(1963) 10 MAD CK 0012

In the Madras High Court

Case No : A.A.O No. 43 of 1960

Solar Works APPELLANT

Vs

Employees' State Insurance Corporation and Another RESPONDENT

Date of Decision : 04-10-1963

Acts Referred:

Employees State Insurance Act, 1948 — Section 75, 75(2), 96
Madras Employees Insurance Court Rules, 1951 — Rule 17

Citation : AIR 1964 Mad 376 : (1964) 9 FLR 232 : (1964) ILR (Mad) 906 : (1963) 2 LLJ 597 : (1964) 77 LW 134

Hon'ble Judges : Venkatadri, J;Anantanarayanan, J

Bench : Division Bench

Advocate : S.S. Ramachandra Iyer, for G. Krishnamurthi Iyer and S.R. Kumaraswami, for the Appellant; R. Gopalswami Iyengar and T.N.C. Rangarajan for Govt. Pleader, for the Respondent

Judgement

Venkataraman, J.—This appeal arises out of an application filed under the Employees State Insurance Act, 1948. The application was filed

u/s 75(2) of the Act by the Employees'' State Issurance Corporation, to recover contribution due from the employer, namely, the Solar Works, the

appellant in this appeal (respondent in the application before the Employees Insurance Court, the Principal Judge, City Civil Court, Madras). The

application was filed for the recovery of contribution relating to the period between March 1957 to November 1958. It was filed on 21-6-1959.

The Act does not prescribe any period of limitation within which such an application could be filed; but R. 17 of the rules framed by the Madras

State Government prescribes a period of 12 months from the date, on which the cause of action arose or the claim became due. There is a proviso

that the court may entertain an application after the said period of 12 months, if it is satisfied that the applicant had sufficient reason for not, making

the application within the said period. The Corporation: invoked the benefit of this proviso in their application. They stated that they became aware

of the liability of the employer only on 16-2-1959, when the Insurance Inspector inspected the records of the employer.

2. The employer opposed the claim as barred by limitation and urged that no satisfactory reasons had been adduced under the proviso to R. 17 for

excusing the delay.

3. At the time of the argument on the application before the Employees'' State Insurance Court, it appears, to have been contended on behalf of

the employer that R. 17 was valid but not the proviso thereto; and that under no circumstances could the delay be condoned. On the other hand, it

appears to have been contended on behalf of the Corporation that R. 17 itself was ultra vires the State Government, because the Act itself did not

provide any period of limitation: for such an application for contribution and on a true construction of the Act it would follow that the intention of

the Legislature was that there could be no period of limitation at all for such an application.

4. The Employees State Insurance Court accepted; the contention of the1 Corporation to a substantial extant, namely, that the Act did not

specifically provide for any limitation and that R. 17 was ultra vires of the Act. At the same time it was not prepared to accept the further

contention of the Corporation that there would be no limit of time at all for such an application and it held'' that the period of limitation would be the

same as if a regular suit had been filed in the ordinary civil court for recovering the contribution. In that view it held that Article 120 of the

Limitation Act would apply and, if so the claim would be within time. The court passed this, order in a batch of applications and posted the

applications for further consideration on the other points, at issue.

5. The contention of the learned counsel for the appellant, Sri G. Krishnamurthi Aiyar, is that the Employees; Insurance court is wrong in its view

that R. 17 is ultra vires the State Government; and he says that the matter must go back in order that the Insurance Court may consider whether

there are reasonable grounds for condoning the delay under the proviso to R. 17. The learned counsel for the appellant does not contend before me that the proviso is invalid as was contended on behalf of the employer before the insurance court. As against this, Sri Rangarajan representing

the Government Pleader, who appears for the Corporation contends that R. 17 is ultra vires the State Government and that on a true construction

of the Act it should be held that no limitation is prescribed at all under the Act. The further question whether Article 120 of the Limitation Act

would apply has not been argued before me because it cannot arise. The question is whether R. 17 is valid; if so the application should go back for

consideration whether there are reasonable grounds for condoning the delay or whether Rule 17 is ultra vires in which case the application should

be held to be within time.

