

**Roshan Industries Private Ltd., Yamanagar Vs. Employees' State Insurance Corporation**

**LegalCrystal Citation** : [legalcrystal.com/610753](http://legalcrystal.com/610753)

**Court** : Punjab and Haryana

**Decided On** : Mar-23-1966

**Reported in** : AIR1968P& H56; [1967(15)FLR387]; (1968)ILLJ77P& H

**Judge** : P.D. Sharma, J.

**Acts** : Employees' State Insurance Act, 1948 - Sections 40(4) and 75(2); Limitation Act, 1908 - Sections 10 - Schedule - Article 120

**Appeal No.** : First Appeal from Order No. 30 of 1962

**Appellant** : Roshan Industries Private Ltd., Yamanagar

**Respondent** : Employees' State Insurance Corporation

**Advocate for Def.** : K.L. Kapur, Adv.

**Advocate for Pet/Ap.** : R. Sachar, Adv.

**Disposition** : Appeals dismissed

**Judgement** :

ORDER

P.D. Sharma, J.

1. This judgment will dispose of two first appeals (Nos. 30 and 31 of 1962) from the two orders of the Employees' Insurance Court, Ambala, dated 4-1-1962. The facts giving rise to these may briefly be noted here. The Employees' State Insurance Corporation (hereinafter referred to as the Corporation) through the Insurance Inspector, Ambala, instituted application, No. 1 of 1961 in the Employees' Insurance Court, Ambala, under Section 75(2) of the Employees' State Insurance Act (hereinafter referred to as the Act) for the recovery of Rs 5,040 as employees' contribution for the period from 1-4-1953 to 31-3-1960 against (1) Shri M. L. Sakhri, Manager and Principal Employer of M/s. Roshan Industries Private, Ltd., and (2) Messrs. Roshan Industries Private Ltd., Yamunanagar. The Insurance Inspector at the time of his inspection on 20th July 1960 is said to have noticed that the respondents had not paid their share of the employees' contribution on the wage amount of Rs. 2,01,600.46. The employers resisted the above application on the grounds that it was barred by time, that the Corporation had not delegated the powers for instituting the present proceedings to the Insurance Inspector and that Hans Raj was not an Insurance Inspector and further that no wages were paid to the employees within the

meaning of the Act. It was also urged that the Corporation had not filed along with the application a list of the employees in relation to whose wages the employees' contribution had been claimed and so was defective in form.

2. The Employees' Insurance Court framed the following issues:--

1. Whether the applicant-Corporation has delegated the powers to act, appear and make applications on its behalf to Insurance Inspector, Employees' State Corporation?
2. Whether Shri Hans Raj is Inspector, Employees' State Insurance Corporation?
3. Whether the sum of Rs. 5,040 is due to the applicant as employees' contribution by the respondents, if not, how much is due to them?
4. Whether the application is within time?
5. If not, whether there are good and sufficient grounds for extending the period of limitation?
6. Whether it is obligatory on the applicant to furnish the list of the employees whose wages are liable to employees' contribution?
7. If yes, what is the effect of the applicant having not filed that list?
8. Relief.

The Corporation had also independently moved the Collector having jurisdiction in the matter for the recovery of Rs. 2,533.00 as employer's special contribution from the two respondents as arrears of land revenue. The employers consequently filed application No. 5 of 1961 under Section 75(1) of the Act for an injunction restraining the Corporation from recovering the said amount. The Corporation resisted the above prayer. In this case the following issues were settled by the Insurance Court:--

1. Whether the applicant is not liable to pay employer's special contribution to the respondent for the reasons contained in paras Nos. 4 to 6 of the petition.
2. Relief.'
3. The proceedings in both the cases were consolidated by the Court and disposed of by a common order.

Application No. 1 of 1961,

4. The Employees' Insurance Court decided issues Nos. 1 to 4 in favour of the applicant and issue No. 6 against the respondents. Issues Nos. 5 and 7 did not arise. In the result the application was allowed with costs.

Application No. 5 of 1961.

