A **BHARAT BARREL & DRUM MFG. CO. LTD. & ANR.**

v.

EMPLOYEES STATE INSURANCE CORPORATION

September 23, 1971

[C. A. VAIDIALINGAM AND P. JAGANMOHAN REDDY, JJ.]

B *Employees' State Insurance Act,* 1948, *s.* 96(1)(*b*)—*Power to prescribe by rules "the procedure to be followed in proceedings before the court"—If includes power to prescribe period of limitation for claims under s.* 75.

Limitation, Statutes of—Nature.

C In exercise of the power conferred by s. 96(1)(b) of the Employees' State Insurance Act, 1948, to "Prescribe by rule the procedure to be followed in proceedings" before the Insurance Court, the State Government made r. 17 prescribing a period of limitation of twelve months for every application to the Court. The Employees' State Insurance Corporation filed an application before the Court claiming payment of the contribution due from the appellant. The appellant took the plea that the application was barred as it was not presented within the period prescribD ed. The High Court, on a reference, held that s. 96(1)(b) did not grant power to Government to make a rule prescribing a period of limitation on claims enumerated in s. 75(2) and, therefore, r. 17 was *ultra vires* the rule making power under s. 96(1). On the question whether the power to prescribe a period of limitation for initiating proceedings before the court is a part of, and is included in, the power to prescribe "the procedure to be followed in proceedings" before such courts,

E HELD : The power under s. 96(1)(b) does not empower the government to prescribe by rule a period of limitation for claims under s. 75.

(i) The law of limitation appertains to remedies, because, the rule is that claims in respect of rights cannot be entertained if not commenced within the time prescribed by the statute in respect of that right. The object of the statutes of limitation is to compel a person to exercise his F right to take action within a reasonable time, as also, to discourage and suppress stale, fake and fraudulent claims. While this is so, there are two aspects of the statutes of limitation, the one concerns the extinguishment of the right if a claim or action is not commenced within a particular time; the other merely bars the claim without affecting the right which either remains merely a moral obligation or can be availed of to furnish the consideration for fresh enforceable obligation. Where a statute prescribing limitation extinguishes the right it affects substantive rights, while, G that which purely pertains to the commencement of action without touching the right is procedural. The statement that substantive law determines rights and procedural law deals with remedies is not wholly valid, for, neither the entire law of remedies belongs to procedure, because, rights are hidden even in the "interstices of procedure". There is, therefore, no clear cut division between the two. [872 G, 873 C—E, 874 B]

(ii) There is difference between the manner in which jurisprudential H lawyers consider the question and the way in which judges view the matter. Where a question of limitation arises, the present tendency is towards the view that statutes of limitation may not prove to be a determining factor. But, what has to be considered is whether the statute

extinguishes merely the remedy, or extinguishes the substantive right as well as the remedy. The safest course would be to examine each case on its own facts and circumstances and determine, for instance, whether it affects substantive rights and extinguishes them, whether it merely concerns a procedural rule only dealing with remedies, whether the intendment to prescribe limitation is discernible in the scheme of the Act, or whether it is inconsistent with the rule-making power. [876 H] A

(iii) Apart from the implications inherent in the term "Procedure" appearing in s. 96(1) the word *in* furnishes a clue, to the controversy, that the procedure must be in relation to the proceedings in court after it has taken seisin of the matter. Therefore, the application by which the court is asked to adjudicate a matter covered by s. 75(2) is outside the scope of the rule-making power. [877 D] B

(iv) The provisions of the Act clearly indicate that the whole scheme is dependent upon the contributions made by the employer not only in respect of the amounts payable by him but also in respect of those payable by the employee. No limitation has been fixed for the recovery of these amounts by the Corporation from the employer; on the other hand s. 68 empowers the Corporation to resort to coercive process. If any such steps are proposed to be taken by the Corporation and the employee is aggrieved he has a right to file and apply to the Insurance Court and have his claim adjudicated by it in the same way as the Corporation can prefer a claim in a case where the liability to pay is disputed. Section 75(2)(d) clearly envisages this course when it provides that the claim against a principal employer under s. 68 shall be decided by the Insurance Court. The fact that neither s. 75(2)(d) nor s. 68, nor s. 77 which deals with the commencement of the proceedings, prescribe any period of limitation, while a period of limitation is provided in the case of a claim by an employee for the payment of any benefit under the regulations, clearly shows that the legislatures did not intend to fetter the claim under s. 75(2)(d). Where the legislature clearly intends to provide specifically the period of limitation in respect of claims arising thereunder, it cannot be considered to have left such matters in respect of claim under some similar provisions to be provided for by the rules to be made by government under its delegated powers to prescribe the procedure to be followed *in* proceedings before such court. [878 H—879 C, 880 F] C D E