6. This question was decided by Kailasam J. in A. A. O. No. 6 of 1960 (Mad) arising out of another application dealt with by the Employees''

Insurance court in the same order. Kailasam J. took the view that R. 17 is intra vires the State Government; and he remanded that particular

application for consideration of the question whether there were reasonable grounds for condoning the delay. Prima facie, I am unable to share the

view of Kailasam J. and that is why I feel that it is better that the matter is decided by a Bench and I am making this order of reference to a Bench.

7. Section 75(2) of the Act says that the claims mentioned therein shall be decided by the Employees Insurance Court. Clause (a) deals with the

claim for recovery of contributions from the principal employer. Sub-section (3) of Section 75 says :- :

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 the Employees'' Insurance Court.

Section 76 says that the institution of proceedings shall be in the particular insurance court appointed for the purpose. Section 77 says:

Commencement of proceedings: 1. The proceedings before an Employees'' Insurance Court shall be commenced by application.

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 mad3 by the State Government in consultation with the Corporation,

It is also necessary to quote Section 78 in. full:

Powers of Employees'' Insurance Court - (1) The Employees'' Insurance Court shall have all the powers of a civil court for the purpose 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 Ch. XXXV of the Criminal

Procedure Code, 1898 (Act V of 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 proceedings 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.

8. Section 96(1) of the Act in so far as it is material says:

Power of State Government to make rules:

1. The State Government may, subject to the condition of previous publication, make rules not inconsistent with this Act in regard to all or any of

the following, matters, namely-

(a) the constitution of Employees'' Insurance Courts, the qualifications of persons who may be appointed Judges thereof, and the conditions of

service of such Judges;

(b) The procedure to be followed in proceedings before such courts and the execution of orders made by such courts;

(c) the fee payable in respect of application made to the Employees'' Insurance Court, the costs incidental to the proceedings in such court, the

form in which application should be made to it and the particulars to be specified in such applications;

(h) any other matter which is required or allowed by this Act to be prescribed by the State Government.

(2) Rules made under this section shall be published'' in the official Gazette and thereupon shall have effect as if enacted in this Act.

9. Rule 17 runs thus:

Limitations: 1. Every application to the court shall be brought within 12 months from the date on which the cause of action arose or, as the case

may be, the claim became due;

Provided that the court may entertain the application after the said period of 12 months if it is satisfied that the applicant has sufficient reasons for

not making the application within the said period;

2. Subject as aforesaid, the provisions of parts IF and III of the Indian Limitation Act, 1908, shall so far as may be, apply to every such

application.

The contention on behalf of the employer which found favour with Kailasam, J., and which is repeated before me, is that limitation is a matter of

procedure and, therefore, R. 17 is valid if read along with Section 78(2) and Section 96(1)(b) and 96(2). For the proposition that limitation is a

rule of procedure, reliance is placed on the observations of the Full Bench of this court in Kandaswami Pillai Vs. Kannappa Chetty alias

Arunachala Chetty, . The Question there was whether the period of 12 years prescribed u/s 48, C. P. C. for the last application for execution of

the decree is absolute or is controlled by Section 15(1) of the Indian Limitation Act which provides for exclusion of the period covered by stay or

injunction. In that context the Full Bench held that both the CPC and the Limitation Act are enactments relating to procedure which have to be

read together and that Section 15(1) of the Limitation Act would control Section 48 of the Civil Procedure Code.

10. Dealing with this question Kailasam J. observed :-

Thus the Act is self-contained regarding the institution, commencement and the procedure to be followed by the Employees'' Insurance Court.

Rules of limitation are only rules of procedure and when the statute empowers the Government to frame rules regarding the procedure to be

followed in proceedings before the Employees'' insurance Court, that includes the power also to prescribe the period of limitation. A rule of

limitation may cease to be a mere procedure when it defeats the vested rights which had already accrued. The Corporation has no vested right to

file an application whenever it chooses. It cannot be said that the present rules In any way affect the vested rights. The statute authorises the State

Government to frame rules regarding the procedure which includes the time before the applications should be filed. It hold that R. 17 of the

Madras Employees'' Insurance Court Rules, 1951, is within the rule-making power conferred on the Government by Section 96(2) of the

Employees'' State Insurance Act.

