

(1969) 07 BOM CK 0007

In the Bombay High Court

Case No : A.F.O. No. 5 of 1968 with A.O. No. 6 of 1968

Popular Process Studio and Another

APPELLANT

Vs

Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 31-07-1969

Acts Referred:

Bombay Employees Insurance Courts Rules, 1959 — Rule 17
Criminal Procedure Code, 1898 (CrPC) — Section 195
Employees State Insurance Act, 1948 — Section 2(14), 26(1), 75, 75(1), 75(2)
Industrial Disputes Act, 1947 — Section 33(2), 33C(2)
Limitation Act, 1908 — Article 120, 181, 12, 5
Limitation Act, 1963 — Article 137

Citation : AIR 1970 Bom 413 : (1970) 72 BOMLR 320 : (1970) MhLj 780

Hon'ble Judges : Bal, J

Bench : Single Bench

Advocate : V.D. Govilkar, for the Appellant; M.V. Jayakar, for the Respondent

Judgement

1. These two appeals arise out of almost identical facts and raise a common question of law for decision. They arise out of two applications filed by the Employees" State Insurance Corporation (hereinafter referred to as "the Corporation") before the Employees" Insurance Court, Bombay, (hereinafter referred to as the "E. I. Court"), u/s 75(2) of the Employees" "State Insurance Act, 1948 (Act 34 of 1948, hereinafter referred to as "The Act"). The application leading to A.O. No. 5 of 1968 was against Messrs. Popular Process Studio and its proprietor Mukund Kashalkar for the recovery of Rs. 1567.63 as employees" contribution for the period from August 19, 1959, to August 31, 1964, and was filed on. January 25, 1965, while the application leading to A.O. No. 6 of 1968 was against Messrs. Dawn Mills Co. (Ltd.) and its Director Ramniwas Ram Narayan for the recovery of Rs. 7252.13 as employees" contribution for the period from October 3, 1954, to March 31. 1960, and was filed on June 23, 1964. Both the applications were accompanied by applications for condonation of delay for the reasons stated therein but it was made clear that the prayer for condonation of delay was made without prejudice to the contention of the

Corporation that Rule 17 of the Bombay Employees' Insurance Courts Rules, 1959, requiring an application to the E. I. Court to be made within twelve months from the date on which the cause of action arose, was ultra vires and applications to the E. I. Court were not subject to any limitation.

2. The respondents contended that the applications were barred by time and there were no sufficient reasons for condoning the delay.

3. Before the applications for condonation of delay came up for hearing, a Division Bench of this High Court had held in *The Employees' State Insurance Corporation, Bombay Vs. Bharat Barrel and Drum Manufacturing Co. Private Ltd. and Another*, that Rule 17 of the Bombay Employees' Insurance Courts Rules, 1959, was ultra vires the rule-making power of the State Government u/s 96(1) of the Act and applications filed by the Corporation before January 1, 1964, are not subject to any period of limitation but those filed thereafter are subject to the period of three years from the date when the right to apply accrues, prescribed in Article 137 of the Limitation Act of 1963 (36 of 1963). As both the applications in question had been filed after January 1, 1964, and the right to apply had apparently accrued more than three years prior to the filing of the applications, the applications for condonation of delay still survived and were heard. In the application against Messrs, "Popular Process Studio, the E. I. Court held that the opponents had fraudulently concealed from the Corporation till November 27, 1963, documents necessary for ascertainment of dues; hence by virtue of the provisions of Section 17 of the Limitation Act, 1963, limitation did not start till that date and the application which was filed within three years from that date was within limitation. Alternatively it also held that the Corporation was misled by the practice followed by the E. I. Court of treating such applications as governed by Article 120 of the Indian Limitation Act, 1908, till the decision of this High Court referred to above, which was given on September 19, 1966, and hence condoned the delay, if any- In the application against Messrs. Dawn Mills Co. (Ltd.) the E. I. Court condoned the delay on the same ground.