(v) Nor does s. 78(2) delegate any power to the government to make rules. The section only requires the Insurance Court to follow "such procedure as may be prescribed by rules made by the State Government". And these rules can only be made under s. 96 of the Act. [882 D] F

(vi) Further, the nature of the rule bars the claim itself and extinguishes the right which is not in the pale of procedure. A provision by which an employee loses his right to receive payment of any benefit conferred by the Act, if he does not file an application within 12 months after the claim has become due, affects substantive rights, and must, therefore, be dealt with by the legislature itself and is not to be inferred from the rule-making power conferred for regulating the procedure unless that is specifically provided for. The legislature does not part with the power to prescribe limitation which it jealously retains to itself unless it intends to do so in clear and unambiguous terms or by necessary intendment. [881 B—F] G

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Employees' State Insurance Corporation v. *Madhya Pradesh Government & Ors.*, A.I.R. 1964 (51) M.P. 75, *M/s. Solar Works, Madras* v. *Employees' State Insurance Corporation, Madras* A.I.R. 1964 (51) Mad.

A 376, *United India Timber Works, Yamunagar & Anr.* v. *Employees' State Insurance Corporation, Amritsar* A.I.R. 1967 (54) Punjab, 166 (FB) and *E.S.L.C. Hyderabad* v. *A.P. State Electricity Board, Hyderabad,* 1970 Labour & Industrial cases 921, approved.

View *contra* in *M/s. A. K. Brothers* v. *Employees' State Insurance Corporation,* A.I.R. 1965 (52) All. 410, disapproved.

B *Roshan Industries Pvt. Ltd., Yamunagar* v. *Employees' State Insurance Corporation,* A.I.R. 1968 (55) Punjab 56 (SB). *Manoel Francisco Lonez & Ors.* v. *Lieut. Godoluhin James Burslem,* (1843) IV M.I.A. 300, *Ruckmaboye* v. *Lulloobhoy Mottichund,* (1849-54) V M.I.A. 234, *Sennimalai Goundan* v. *Palani Gonndan & Anr.* A.I.R. 1917 Madras 957, *Krishnamachariar* v. *Srirangammal & Ors.,* I.L.R. 47 Madras 824, *Bendredas* v. *Thakurdev,* I.L.R. 53 Bom. 453, *Velu Pillai* v. *Sevuga Perumal Pillai,* A.I.R. 1958 Madras 392, *Narsingh Sahai* v. *Sheo Prasad,* [1918] I.L.R. 40 C All 1(FB), *Chunilal Jethabhai* v. *Dhyabhai Amulakh,* [1908] I.L.R. 93 Bom. 14(FB). *Union of India* v. *Ram Kanwar & Ors.*, [1962] 3 S.C.R. 313, *Punjab Cooperative Bank Ltd.* v. *Official Liquidators Punjab Cotton Press Company Ltd. (in Liquidation),* A.I.R. 1941 Lah. 57 (FB), and *East & West Steamship Company, George Town, Madras* v. *S. K. Ramalingam Chettiar,* [1960] 3 S.C.R. 820, referred to.

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 563 of 1967.

Appeal from the judgment and order dated September 15, 16. 19, 1966 of the Bombay High Court in Civil Reference No. 8 of 1964.

E *G. B. Pai, Bhuvanesh Kumari* and *O. C. Mathur,* for the appellants.

L. M. Singhvi, Ram Panjawani and *S. P. Nayar,* for the respondent.

The Judgment of the Court was delivered by

F **P. Jaganmohan Reddy, J.** In exercise of the powers under Sec. 96(1)(b) of the Employees State Insurance Act 1948 (hereinafter referred to as 'the Act') relating to "the procedure to be followed in proceedings before such Courts and the execution of orders made by such Courts", the Government of Bombay made the following Rule;

G "17. *Limitation* :

(1) Every application to the Court shall be brought within twelve 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 an application after the said period of twelve months if it is satisH fied that the applicant had sufficient reasons for not making the application within the said period.