The reason why I prima facie find myself unable to agree with Kailasam, J., is that if it was the intention of the legislature that Section 78(2) which

says that ''The Employees'' Insurance Court shall follow such procedure as may be prescribed by rules made by the State Government"" should

govern also the period of limitation within which the application should be filed, we could reasonably expect it to have been provided for in Section

77, which deals with ''commencement of proceedings''. Section 77(2) provides

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.

It would have been the easiest and normal thing to say that it should be filed within such time as may be prescribed either by the Act or by the rules

to be framed. Section 78(2) seems, in my opinion, to have more appropriateness with reference to the procedure to be followed by the

Employees'' State Insurance Court after the application is filed. It has to be read in conjunction with Sub-section (1) to Section 78, which deals

with the powers of the Employees'' Insurance Court, regulating the procedure for the enquiry of the applications before it after they have Seen

instituted. The question whether an application is filed within time is one anterior to the stage for the provision as made in Section 78, and is one for

which we could more legitimately expect a provision to be made in the earlier Section 77. In this connection it is relevant to note, that some of the;

sections in the Act itself have specifically provided periods of limitation. Thus Section 80 of the Act says:

Benefit not admissible unless claimed in. time : An Employees'' Insurance Court shall not direct the payment of any benefit to a person unless he

has made a claim for such benefit in accordance with the regulations made in that behalf, within twelve months after the claim became due:

Provided that, if the court is satisfied that there was reasonable excuse for not making a claim for the benefit within twelve months after it became

due, it may direct the payment of the benefit as if the claim had been made in time.

11. Similarly, Section 82 of the Act runs:

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 Indian Limitation Act, 1908 (XL of 1908) shall apply to appeals under this section.

This shows that it is not as if the legislature was unaware of the necessity of providing for periods of limitation where it thought fit to do so.

12. Section 96(1)(b) must be interpreted in the same manner as Section 78(2) just as Section 96(l)(c) has to be interpreted in the light of Section

77(2). In this view of the matter Section 96(1)(b) cannot enlarge the scope of Section 78(2). Section 96(2) on which reliance has been placed

cannot really help the appellant because it only means that the rule made in Section 96(1) shall have effect as if enacted in the Act and therefore, he

must fall back upon Section 96(1). Section 96(1)(h) cannot be of much assistance to the appellant because apart from Section 78(2), Section 77

itself does not say that the period of limitation should be prescribed by the State Government. In some enactments we find that without prejudice to

the particular matters specified as subjects on which rules could be made by the Government, the Government may make rules for carrying out the

provisions of the Act and its objects. If such a provision has found place in Section 96, it may be arguable that there is a power for prescribing the

period of limitation, but unfortunately such a general power has not been vested in the Government u/s 96(1). u/s 96(1) rules on particular matters

alone can be framed by the State Government and even Section 96(1)(h) though it is rather general in scope, permits the State Government to

make rules only in respect of a matter which is required or allowed by the Act to be prescribed by the State Government. But, if on a true

construction of Sections 77 and 78 of the Act, limitation is not such a matter, Section 96(1)(h) cannot enable the Government to make a rule about

limitation.

13. The result of this will no doubt be that there is a lacuna in the Act in respect of this matter casus omissus as it is called. But with regard to this, a

few observations may be made. The first is that while an Act should be so construed as to avoid if possible casus omissus still, we should not strain

the language of the Act where the omission clearly appears. As the Privy Council has observed in connection with a different matter, in Abdullah

Ashgar Ali v. Ganesh Das, AIR (20) 1933 PC 63 ,

It is either an application made within time, or it is an application made for which no period of limitation is prescribed. The case may be a casus

omissus. If it; be so; then it is for others than their Lordships to remedy the defect.

On behalf of the Corporation it can also be argued that while there may be some justification for imposing a limit of 12 months within which a claim

for benefit should be made, it may not be right to impose such a time limit over a claim by the Corporation for contribution by the Employer

particularly as the whole scheme depends on contributions by the employer to a large extent. Anyway, it is a matter for the legislature to rectify by

drafting the Act clearly. The business of the Court is to interpret the Act as it stands.

14. It seems to me that in view of the considerations which I have outlined above, it is desirable that the matter is decided by a Bench. The matter

is accordingly referred to a Bench. The papers will be placed before my Lord, the Chief Justice.

