The main objections raised on behalf of the respondents are summarised hereinafter:

(1) According to the learned counsel of the respondents, the Employees" Insurance Court, West Bengal was constituted by the State Government in terms of Section 74 of the ESI Act, 1948, and as such according to the learned counsel of the respondents the Employees" Insurance Court is a creature of a special statute and therefore, it is a Tribunal and not a civil Court.

(2) It has further been contended on behalf of the respondents that all Articles in the Third Schedule of the Limitation Act are applicable only to a Court under the Civil Procedure Code. As the EI Court is a Tribunal and not a Court the Limitation Act does not apply.

(3) The learned counsel of the respondents further submitted that Section 77(1-A) of the said Act prescribes a limitation of 3 years. It is a period prescribed by a Special Statute. The Section does not contain any provisions for condonation of delay as in other Special Statutes.

(4) According to the learned counsel of the respondents, there is no provision for condonation of delay inbuilt in Section 77 of the said Act. Learned counsel of the respondents specifically submitted that in respect of special statutes as the ESI Act the general provisions of the Limitation Act cannot be applied,

32. The learned counsel of the respondents referred to the order passed by BASUDEV PANIGRAHI, J., on July 21, 1999 whereby and whereunder the earlier writ petition of the petitioners was finally disposed of. In the said order PANIGRAHI, J. specifically held that the petitioners shall be at liberty to file a claim u/s 75 of the ESI Act, subject to limitation.

33. It has been contended on behalf of the respondents that the fact as to coverage of the establishment of the petitioners under the ESI Act, 1948, was intimated to the petitioners on behalf of the ESI Corporation by written

communication, dated January 27, 1992, and thereafter, the authorised officer of the ESI Corporation demanded payment of arrear contributions and interest by subsequent letters, dated April 30, 1992. So, according to the learned counsel of the respondents cause of action really arose on January 27, 1992 and also on April 30, 1992.

34. According to the learned counsel of the respondents, the petitioners were required to file the application u/s 75 of the ESI Act before the Employees' Insurance Court challenging the coverage under the said Act and liability to pay the amount demanded by the ESI Corporation within 3 years from January 27, 1992/April 30, 1992 in terms of the provisions of Section 77(1-A) of the ESI Act. The application u/s 75 of the said ESI Act was admittedly filed by the petitioners in the year 1999, i.e., beyond the prescribed period of 3 years from the date on which the cause of action arose.

35. Sri Subal Maitra, learned counsel of the respondent ESI Corporation submits that the petitioners herein should have filed the dispute case before the Employees' Insurance Court within the prescribed time period as mentioned in Section 77 of the said ESI Act, 1948 and since the petitioners did not file the said dispute case within the prescribed time period, an application u/s 5 of the Limitation Act was filed for condonation of delay in filing the said dispute case being T.C. No. 109 of 1999.

36. The learned counsel of the respondents submits that the learned Judge of the Employees' Insurance Court has rightly held that the provisions of Section 5 of the Limitation Act are not applicable in any proceedings before the Employees' Insurance Court. Sri Maitra referred to and relied upon the following decision which is quoted hereinafter:

AIR 1972 1935 (SC)

"15. We may before parting with this case point out that the Legislature has since chosen to specifically prescribe 3 years limitation period by addition of Sub-section (I-A) to Section 77 while deleting Section 80. Section 77(I-A) provides that:

"Every such application shall be made within a period of three years from date on which the cause of action arose."

By this amendment, the claim under Clause (d), as well as, the one under Clause (f) of Sub-section (2) of Section 75 which provides for the adjudication of a claim by the Insurance Court for the recovery of any benefit admissible under the Act for which a separate limitation was fixed u/s 80, is now to be made within 3 years from the date of the accrual of the cause of action. This amendment also confirms the view taken by this Court that the power u/s 96(1)(b) does not empower the Government to prescribe by rules a period of limitation for claims u/s 75."

The Division Bench of this Court in the case of Employees' State Insurance

Corporation v. Braithwaite & Company. Ltd. F.M.A No. 746 of 1989 held as hereunder:

"After considering the respective submission of the parties it appears to us that the challenge of the respondent before the Insurance Court as to the show-cause notice and also the order passed by such Corporation levying the damages was clearly time barred. u/s 77(1-A) of the Employees' State Insurance Act an application for initiating the proceeding before the Employees' State Insurance Court has to be made within a period of three years from the date on which the cause of action arose."