(2) Subject as aforesaid the provisions of Part II and III of the Indian Limitation Act, 1908 (IX of (1908), shall so far as may be applied to very such application". A

The *vires* of this Rule was challenged by the Employees State Insurance Corporation (hereinafter referred to as 'the Corporation') when it filed an application on 7th October 1963 against the Appellant in the Employees Insurance Court (hereinafter referred to as 'the Insurance Court') claiming payment of the contributions due from it for the period 1st September 1957 to 31st July 1963. In those proceedings the Appellant had taken the plea that the application was barred under Rule 17 as it was not presented within twelve months from the date when the cause of action arose or as the case may be when the amount became due. As the plea raised before it was important the Insurance Court made a reference under Section 81 of the Act on the following question for the decision of the High Court of Bombay :— B C

(1) Whether rule 17 of the Employees' State Insurance Rule is *ultra vires* the rule making power of the State Government under Sec. 96(1) of the Employees State Insurance Act ? D

(2) If yes, what, if any, limitation applies to applications filed by the Corporation to the Employees' Insurance Court ? E

The High Court of Bombay having considered the several cases and the contentions and submissions made before it held that the clear and unambiguous terms of s. 96(1)(b) exclude the grant of the power to any State Government to make a rule prescribing a period of limitation on claims ennumerated in Sec. 75(2). It was further of the view that where two interpretations of the terms of Sec. 96(1)(b) were possible that interpretation should be accepted which excludes the grant of such a power, because it appeared to it clear from the scheme of the Act and the provisos thereof that the legislature did not intend to confer such power on the State Governments. It therefore answered the first question in affirmative namely that Rule 17 is *ultra vires* the rule making power of the State Government under Sec. 96(1)(b) of the Act. On the second question it held that an application filed in a Court before 1-1-1964 for relief under Sec. 75 of the Act was not subject to any period of limitation, but an application filed on or after 1-1-64, would, however, be covered by Art. 137 of the Limitation Act of 1963 which provides a limitation of 3 years from the date when the right to apply accrues. This appeal has been filed against that decision by certificate under Art. 133(1)(c) of the Constitution. F G H

A This question has been the subject matter of the decisions in : *Employees' State Insurance Corporation* v. *Madhya Pradesh Government & Ors.*(1) *M/s Solar Works, Madras* v. *Employees State Insurance Corporation, Madras & Anr.*(2) *M/s. A. K. Brothers* v. *Employees' State Insurance Corporation,*(3) *United India Timber Works, Yamunanagar & Anr.* v. *Employees State Insurance Corporation, Amritsar,*(4) *Roshan Industries Pvt. Ltd. Yamunanagar* v. *Employees' State Insurance Corporation*(5), *E.S.L.C. Hyderabad* v. *A. P. State Electricity Board, Hyderabad*(6). All the High Courts in these cases except that of Allahabad held that the rule is *ultra vires* the powers conferred on the State Government under Sec. 96(1)(b) inasmuch as it is not empowered to make rules prescribing periods of limitation for applications to be filed before the Court, though in Madhya Pradesh case it was also said that :

> "Even if it be taken that clause (b) of Sec. 96(1), as it is worded, is wide enough to cover a rule of limitation, that cannot authorize the Government to frame a rule regulating limitation for the recovery of contributions....."

because according to it the validity of the rule does not necessarily depend on the ascertainment of "whether it confers rights or merely regulates procedure, but by determining whether it is in conformity with the powers conferred by the statute and whether it is consistent with the provisions of the statute". These decisions also held that the scheme of the Act was such that the Legislature did not and could not have intended to confer any power upon the State Government to make rules prescribing a period of limitation for application under Sec. 75(2).

The question which directly confronts us is whether the power to prescribe periods of limitation for initiating proceedings before the Court is a part of, and is included, in the power to prescribe "the procedure to be followed in proceedings before such Courts". The answer to this question would involve the determination of the further question whether the law relating to limitation is procedural or substantive or partly procedural and partly substantive. If it is procedural law does it make any difference whether it relates to the time of filing application for initiation of proceedings before the Court or whether it relates to interlocutory applications or other statements filed before it after the initiation of such proceedings. The contention on behalf of the Appellant is that the law relating to limitation is merely procedural, as such it makes

(1) AIR 1964 (Vol. 51) Madhya Pradesh 75. (2) AIR 1964 (Vol. 51) Madras 376.
(3) AIR 1965 (Vol. 52) Allahabad 410. (4) AIR 1967 (Vol. 54) Punjab 166 (FB).
(5) AIR 1968 (Vol. 55) Punjab 56 (SB). (6) 1970 Labour & Industrial cases 921.

no difference whether it relates to the time of filing an application or it deals with the time for filing interlocutory applications or other statements. There is also it is submitted no indication in the scheme of the Act that it is otherwise or that there is any impediment for the Government to prescribe under the rule making authority the period of limitation for applications under Sec. 75(2). Before we consider the scheme of the Act it may be necessary to examine the scope and ambit of the terms 'procedure' as used in Sec. 96(1)(b).