5. Issue No. 1 was decided against the applicant and in consequence the application was dismissed with costs.

6. Shri M. L. Sakhri, Manager and Principal Employer and Messrs. Roshan Industries Private, Ltd., in their separate appeals impugned the correctness of the orders passed by the Employees' Insurance Court in applications Nos. 1 and 5 of 1961. The only point urged before me was that the application put in by the Corporation under Section 75(2) of the Act was barred by time. The Employees' Insurance Court while dealing with this point held that Article 120 of the Limitation Act applied to the case and that the limitation started from the date the Insurance Inspector inspected the account of the appellants on 20th July, 1960 and detected the fraud committed by them as is provided in Section 18 of the Indian Limitation Act. It may be stated here that Rule 17 of the Employees' Insurance Court Rules, 1949, framed by the Governor of Punjab in the exercise of the powers under Clauses (a) to (e) of Sub-section (1) of Section 96 of the Act, which provided a period of one year as limitation for filing of applications by the Corporation under Section 75(2) of the Act has been declared as ultra vires by a Full Bench of this Court in United India Timber Works v. Employees' State Insurance, F.A.O. No. 74 of 1963 = (All 1967 Punj 166). Therefore it cannot now be urged that the application was barred by time because it was not filed within the period of limitation provided in Rule 17. The learned counsel for the appellants, however, maintained that Article 120 of the Indian Limitation Act applied to the case but the period of limitation started from the date, the amount signifying the employees' contribution became due and that the respondent could not plead that the period of limitation started from the date the fraud was detected because no details of the alleged fraud had been stated in the application under Section 75(2) of the Act. The learned counsel for the respondent brought to my notice paragraphs 5 and 6 of the said application which amongst other things also mention that the appellants concealed the true facts deliberately and it was only after inspection of their records by the Insurance Inspector on 20th July, 1960, that the right to claim the sum in question came to light. Further it has been pointed out by the Employees' Insurance Court that the appellants in their return form S.C. 2 did not include Rs. 2,01,600.46, the amount of wages for which the employees' contribution is being claimed now which was necessary for them to do under the Act. This was not controverted by the learned counsel for the appellants. It could thus be said that the appellants fraudulently kept back the aforesaid information from the Corporation and it came to light on the date the Insurance Inspector inspected their records. Section 18 of the Indian Limitation Act provides:

'Where any person having a right to institute a suit or make an application has by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application:--

(a) against the person guilty of the fraud or accessory thereto or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration.

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.'

In view of the above the cause of action accrued to the Corporation when the fraud came to its knowledge. There can be no manner of doubt that salient particulars of

the fraud had been given in the application and that being so, the appellants could not be now heard to say that such particulars had not been furnished to them earlier. The period of limitation in all certainty started from 20th July, 1960 and not from the date the sum in question became due from them. Be that as it may, the learned counsel for the Corporation-respondent contended and strenuously too that Article 120 of the Indian Limitation Act did not apply to the applications of the present category because it related to suits only. There is considerable force in what he urged. The Privy Council in *Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Co., Ltd.*, AIR 1933 PC 63, laid down:--

'The word 'suit' ordinarily means, and apart from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint. But a claim against a company in liquidation not made by a proceeding instituted by the presentation of a plaint cannot be considered to be a 'suit instituted' within the section. The explanation is not concerned with question if what is a suit, or is to be considered a suit, within Section 3. It assumes the existence of a suit which has been instituted by the presentation of a plaint, and is concerned only with the point of time at which the suit is for the purpose of Section 3 to be treated as being instituted.'

The application under Section 75(2) of the Act not being a suit, therefore, does not fall within the ambit of Article 120 of the Indian Limitation Act. The learned counsel for the Corporation-respondent further maintained that even if an application under Section 75(2) of the Act by the Corporation be treated as a suit, then also no period of limitation had been prescribed by any law. In this connection he referred to Sub-section (4) of Section 40 of the Act and Section 10 of the Indian Limitation Act. Which run as under:--

'(4) Any sum deducted by the principal employer from wages under the Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.'

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns forvaluable consideration) for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.'

After reading Sub-section (4) of Section 40 of the Act, it becomes clear that any sum deducted by the principal employer front wages under this Act. Which includes the employees' contribution also, shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted. It is equally clear from the phraseology of Section 10 of the Indian Limitation Act that no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns, for the purpose of following in his or their hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time. Therefore, an application under Section 75(2) of the Act cannot be barred by any length of time. This finds support from the observations made by the Full Bench in *United India Timber Works case*, F.A. No. 74 of 1963 = (AIR 1967 Punj 166) (FB), where vires of Rule 17 of the Employees' Insurance Court Rules were considered (p. 16) as under:--

'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.'

The application filed by the Corporation-respondent under Section 75(2) of the Act was not barred by time.

7. The two appeals fail and are dismissed but the parties are left to bear their own costs.

**LegalCrystal - Indian Law Search Engine - [www.legalcrystal.com](http://www.legalcrystal.com)**