(In pursuance of the aforesaid order of reference, this Appeal coming on this day for hearing before this Bench (Anantanarayanan and Venkatadri

JJ.), the Court delivered the following :

JUDGMENT

Anantanarayanan, J.—The civil misc. appeal really involves the brief question whether R. 17 framed by the Government under the

Employees'' State Insurance Act of 1948, (The Madras Employees'' Insurance Court Rules, 1951) is intra vires of the delegated cowers of the

State, or otherwise. The matter has come up on difference of opinion, between two learned Judges of this Court, Kailasam J, and Venkataraman

J., Venkataraman J. taking the view that this is a matter of casus omissus in the Act itself, and hence that there, is no valid delegation of power to

Government with regard to limitation, which would render the rule intra vires of the rule-making powers of the State.

2. We have heard the learned counsel for the employer (Messrs Solar Works), learned counsel for the Employees State Insurance Corporation,

the learned Advocate General as amicus curiae and learned Government Pleader. We have no doubt whatever that the view expressed by

Venkataraman J. is correct, and that the rule, as it stands, cannot be supported upon the delegation of cowers conferred by the Act in favour of the

State, in order to make rules for the purposes of the Act.

3. The point is really quite simple, and may be precisely expressed in the following form. Where an Act itself does not provide for limitation, with

reference to a particular matter and the delegation of power to make rules is conferred by a section of the Act which does not, expressly or

impliedly, relate to the power to prescribe time, the authority to which the power is delegated, namely, the State in this case, cannot make a rule

prescribing limitation. This is because, even under the Constitution (Article 145(1)(c)), where the Supreme Court is authorised to make rules for

the practice and procedure of the court, there is specific reference to a power to prescribe limitation for applications to court. As the learned

Advocate General rightly stresses, in the Government of India Act, 1935, list 3, entry 4, the power to prescribe limitation was included as part of

the Civil procedure, but a significant departure appears in list (3) entry (13) of the 7th Schedule to the Constitution. There the power to prescribe,

limitation has been segregated. The learned Advocate General has also been at pains to furnish us with a table of Central and State Act, all the

particulars of which need not be reproduced here, which definitely proves that, where the rule-making power is conferred by a section of the Act.

and it is contemplated that the rule-making authority might also prescribe limitation, there is a specific reference to the power to prescribe time, in

some form or another, in the section concerned. It is sufficient for us to point out that there is an impressive list of the Central Acts exhibiting this

uni1orm feature as well as at least ten or more Madras Acts, also having the same characteristic.

4. When we turn to the matter actually in issue before us, we find further difficulties in adopting the view that the rule-making power generally

conferred in the present case u/s 96(b), namely, the power to make rules with1 regard to ""the procedure to be followed in proceedings before such Courts and the execution of orders made by such courts"" will, by necessary implication, include the power to prescribe limitation. First of all,

as the learned Advocate General has emphasised, the liability under the Act to make the relevant contributions, the failure to make which has led to

the application by the employees of the Corporation in this case, is primarily that of the employer. Actually, the default in this respect might be

brought to the notice of the Corporation only if an individual case arose, and if there is to be a strict rule of limitation! in this behalf, as. envisaged

by R. 17, the result may constitute very great hardship to the employees and their organisation, and deprivation of the benefits. Again, it is

noteworthy that Section 96(b), which we have just re-produced does not refer, in any sense, to a power to prescribe time, or to lay down any rule

of limitation. In the light of the tendency shown in recent times, not to consider the power to prescribe limitation as merely a part of procedural

provisions, at least so far as legislative competence is concerned, we agree with the argument of the learned Advocate General that Section 96(b)

will not authorise the State Government to make a rule for limitation, as for instance R. 17 which is now in controversy. The learned Government

Pleader for the State has offered no arguments to counter this contention. Hence, we agree with Venkataraman J. that R. 17, as it stands, is ultra

vires of the rule-making power of the State, and that, in the present case, the application by the employees of the State Insurance Corporation is

not time barred in any sense, and needs no condonation. The C. M. A. is dismissed accordingly. In the circumstances we direct that the parties will

bear their own costs.