The topic of procedure has been the subject of academic debate and scrutiny as well as of judicial decisions over a long period but in spite of it, it has defied the formulation of a logical test or definition which enables us, to determine and demarcate the bounds where procedural law ends and substantive law begins, or in other words it hardly facilitates us in distinguishing in a given case whether the subject of controversy concerns procedural law or substantive law. The reason for this appears to be obvious, because substantive law deals with right and is fundamental while procedure is concerned with legal process involving actions and remedies, which Salmond defines "as that branch of law which governs the process of litigation", or to put it in another way, substantive law is that which we enforce while procedure deals with rules by which we enforce it. We are tempted in this regard to cite a picturesque aphorism of Therman Arnold when he says "Substantive law is canonised procedure. Procedure is unfrocked substantive law(1)".

The manner of this approach may be open to the criticism of having over simplified the distinction, but nonetheless this will enable us to grasp the essential requisites of each of the concepts which at any rate "has been found to be a workable concept to point out the real and valid difference between the rules in which stability is of prime importance and those in which flexibility is a more important value(2)". Keeping these basic assumptions in view it will be appropriate to examine whether the topic of limitation belongs to the Branch of procedural law or is outside it. If it is a part of the procedure whether the entire topic is covered by it or only a part of it and if so what part of it and the tests for ascertaining them. The law of limitation appertains to remedies because the rule is that claims in respect of rights cannot be entertained if not commenced within the time prescribed by the statute in respect of that right. Apart from Legislative action prescribing the time, there is no period of limitation recognised under the general law and therefore any time fixed by the statute is neces-

(1) XLV Harvard Law Journal—617 & 645.

(2) American Jurisprudence—Vol. 51 (Second Edn.) 605.

A sarily to be arbitrary. A statute prescribing limitation however does not confer a right of action nor speaking generally does it confer on a person a right to relief which has been barred by efflux of time prescribed by the law. The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a court of law. The principle which forms the basis of this rule is expressed in the maxim *vigilantibus, non dormientibus, jura subveniunt* (the laws give help to those who are watchful and not to those who sleep). Therefore the object of the statutes of limitations is to compel a person to exercise his right to action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims. While this is so there are two aspects of the statutes of limitation the one concerns the extinguishment of the right if a claim or action is not commenced with a particular time and the other merely bars the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation. Where a statute prescribing the limitation extinguishes the right, it affects substantive rights while that which purely pertains to the commencement of action without touching the right is said to be procedural. According to Salmond the law of procedure is that branch of the law of actions which governs the process of litigation, both Civil and Criminal. "All the residue" he says "is substantive law, and relates not to the process of litigation but to its purposes and subject matter". It may be stated that much water has flown under the bridges since the original English theory justifying a statute of limitation on the ground that a debt long overdue was presumed to have been paid and discharged or that such statutes are merely procedural. Historically there was a period when substantive law was inextricably intermixed with procedure; at a later period procedural law seems to have reigned supreme when forms of action ruled. In the words of *Maine* "So great is the ascendancy of the Law of Actions in the infancy of Courts of Justice, that substantive law has at first the look of being gradually secreted in the interstices of procedure(1)". Even after the forms of action were abolished Maitland in his Equity was still able to say "The forms of action we have buried but they still rule us from their graves", to which Salmond added "In their life they were powers of evil and even in death they have not wholly ceased from troubling(2)". Oliver Wendal Holmes had however observed in "The

(1) Maine, Early Law and Custom 389. (2) 21 L.Q.R. 43.

Common Law", "wherever we trace a leading doctrine of substantive law far enough back, we are likely to find some forgotten circumstance of procedure at its source". It does not therefore appear that the statement that substantive law determines rights and procedural law deals with remedies is wholly valid, for neither the entire law of remedies belongs to procedure nor are rights merely confined to substantive law, because as already noticed rights are hidden even "in the interstices of procedure". There is therefore no clear cut division between the two.