4. The findings and orders of the E. I. Court are challenged by the appellants in the present appeals. Mr. Jaykar, learned Advocate for the Corporation, however submits that it is not now necessary to go into the merits of those findings; in so far as it lays down that Article 137 of the Limitation Act, 1963, applies to applications to the E, I. Court, the decision in *The Employees' State Insurance Corporation, Bombay Vs. Bharat Barrel and Drum Manufacturing Co. Private Ltd. and Another*, is no longer good law and when the applications in question were filed there was no other provision of law prescribing any period of limitation for filing such applications. Mr. Jaykar relies on the decision of the Supreme Court in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.,*). The question directly involved in that case was whether. Article 137 of the Limitation Act of 1963 is applicable to applications to the Labour Court u/s 33(2) of the Industrial Disputes Act," 1947, but the Supreme

Court considered the wider question about the scope of that Article and held, disapproving the decision of the Full Bench of this High Court in P.K. Porwal (By Manager) Vs. Labour Court, Nagpur, , that like Article 181 of the Indian Limitation Act, 1908, Article 137 of the Limitation Act, 1963 was applicable only to applications to Courts under the Code of Civil Procedure.

5. The above decision of the Supreme Court clearly supports the submission of Mr. Jaykar, Mr. Govilkar, learned Advocate for the appellants, has," however, Invited my attention to certain observations of the Supreme Court in the later decision In Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others,), which make further investigation necessary.

6. In Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, which also related to applications to the Labour Court u/s 33-C(2) of the Industrial . Disputes Act, the Supreme Court referred to its earlier judgment in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., and explained that the judgment in that case was based on two grounds, viz. (i) that in -spite of the changes made in the Limitation Act, 1963, no drastic change was intended in the scope of Article 137 so as to include within it all applications irrespective of whether they had any reference to the CPC or not; and (ii) that it is only applications to "Courts" that are Intended to be covered under Article 137 of the Limitation Act, 1963. Their Lordships based their decision in Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, on the second, of these grounds, holding that Art, 137 was not applicable because the Labour Court is not a "Court" within the Limitation Act," 1963, and then went on to say: "It is not necessary to express our views on the first ground given by this Court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., . It seems to us that it may require serious consideration whether applications to Courts under other provisions, apart from Civil Procedure Code, are included within Article 137 of the Limitation Act, 1963; or not."

7. It is thus finally settled that Article 137 of the Limitation Act, 1963, is confined to applications to "Courts" within the meaning of that Act but the question whether it applies to applications to "Courts" under provisions other than those of the CPC is left open. The first question" which, therefore, arises for consideration in these appeals is whether the E. I. Court is a "Court" within the meaning of, the Limitation Act 1963. Other questions will arise if the answer to this question is found to be in the affirmative.

8. The term "Court" is not defined in the Limitation Act, 1963, nor was it defined in the Indian Limitation Act, 1908, which it repealed and replaced. It must, therefore, be taken in its accepted sense in legal parlance and would prima facie mean a Court of law in the heirarchy of Courts established for the purpose of administration of justice throughout the Union.

9. In Shri Virindar Kumar Satyawadi Vs. The State of Punjab, the Supreme Court

pointed out that "it is a familiar feature of modern legislation to set up bodies and tribunals, and entrust to them work of judicial character, but they are not "Courts" in the accepted sense of that term though they may possess some of the trappings of a Court,"

10. The question whether a particular tribunal is or is not a "Court" in the strict sense, is not always easy to decide. In dealing with that question, decisions regarding the nature of other authorities or tribunals created under different Acts cannot also generally be of much assistance. The fact that its name includes the term Court is neither here nor there, nor is the fact that it possesses some of the trappings of a Court, decisive of the matter. In the words of the Supreme Court in *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, , "when a question therefore arises as to whether an authority created by an Act is a "Court" as distinguished from a quasi judicial tribunal, "what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court". (the underlining "(here in " ") is mine).

11. The only decision relating to the nature of the E. I. Court which has been brought to my notice by Mr. Jaykar is: *Regional Director, Employees' State Insurance Corporation v. Ram Laxhan Pandey*, AIR 1960 Punj 559. In that case a learned Single Judge of the Punjab High Court held that the Employees' Insurance Court is not an ordinary Civil Court but a domestic tribunal specially constituted for the purpose of deciding any controversy that may arise on the matters enumerated in Section 75 of the Act. The question whether the E. I., Court is a "domestic" tribunal may be debatable but I agree with respect that it is a tribunal which is not a "Court" in the strict sense. As no reasons have been given in the Punjab decision, I will briefly give my reasons for arriving at this conclusion.