37. Sri Maitra specifically urged before this Court that the Employees' Insurance Court is not a civil Court. Section 78(1) of the ESI Act confers on the Employees' Insurance Court certain limited powers of the civil Court. Provisions of Section 78(1) is quoted hereunder:

"78. Powers of Employees' Insurance Court. -(1). The Employees' Insurance Court shall have all the powers of a civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such Court shall be deemed to be a civil Court within the meaning of Section 195 and Chap. XXVI of the Code of Criminal Procedure, 1973)."

38. According to Sri Maitra, apart from the aforesaid powers Employees' Insurance Court does not have any other powers of a civil Court. Sri Maitra further submits that the Employees' Insurance Court cannot review its own order and it cannot enforce also its own orders. The Employees' Insurance Court, according to Sri Maitra, has no inherent power as provided u/s 151 of the Code of Civil Procedure. Referring to Section 78(4) of the ESI Act. Sri Maitra submitted that an order of the Employees' Insurance Court shall be enforceable as if it were a decree passed in a suit by a civil Court. So, according to Sri Maitra, the proceeding before the Employees' Insurance Court is not a suit and the order passed by the said Court is not a decree.

39. Sri Maitra also submits that although Section 77(1-A) of the ESI Act, 1948, does not provide that the provisions of Section 5 of the Limitation Act, 1963, would apply to an application u/s 75 of the ESI Act but Section 82(4) of the said Act of 1948 provides specifically that Section 5 would apply to appeals referred u/s 82 of the said Act. Provision of appeal as mentioned in Section 82 of the said Act is reproduced below:

"82. Appeal. -(1) Save as expressly provided in this Section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

(3) The period of limitation for an appeal under this Section shall be sixty days.

(4) The provisions of Sections 5 and 12 of the (Limitation Act, 1963 (36 of 1963)) shall apply to appeals under this Section."

40. Referring to the provisions of Section 77(I-A) and Section 82(4) of the ESI. Act, Sri Maitra submits that the application u/s 5 of the Limitation Act has been specifically provided to the appeals preferred u/s 82 of the said Act whereas the application under the said Section 5 of the Limitation Act has not been provided in respect of the proceedings initiated u/s 77(I-A) of the said ESI Act.

41. Sri Maitra referred to the following decisions in support of his aforesaid contentions:

Shri Virindar Kumar Satyawadi Vs. The State of Punjab, .

"5a It is a familiar feature of modern legislation to set up bodies and Tribunals and entrust to them work of a judicial character but they are not Courts in the accepted sense of that term, though they may possess, as observed by LORD SANKEY L.C. in *Shell Company of Australia v. Federal Commissioner of Taxation* [1931 A.C. 275 (A)], some of the trappings of a Court.....

Town Municipal Council, Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.,

"..... When this Court earlier held that all the articles in the third division to the schedule, including Article 181 of the Limitation Act of 1908, governed applications under the CPC only, it clearly implied that the applications must be presented to a Court governed by the Code of Civil Procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Articles 158 and 178 were to be presented to Courts whose proceedings were governed by the Code of Civil Procedure. At best the further amendment now made enlarges the scope of the third division of the schedule so as also to include some applications presented to Courts governed by the Code of Criminal Procedure. One factor at least remains constant and that is that the applications must be to Courts to be governed by the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than Courts, such as a quasi-judicial Tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not Courts and they are in no way governed either by the CPC or the Code of Criminal Procedure"

Agarwal Hardware Industries v. Employees State Insurance Corporation (supra):

"..... The Employees" Insurance Court is undoubtedly a special Tribunal constituted u/s 74 of the Act and such a Tribunal possess the limited jurisdiction of adjudicating only such disputes as are specified in Section 75 of the Act. No doubt the jurisdiction to be exercised by such a Tribunal is exclusive as is explicit on the provisions of Section 75(3) of the Act. Section 77 of the Act provides that all proceedings before such Tribunal are to be initiated on applications made in