A large number of decisions have been referred before us both English and Indian some of antiquity in support of the proposition that the law prescribing the time within which an action can be commenced is purely procedural and therefore when a statute empowers the Govt. to make rules in respect of procedure it confers upon it also the rights to prescribe limitation. To this end have been cited the cases of *Manoel Francisco Lopez & Ors.* v. *Lieut. Godolnhon James Burslem*(1), and *Ruckmaboye* v. *Lulloobhoy Mottichund*(2). An examination of these cases would show that what was being considered was whether the law of limitation was part of the *lex fori* which foreigners and persons not domiciled in the country have to follow if they have to have recourse to actions in that country. In the latter case the Privy Council observed at page 265 :—

> "The arguments in support of the plea are founded upon the legal character of a law of limitation or prescription, and it is insisted, and the Committee are of opinion, correctly insisted, that such legal character of the law of prescription has been so much considered and discussed among writers upon jurisprudence, and has been so often the subject of legal decision in the courts of law of this and other countries, that it is no longer subject to doubt and uncertainty. In truth, it has become almost an axiom in jurisprudence, that is law of prescription, or law of limitation, which is meant by that denomination, is a law relating to procedure having reference only to the *lex fori*".

These observations as well as those in the earlier case must be understood in the light of the principles governing conflict of laws. What was in fact being examined was whether they are part of the procedural law in the sense that the Municipal laws will be applicable on the question of limitation for the commencement of actions because if limitation was purely a question of substantive law that would be governed by the law of the country of the

(1) (1843)—IV Moore Indian Appeals 300.
(2) (1849-54)—(V-Moore Indian Appeals 234).

A domicile of the person who is having recourse to the Courts of the other country. In other words the substantive rights of the parties to an action are governed by a foreign law while all matters pertaining to procedure are governed exclusively by the *lex fori.*

The cases cited at the Bar, of the various High Courts in this B country show that they were construing the rules prescribing limitation in respect of proceedings in Court *i.e.* proceedings after the institution of the suit or filing of the Appeal. In *Sennimalai Goundan* v. *Palani Goundan & Anr.*(1), the question was whether the High Court by framing a rule under Sec. 122 Civil Procedure Code could make Section 5 of the Limitation Act applicable C to applications under sub-rule (2) of Rule 13 of Order IX. While holding that it could, Coutts-Trotter, J as he then was made this pertinent observation :

> "Whatever may be the case of the statute prescribing say 3 years for an action to be brought I am quite clear that the Articles in the Act limiting applications D of this nature which are almost entirely interlocutory deal clearly with matters of procedure....."

This was also the view of the Full Bench in *Krishnamachariar* v. *Srirangammal & Ors.*(2), which was followed by the Bombay High Court in *Bandredas* v. *Thakurdev*(3). It was contended E in *Velu Pillai* v. *Sevuga Perumal Pillai*(4), that rule 41 (A) (2) of the Appellate side Rules of the Madras High Court providing for the presentation of a petition to the High Court within 90 days from the date of the order passed in an execution proceedings was *ultra vires,* because the High Courts were not entitled by rules to regulate or enlarge the periods in the Limitation Act in respect of the proceedings to which the Limitation F Act apply. This contention was negatived on the ground that such a power was inherent in Sec. 122 of the Civil Procedure Code. The argument of the petitioner that he had a vested right to go up in revision at any time and that the decision of the Full Bench in *Krishnamachariar* v. *Srirangammal & Ors.*(2) does not affect his right, was rejected on the ground that Sec. 122 Civil G Procedure Code empowers the High Courts to make rules regulating their own procedure and the procedure of the subordinate Courts subject to their superintendence.

There were earlier decisions of the Allahabad High Court and Lahore High Court as also a decision of the Bombay High H Court rendered under Sec. 602 of the old Civil Procedure Code

1 AIR 1917 Madras 957.
(2) ILR 47 Madras 824.
(3) ILR 53 Bombay 453.
(4) AIR 1958 Madras 392.

referred to by Krishnan, J., in his referring order in *Krishnamachariar's* case which took the view that the High Court has not the power by rule under Sec. 122 or the corresponding Sec. 602 of the old Civil Procedure Code to make rules for altering the period of limitation prescribed by the Indian Limitation Act, —see *Narsingh Sahai* v. *Sheo Prasad*(1), and *Chunilal Jethabhai* v. *Dahyabhai Amulakh*(2). Again a similar question arose as to whether clause 27 of the Letters Patent of the Lahore High Court (there are similar clauses in the Letters Patent of the other High Courts) could validly empower the making of rule 4 prescribing a period for filing an appeal under Clause 10 of the Letters Patent. Clause 27 of the Letters Patent empowered the High Court from time to time to make rules and orders for regulating the practice of the Court etc. This Court in *Union of India* v. *Ram Kanwar & Ors.*(3), approved the view of a Full Bench of the Punjab High Court in *Punjab Cooperative Bank Ltd.* v. *Official Liquidators Punjab Cotton Press Company Ltd. (in liquidation)* (4), where it was held that rule 4 is a special law within the meaning of Sec. 29(2) of the Limitation Act. Subba Rao, J., as he then was said at page 320 :

> "Rule 4 is made by the High Court in exercise of the legislative power conferred upon the said High Court under cl. 27 of the Letters Patent. As the said rule is a law made in respect of special cases covered by it, it would certainly be a special law within the meaning of S. 29(2) of the Limitation Act".