12. The general question as to what constitutes a Court properly so called was considered at some length and certain tests were laid down by the Supreme Court in *Brajnandan Sinha Vs. Jyoti Narain*, . After pointing out that "the pronouncement of a definitive judgment is considered the essential "sine qua non" of a Court and unless and until a binding and authoritative judgment can be pronounced by a person or body of persons it cannot be predicated that he or they constitute a Court". Their Lordships quoted with approval the following negative propositions in relation to the subject, enumerated by the Privy Council in *Shell Co. of Australia v. Federal Commr. of Taxation*, 1931 AC 275:

"(1) A tribunal is not necessarily a Court in this strict sense because it gives a final decision;

(2) Nor because K hears witnesses on oath;

(3) Nor because two or more contending parties appear before it between whom it has to decide

(4) Nor because it gives decisions which affect the rights of subjects;

(5) Nor because there is an appeal to a Court;

(6) Nor because it is a body to which a matter is referred by another body."

13. The pronouncement of a binding and authoritative judgment -though absolutely essential, is thus not enough to constitute a tribunal a "Court" in the strict sense. A further requirement is that the tribunal must have been invested with the inherent judicial power of the State and the pronouncement of a binding and authoritative judgment must be in exercise of that judicial power. In *Brajnandan Sinha Vs. Jyoti Narain*, their Lordships quoted with approval a passage from the Judgment of the Privy Council in *Shell Co.'s case*, 1931 AC 275 which defines judicial power to mean "the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects whether the rights relate to life, liberty or property" and adds "the exercise of this power does not begin till some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action".

14. A tribunal invested with the inherent judicial power of the State and constituting a Court in the strict sense, would automatically acquire all incidental powers necessary for the proper exercise of that power including the power to execute its own orders. No express legislation would be necessary for conferring some or all of those powers upon it.

15. In *Brajnandan Sinha Vs. Jyoti Narain*, the question was whether a Commissioner appointed under the Public Servants (Inquiries) Act, 1850, was a "Court" within the meaning of the Contempt of Courts Act wherein that term was not defined. The provisions of the Public Servants (Inquiries) Act and the legal position of the Commissioner appointed under that Act had been considered by the Supreme Court in the earlier case of *S.A. Venkataraman Vs. The Union of India (UOI)* and *Another*, and it had been held that an inquiry before the Commissioner was not a prosecution for an offence within the meaning of Article 20(2) of the Constitution. In *Brajnandan Sinha Vs. Jyoti Narain*, the Supreme Court affirmed this conclusion, accepting it as sufficient to establish that the Commissioner was not a "Court" and observed:

"We are also of the same opinion, apart from the considerations which weighed with the Court in that case, we have also the provisions of Section.8 of the Act itself which go to show that the Commissioners are given certain powers of the Civil and Military Courts in regard to punishing contempts and obstruction to their proceedings, summoning of witnesses, compelling the production to documents and for service of their process as also the same protection as Zilla and City Judges.

"The very fact that this provision had got to be enacted shows that the position of the Commissioners was not assimilated to that of Judges and that they did not constitute Courts of Justice or Courts of law" but were mere fact finding tribunals deriving whatever powers they could exercise under the very terms of the Act

which created them. The power of punishing contempts and obstruction to their proceedings as is given to Civil and Criminal Courts by the Code of Criminal Procedure, 1898, was also similar in its nature and the very nature and extent of the power indicated that they were not courts in the ordinary sense of the term.

"No such provision would have been necessary to be enacted if in fact they were constituted Courts of Justice or Courts of Law" and it is no argument to say that these provisions were enacted even though they were not strictly necessary merely for the sake of abundant caution or clarification of the position." (the underlinings (here in " ") are mine).

16. In order to determine whether the E. I. Court is a "Court" in the strict sense, the relevant provisions to the Act (as it stood before its amendment in 1966 by Act 44 of 1966) must now be examined in the light of the above tests.