the manner prescribed by the Rules and Section 76 provides the forum and also provides for transfer of such proceedings from one Tribunal to the other in the circumstances and in the manner prescribed. Section 77 further provides for the limitation for the proceedings to be initiated. Section 78 is important when it provides that such a Tribunal is vested with some of the powers of the civil Court as under the CPC expressly specified in that section. This section further provides that the Tribunal so constituted shall be deemed to be a civil Court within the meaning of Section 195 and Chap. 35 of the Code of Criminal Procedure. The other procedure to be followed by the Tribunal in adjudicating these disputes is as prescribed by the Rules. Section 78(4) provides that an order passed by such a Tribunal shall be enforceable "as if it were a decree passed in a suit by a civil Court." Section 81 authorises the Tribunal to submit any question of law for the decision of the High Court and Section 82 provides for an appeal against an order of the Tribunal limited to questions of law and also provides the limitation for such an appeal. Section 83 prescribes the conditions in which pending an appeal by the Corporation, the Tribunal can withhold payment of any sum directed to be made by its order under appeal. These are the only material provisions in the Act providing for the constitution of the Employees' Insurance Court and, the manner and procedure of adjudication of disputes and claims by such a Tribunal. These provisions abundantly make it clear that in setting up such a Tribunal, the Legislature did not set it up as one of the ordinary civil Courts in the hierarchy of Courts envisaged by Constitution. It is only some of the powers of ordinary civil Courts which had been extended to these Tribunals and they are being deemed as Courts for limited purposes. To that extent, therefore, these Tribunals are not Courts but Tribunals."

(5) Popular Process Studio and Another Vs. Employees' State Insurance Corporation, :

"25. It will be seen from these provisions that the Employees' Insurance Court is a creature of the Act brought into existence for a specific purpose and has to discharge only such functions as are assigned to it under the Act. In deciding matters which come before it for decision, it has to apply the provisions of the Act and has no power nor can have any occasion to administer the ordinary substantive law of the land. In conducting the proceedings before it, it has to follow such procedure as may be prescribed by rules framed by the State Government and not the procedure followed by the ordinary civil Courts. If the rules happen to prescribe the same or similar procedure as that of the ordinary civil Courts that would not change the legal position. The EI Court will then be following that procedure because of the rules and not because it is a "Court"; properly so called. The procedure may be altered by the State Government at any time by altering or amending the rules or by replacing them by fresh rules. The EI Court exercises the powers of a civil Court for the purposes of summoning and enforcing attendance of witnesses etc. because those limited powers are specially conferred upon it by Section 78 of the Act and it is to be deemed to be a civil Court for certain specified uses because the Act so provides. It has no

power to execute its own orders. An order passed by it is enforceable as if it were a decree passed in a suit by a civil Court. It is thus clear that the EI Court does not satisfy the tests laid down by the Supreme Court in *Brajnandan Sinha Vs. Jyoti Narain*, . It is not therefore, a "Court" in the strict sense or in the accepted connotation of that term in legal parlance. It follows that it is not a "Court" for the purposes of the Limitation Act, 1963, and applications made to it are not covered by Article 137 of that Act."

42. Learned counsel of the respondents submitted that the provisions of the Limitation Act, 1963, would apply only to civil Court and not to a Tribunal including the Employees' Insurance Court unless the special statute, i.e., the ESI Act which creates such Tribunal specifically provides so. Sri Maitra cited the following decisions in support of his aforesaid contentions: (1) *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, :

"In our view, Article 137 only contemplates applications to Courts. In the Third Division of the schedule to the Limitation Act, 1963, all the other applications mentioned in the various articles are applications filed in a Court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the Court is closed." Again u/s 5 it is only a Court which is enabled to admit an application after the prescribed period has expired if the Court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to Courts, and that the Labour Court is not a Court within the Indian Limitation Act, 1963."

(2) *Employees' State Insurance Corporation v. United Electrical Industries Ltd.* 1975 (2) LLN 303:

"On the question of limitation, the Employees' Insurance Court was clearly in error. It observed that the Court had dealt with a good number of similar cases and had passed judgments therein declaring that any demand of application made by any party after a period of three years from the date the cause of action arose was barred by limitation under Article 137 of the Indian Limitation Act. Reference is also made to the decision of the Supreme Court reported in *Bharat Barrel and Drum Manufacturing Company Ltd. v. Employees' State Insurance Corporation* (supra). Evidently the Insurance Court was in error in applying the provisions of the Limitation Act, to an application under the Employees' State Insurance Act. It has been held by this Court in *South India Corporation (Travancore) (Private) Ltd. v. Employees' State Insurance Corporation* 1973 K.L.T. 571, that the period of limitation under Indian Limitation Act is not applicable to proceedings before the Employees' Insurance Court....."