In that case no question was raised as to whether rule 4 was dealing with a procedural matter or dealt with a substantive right. These cases are of little assistance and if at all they lay down the principle that inter-locutory proceedings before the Court do not deal with substantive rights and are concerned with mere procedure and can be dealt with by rules made under the powers conferred on the High Court to regulate the procedure. It is therefore apparent that whether the fulfilment of a particular formality as a condition of enforceability of a particular right is procedural or substantive has not been, as we had already noticed free from difficulty. What appears to be a self-evident principle will not become so evident when we begin to devise tests for distinguishing procedural rule from substantive law. It appears to us that there is a difference between the manner in which the jurisprudential lawyers consider the question and the way in which the Judges view the matter. The present tendency

(1) [1918] ILR 40 All. 1 (FB).
(2) [1908] ILR 32, Bom. 14 (FB).
(3) [1962] (3) SCR 313.
(4) AIR 1941 Lah. 57 (FB).

A is that where a question of limitation arises, the distinction between so-called substantive and procedural statutes of limitation may not prove to be a determining factor but what has to be considered is whether the statute extinguishes merely the remedy or extinguishes the substantive right as well as the remedy. Instead of generalising on a principal the safest course would be B to examine each case on its own facts and circumstances and determine for instance whether it affects substantive rights and extinguishes them or whether it merely concerns a procedural rule only dealing with remedies or whether the intendment to prescribe limitation is descernible from the scheme of the Act or is inconsistent with the rule making power etc.

C

Apart from the implications inherent in the term procedure appearing in Sec. 96(1)(b) the power to prescribe by rules any matter falling within the ambit of the term must be the "procedure to be followed *in* proceedings before such Court". The word 'in', emphasised by us, furnishes a clue to the controversy D that the procedure must be in relation to proceedings in Court after it has taken decision of the matter, which obviously it takes when moved by an application presented before it. If such be the meaning the application by which the Court is asked to adjudicate on a matter covered by Sec. 75(2) is outside the scope of the rule making power conferred on the Government.

E

In the *East & West Steamship Company, George Town, Madras* v. *S. K. Ramalingam Chettiar*(1), one of the questions that was considered by this Court was whether the clause that provides for a suit to be brought within one year after the delivery of the goods or the date when the goods should have been F delivered, only prescribes a rule of limitation or does it also provide for the extinction of the right to compensation after certain period of time. It was observed by Das Gupta, J, at page 836 :

> "The distinction between the extinction of a right and the extinction of a remedy for the enforcement G of that right, though fine, is of great importance. The legislature could not but have been conscious of this distinction when using the words "discharged from all liability" in an article purporting to prescribe rights and immunities of the shipowners. The words are apt to express an intention of total extinction of the liability H and should, specially in view of the international character of the legislation, be construed in that sense.

(1) [1960] (3) SCR 820.

A

It is hardly necessary to add that once the liability is extinguished under this clause, there is no scope of any acknowledgement of liability thereafter".

What we have to consider is, apart from the question that the Government on the terms of Sec. 96(1)(b) is not empowered to fix periods of limitation for filing applications under B Sec. 75(2) to move the Court, whether on an examination of the Scheme of the Act, rule 17 affects substantive rights by extinguishing the claim of the Corporation to enforce the liability for contributions payable by the Appellant.