17. The Act was enacted "to provide for certain benefits to employees in case of sickness, maternity and employment injury". It applies in the first instance to all factories other than seasonal factories, but its provisions can be extended to other establishments. Section 2(14) defines an "insured person" as "a person who is or was an employee in respect of whom contributions are or, were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act." Section 3 provides for the establishment of the Corporation for the administration of the scheme of Employees' State Insurance in accordance with the provisions of the Act. Section 26(1) provides for the creation of a fund to be called the Employees' State Insurance Fund into which all moneys received by the Corporation, including contributions under the Act, are to be paid. The fund is to be held and administered by the Corporation for the purposes of the Act. Two kinds of contribution at certain rates are payable to the Corporation under the Act in respect of every employee covered by its provisions. One is called the employer's contribution and the other is called the employee's contribution. The liability to pay both the contributions in respect of every employee, whether employed by him directly or through an immediate employer, is however, cast on the principal employer by Section 40 and the principal employer is given the right to recover from the concerned employee the employee's contribution, by deduction from his wages. Sections 46 to 73 deal with the various benefits available Under the Act to insured persons and with other connected matters.

18. The provisions relating to E. I. Court are contained in Chapter VI which deals with "Adjudication of Disputes and Claims" and comprises Sections 74 to 83. Section 74 enjoins the State Government to constitute an E. I. Court for each local area and to appoint to it as judges, such number of persons (possessing the prescribed qualifications) as it may think fit. Sub-sections (1) and (2) of Section 75 enumerate the various matters to be decided by the E. I. Court. They consist of claims and questions under the Act regarding which disputes may arise between employers, employees and the Corporation and are to be decided in accordance with the provisions of the Act. Section 75(3) bars the jurisdiction of

Civil Courts to decide or deal with any question or dispute covered by Section 75(1) and 75(2) or to adjudicate on any liability which by or under the Act is to be decided by the E. I. Court. Section 76 deals with the territorial jurisdiction of an E. I. Court and the transfer of proceedings from one E. I. Court to another. Section 77 provides that proceedings before an E. I. Court shall be commenced by application and every such application shall be in such form, 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.

19. Section 78 which deals with the powers of the E. I. Court reads:

"ui. (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 Chapter XXXV of the Code of Criminal Procedure, 1898.

(2) The Employees" Insurance Court shall follow such procedure as may be prescribed by rules made by the State Government.

(3) All costs incidental to any proceeding before an Employees" Insurance Court shall, subject to such rules as may be made in this behalf by the State Government, be in the discretion of the Court.

(4) An order of the Employees" Insurance Court shall be enforceable as if it were a decree passed in a suit by a Civil Court."

20. Section 79 permits any application, appearance or act required to be made or done by any person (other than a witness) to be made or done by a legal practitioner or by an officer of a registered trade union authorised in writing by such person or with the permission of the E. I. Court, by any other person so authorised.

21. Section 80 provides that the E. I. Court shall not direct the payment of any benefit to a person unless he has made a claim (to the Corporation) for such benefit within twelve months after the claim became due and in accordance with the regulations made (by the Corporation) in that behalf. The proviso to the section empowers the Court to relax this condition in appropriate cases.

22. Section 81 provides that an E. I. Court may submit any question of law for the decision of the High Court and if it does so, it shall decide the question pending before it in accordance with such decision.

23. Section 82 lays down that an appeal shall lie to the High Court from an order of the E. I. Court only if it involves a substantial question of law and not otherwise; the period of limitation for such an appeal is sixty days and the provisions of Sections 5 and 12 of the Indian Limitation Act, 1908, apply to such

appeals.

24. Section 83 empowers the E. I. Court to withhold payment of any sum directed to be paid by it where the Corporation has presented an appeal to the High Court against its order.

25. It will be seen from these provisions that the E. I. 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 E. I. 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 E. I. 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 purposes 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 E. I. 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 of 1963, and applications made to it are not covered by Article 137 of that Act.

26. Admittedly, there was no other provision of law prescribing any period of limitation for applications to the E. I. Court at the time when the applications with which we are concerned in the present case were filed and no question of condonation of delay can therefore, arise.

27. Mr. Govilkar for the appellants, submits that at any rate there were laches on the part of the respondent Corporation and that should be sufficient to refuse relief to it. The argument would have had some force if the relief sought by the respondent Corporation had been a discretionary relief; but that is not so. There is no dispute that if a proper application is filed before it and the claim is legally established, the Employees' Insurance Court has no discretion of refuse relief on the ground of laches.

28. In the result, both the appeals fail and are dismissed with costs.

29. Appeals dismissed.