(3) *Sakuru Vs. Tanaji*, :

"It is well settled by the decisions of this Court in *Town Municipal Council, Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli*

and Others etc., , Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, and Smt. Sushila Devi Vs. Ramanandan Prasad and Others, , that the provisions of the Limitation Act, 1963, apply only to proceedings in "Courts" and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or executive authorities notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein u/s 90 of the Act not being a Court, the Limitation Act as such, had no applicability to the proceedings before him"

43. From the aforesaid rival contentions of the respective parties, it now appears that the main question which falls for determination before this Court in this proceeding is whether provision of Section 5 of the Limitation Act is applicable in any proceeding before the Employees' Insurance Court. The provisions relating to commencement of proceedings before the Employees' Insurance Court has been mentioned in Section 77 of the ESI Act. In terms of Section 77(1-A) of the said ESI Act, every application shall be made before the Employees' Insurance Court within a period of 3 years from the date on which cause of action arose. There is no dispute that the cause of action arose in the present case on January 27, 1992 and/or April 30, 1992.

44. The petitioners herein should have filed the dispute case before the Employees' Insurance Court within the prescribed time period of 3 years from January 27, 1992 or at least from April 30, 1992. The dispute case was admittedly, filed by the petitioners before the Employees' Insurance Court in the year 1999, i.e., long after the expiry of the prescribed period of limitation."

45. Appreciating the delay in filing the said dispute case before the Employees' Insurance Court, the petitioners herein also filed an application u/s 5 of the Limitation Act in condonation of delay in filing the said case before the Employees' Insurance Court. It may also be noted that while deciding the previous writ petition filed by the petitioners being W.P. No. 1456 of 1999, BASUDEV PANIGRAHI, J,, by the order, dated July 21, 1999, although granted liberty to the petitioners to file a claim u/s 75 of the ESI Act but such liberty was granted, subject to limitation. Accordingly, the petitioners have no escape from the requirements of the limitations in the matter of filing a claim u/s 75 of the ESI Act.

46. Now, it is to be decided whether Employees' Insurance Court has any authority to entertain any application u/s 5 of the Limitation Act in order to condone the delay in filing a claim before the said Employees' Insurance Court under the provisions of the ESI Act.

47. It has been repeatedly held by the Supreme Court in various decisions that the provisions of the Limitation Act, 1963, apply only to proceedings in "Courts" and not appeals or applications before bodies other than Court such as quasi-

judicial Tribunal or executive authorities. In the case of *Sakuru v. Tanaji* (supra) Hon"ble Supreme Court has specifically held that the provisions of Limitation Act, 1963, apply only to proceedings in "Courts" and not to appeals or applications before bodies other than Courts such as quasi- judicial Tribunal or executive authorities.

48. The Employees" Insurance Court is constituted u/s 74 of the ESI Act, 1948, for adjudication of disputes and claims. Although, Section 78 confers on it certain powers of a civil Court but the same does not and cannot make it a civil Court. In various proceedings Hon"ble Supreme Court and this Hon"ble Court reportedly held that the Employees" Insurance Court is a special Tribunal constituted u/s 74 of the Act and such Tribunals are not Courts.

49. In the case of *Agarwal Hardware Industries* (supra), ANIL SEN, J., not only held that the Employees" Insurance Court is undoubtedly a special Tribunal and further held that in setting up such a Tribunal the Legislature did not set it up as one of the ordinary civil Courts in the hierarchy of Courts envisaged by Constitution. jUSTICE SEN further held that only some of the powers of ordinary civil Courts had been extended to these Tribunals and they are being deemed as Courts for limited purposes but these Tribunals are not Courts but are Tribunals.

50. The Employees" Insurance Court is admittedly, a creature of the Act and while conducting the proceedings the said Employees" Insurance Court is bound to follow the procedures as prescribed by the rules framed by the State Government. The Employees" Insurance Court as discussed earlier cannot be regarded as a Court in the strict sense and therefore, provisions of Limitation Act, 1963, cannot apply in respect of the proceedings before the said Employees" Insurance Court. The Hon"ble Supreme Court in the case of *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, specifically observed as hereunder:

"It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to Courts, and that the Labour Court is not a Court within the Limitation Act, 1963."

Following the observations of LORD SANKEY, L.C. in *Shell Company of Australia v. Federal Commissioner of Taxation* [1931 A.C. 275 , it can be said that the Employees" Insurance Court may possess some of the trappings of a Court but I am unable to hold that the said Employees" Insurance Court is a Court in the accepted sense of that term,

51. Although the petitioners referring to the Division Bench judgment of the Bombay High Court in the case of *Employees" State Insurance Corporation v. Shashikant* (supra), submitted that the provisions of Section 5 of the Limitation Act will apply to an application filed before the Employees" Insurance Court but in my view, the said judgment is not applicable in the facts of the present case. In the said judgment, Division Bench of the Bombay High Court was not at all 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. The relevant portion from the said judgment is quoted hereunder:

"..... 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, Limitation Act will apply to 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."