An examination of the purpose and intendment of the Act and the scheme which it effectuates, leaves no doubt that it was C enacted for the benefit of the employees and their dependents, in case of sickness, maternity and 'employment injury', as also to make provision for certain other matters. Sec. 40 makes the employer liable in the first instance to pay the contributions of the employer as well as the employee to the Corporation subject to the recovery from the employee of the amount he is liable to D contribute. This liability on the employer is categorial and mandatory. He is further required under Sec. 44 to submit to the Corporation returns as specified therein. Chapter V comprised of Sections 46 to 73, deals with the benefits which includes among others, sickness and disablement benefit of the employee, his eligibility for receiving payments and the compensation payable to his dependents. If the employee fails or neglects to pay E the contributions as required, the Corporation has the right to recover from him under Sec. 68, the amounts specified in that Section as an arrear of land revenue. Sec. 94 provides that the contributions due to a corporation are deemed to be included in the debts under the Insolvency Acts and the Company's Act, and are given priority over other debts in the distribution of the pro- F perty of the insolvent or in the distribution of the assets of a Company in liquidation. Chapter VI deals with adjudication of disputes and claims, of which Sec. 74 provides for the Constitution of the Insurance Court; Sec. 74 specifies the matters to be decided by that Court; Sec. 76 and Sec. 77 deal with the institution and commencement of proceedings and Sec. 78 with the G powers of the Insurance Court. Sec. 80 deals with the non-admissibility of the claim, if not made within twelve months after the claim is due while Sec. 82(3) prescribes the period within which an appeal should be filed against the order of the Insurance Court. These provisions in our view unmistakably indicate that the whole scheme is dependent upon the contributions made by the employer not only with respect to the amounts payable H by him but also in respect of those payable by the employee. No limitation has been fixed for the recovery of these amounts

A by the Corporation from the employer; on the other hand Sec. 68 empowers the Corporation to resort to coercive process. If any such steps are proposed to be taken by the Corporation and the employer is aggrieved he has a right to file and apply to the Insurance Court and have his claim adjudicated by it in the same way as the Corporation can prefer a claim in a case where the B liability to pay is disputed. Sec. 75(2)(d) clearly envisages this course when it provides that "the claim against a principal employer under Sec. 68" shall be decided by the Employees Insurance Court. It may be useful to read Sec. 68 and 75(2)(d) which are given below :

Sec. 68

C (1) If any principal employer fails or neglects to pay any contribution which under this Act he is liable to pay in respect of any employee and by reason thereof such person becomes disentitled to any benefit or entitled to a benefit on a lower scale, the Corporation should have been paid by the principal employer, pay D to the person the benefit at the rate to which he would have been paid by the principal employer, pay to the person the benefit at the rate to which he would have been entitled if the failure or neglect had not occurred and the Corporation shall be entitled to recover from the principal employer either—

E (i) the difference between the amount of benefit which is paid by the Corporation to the said person and the amount of the benefit which would have been payable on the basis of the contributions which were in fact paid by the employer; or

F (ii) twice the amount of the contribution which the employer failed or neglected to pay; whichever is greater.

(2) The amount recoverable under this Section may be recovered as if it were on arrear of land revenue.

Sec. 75(2)

G The following claim shall be decided by the Employees' Insurance Court, namely :—

* * * * *

(d) Claim against a principal employer under Section 68;

H It is contended by the learned Advocates for the Appellant that Sec. 68 is a crucial provision as it indicates that the right of the Corporation to enforce its claim for payment has been preserved

subject to the provision that the omission or neglect by the principal employer to make contribution deprives the employee of any benefit either totally or at a reduced scale. It is only in these circumstances he submits that the Corporation can recover the amount by coercive process but in any other case the Corporation's claim to recover by an application to the Insurance Court can be made subject to a period of limitation by a rule made under Sec. 96(1)(b). We are unable to appreciate the logic of this submission because the benefit of an employee can be negatived or partially admitted for instance either by reason of the employer not showing him in the return as an employee of his or showing him as drawing a lesser wage than what he is entitled to or as it may happen mostly, when he fails to make the payments even according to the returns made by him. In all these cases the employee's benefits will be affected because the basis of the scheme of conferring benefit on the employee is the contribution of both the employer and the employee. It is clear therefore that the right of the Corporation to recover these amounts by coercive process is not restricted by any limitation nor could the Government by recourse to the rule making power prescribe a period in the teeth of Sec. 68. What Sec. 75(2) is empowering is not necessarily the recovery of the amounts due to the Corporation from the employer by recourse to the Insurance Court but also the settlement of the dispute of a claim by the Corporation against the principal employer which implies that the principal employer also can, where he disputes the claim made and action is proposed to be taken against him by the Corporation under Sec. 68 to recover the amounts said to be due from him. While this is so there is also no impediment for the Corporation itself to apply to the Insurance Court to determine a dispute against an employer where it is satisfied that such a dispute exists. In either case neither Sec. 68 nor Sec. 75(2)(d) prescribes a period of limitation. It may also be mentioned that Sec. 77 which deals with the commencement of the proceedings, does not provide for any limitation for filing an application to the Insurance Court even though it provides under sub-sec. (2) of that Section that every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, that may be prescribed by rules made by the State Government in consultation with the Corporation. This was probably an appropriate provision in which the legislature if it had intended to prescribe a time for such applications could have provided. Be that as it may in our view the omission to provide a period of limitation in any of these provisions while providing for a limitation of a claim by an employee for the payment of any benefit under the regulations, shows clearly that the legislature did not intend to fetter the claim under Sec. 75(2)(d). It appears to us that where the legislature clearly intends to pro-

A B C D E F G H

A vide specifically the period of limitation in respect of claims arising thereunder it cannot be considered to have left such matters in respect of claims under some similar provisions to be provided for by the rules to be made by the Government under its delegated powers to prescribe the procedure to be followed *in* proceedings before such Court. What is sought to be conferred is the B power to make rules for regulating the procedure before the Insurance Court after an application has been filed and when it is seized of the matter. That apart the nature of the rule bars the claim itself and extinguishes the right which is not within the pale of procedure. Rule 17 is of such a nature and is similar in terms to Sec. 80. There is no gain-saying the fact that if an C employee does not file an application before the Insurance Court within 12 months after the claim has become due or he is unable to satisfy the Insurance Court that there was a reasonable excuse for him in not doing so, his right to receive payment of any benefit conferred by the Act is lost. Such a provision affects substantive rights and must therefore be dealt with by the legislature itself and is not to be inferred from the rule making power D conferred for regulating the procedure unless that is specifically provided for. It was pointed out that in the Constitution also where the Supreme Court was authorised with the approval of the President to make rules for regulating generally the practice and procedure of the Court, a specific power was given to it by Art. 145(1)(b) to prescribe limitation for entertaining appeals before E it. It is therefore apparent that the legislature does not part with the power to prescribe limitation which it jealously retains to itself unless it intends to do so in clear and unambiguous terms or by necessary intendment. The view taken by the Madhya Pradesh, Madras, Punjab and Andhra Pradesh High Courts in the cases already referred to are in consonance with the view F we have taken. In the decision of the Punjab High Court, Dua, J, as he then was expressed the view of the Full Bench with which Palshaw C. J., and Mahajan J, agreed. After examining the provisions of the Act he observed at page 170-171 :—

> "At this stage, I consider it appropriate to point out, what is fairly well-recognised, that what is neces- G sarily or clearly implied in a statute is an effectual as that, which is expressed because it often speaks as plainly by necessary inference as in any other manner. The purposes and aims of an Act as discernible from its statutory scheme are accordingly important guide-posts in discovering the true legislative intent. One H who considers only the letter, of an enactment, goes but, skin deep into its true meaning; to be able to fathom the real statutory intent it is always helpful to inquire into the object intended to be accomplished.

> Considering the entire scheme of the Act before us, it is quite clear that fixation of any period of limitation for the Corporation to realise the contributions from the employer may tend seriously to obstruct the effective working and enforcement of the scheme of insurance".

It may be of interest to notice that Palshaw C. J.. had earlier taken a different view in *Chanan Singh* v. *Regional Director, Employees State Insurance Corporation*(1), but said that he had no hesitation in agreeing with Dua J's view because he realised that his earlier view was based on an over-simplification. In the latest case the Andhra Pradesh High Court also following the earlier decision of Madhya Pradesh, Madras and Punjab held that the State Government had exceeded its powers to frame Rule 17 as no such power to prescribe limitation under the provisions of Sec. 96(1)(b) or under Sec. 78(2) can be said to have been delegated to the State Government. We, however, find that Sec. 78(2) does not delegate any power to the Government to make rules but only requires the Insurance Court to follow "such procedure as may be prescribed by rules made by the State Government" which rules can only be made under Sec. 96 of the Act. In the view we have taken it is unnecessary to examine the question whether legislative practice also leads to the same conclusion though in the Madras and the Punjab decisions that was also one of the grounds given in support of their respective conclusions. The contrary view expressed by a Bench of the Allahabad High Court is in our opinion not good law. We may before parting with this case point out that the legislature since chosen to specifically prescribe 3 years as limitation period by addition of sub-sec. (1A) to Sec. 77 while deleting Sec. 80. Sec 77(1A) provides that "Every such application shall be made within a period of three years from the 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 under Sec. 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 under Section 96(1)(b) does not empower the Government to prescribe by rules a period of limitation for claims under Sec. 75. In the result this appeal is dismissed with costs.

K.B.N. *Appeal dismissed.*