52. Another Division Bench judgment of the Bombay High Court cited on behalf of the petitioners reported in *J.C. Patel v. Employees' State Insurance Corporation, Bombay* (supra) is also not applicable for the simple reason that the question referred for consideration before the said Division Bench of the Bombay High Court was whether Article 137 of the Limitation Act, 1963, would apply to an application filed u/s 75 of the ESI Act between January 18, 1964 and January 28, 1968 because on January 1, 1964, the Limitation Act, 1963, came into force and on January 20, 1968, Section 77(1-A) of the ESI Act came into force. In the aforesaid judgment, the Division Bench of the Bombay High Court wanted to protect the litigants only for the limited period between January 1, 1964 and January 28, 1968 but the observations of the Bombay High Court in the aforesaid case is contrary to the decisions of this Hon''ble Court and also of the Hon''ble Supreme Court of India.

53. The other decisions cited by the learned counsel of the petitioners and mentioned hereinabove are also clearly distinguishable in the facts of the present case and as such same are not at all applicable herein.

54. One other interesting point in the present case is that the provisions of Section 5 of the Limitation Act has been made specifically applicable in respect of the appeals filed u/s 82 of the ESI Act whereas the said provisions of Section 5 of the Limitation Act have not been specifically made applicable in respect of the applications filed u/s 5 of the ESI Act. Section 77(1-A) of the ESI Act specifically provides that every application shall be made before the Employees' Insurance Court within a period of 3 years from the date on which the cause of action arose.

55. Considering the provisions of the Employees' State Insurance Act, 1948, it appears that Section 5 of the Limitation Act has neither been expressly made applicable nor excluded by express reference in respect of the proceedings before the Employees' Insurance Court. If it was the intention of the Legislature to apply Section 5 of the Limitation Act to the proceedings before the Employees' Insurance Court then, there could be no reason for the Legislature to apply Section 5 of the Limitation Act expressly to the application filed u/s 75 of the ESI Act. Admittedly, the legislature thought it fit and proper to apply Section 5 of the Limitation Act in the case of appeal preferred u/s 82 of the said Act as the appeal under the said Section 82 shall lie to the High Court from an order of the Employees' Insurance Court. Accordingly, it is clear that the

Legislature thought it fit not to apply Section 5 of the Limitation Act to the proceeding before the Employees' Insurance Court although the Legislature specifically provided that the provisions of Section 5 of the Limitation Act shall apply in respect of the appeal preferred before the High Court u/s 82 of the said Act. In the aforesaid circumstances, I am of the opinion that Section 5 of the Limitation Act has been expressly excluded by necessary implication in respect of the proceedings before the Employees' Insurance Court in view of the fact that the Legislature intentionally excluded the applications made under the provisions of Section 5 of the Limitation Act in respect of the proceedings before the Employees' Insurance Court.

56. For the aforementioned reasons and considering the various decisions of this Court as well as of the Hon'ble Supreme Court as discussed hereinbefore, I have no hesitation to hold that the Employees' Insurance Court cannot be considered as "Court" in strict sense atleast for the purpose of application of the provisions of the Limitation Act and particularly the provisions of Section 5 of the Limitation Act cannot apply to any proceeding before the Employees' Insurance Court.

57. In the circumstances stated hereinabove, I do not find any infirmity and/or illegality in the impugned order, dated December 6, 1999, passed by the learned Judge of the Employees' Insurance Court which has been challenged in this writ petition before this Hon'ble Court. In my view, the learned Judge of the Employees' Insurance Court has rightly rejected the application filed on behalf of the petitioners u/s 5 of the Limitation Act. Accordingly, this writ petition is devoid of any merit and the same is therefore, dismissed.

58. There will be, however, no order as to costs.

59. The parties are directed to act on the basis of the operative portion of the signed copy of the minutes of this order on the usual undertaking.

Later:

After pronouncement of the judgment, the learned advocate of the petitioners prays for stay of the operation of this judgment and order. I find no reason to grant such stay. Accordingly the aforesaid prayer for stay is refused.

Writ petition dismissed. Prayer for stay refused.