

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) NO. 6880/2004

Judgment delivered on :22 January, 2010

M/s Bhartiya Commercial &
Industrial Resources (India) Limited

.....Petitioner

Through: Ms. Anjana Gosain, Advocate

versus

Union of India & others

..... Respondents

Through: Mr. Amit Khemka, Advocate
for Respondent Nos. 2 to 4.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

KAILASH GAMBHIR, J. (ORAL)

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1. By this writ petition filed under Article 226/227 of the Constitution of India, the petitioner seeks directions to direct

respondent No. 2 to condone the delay in filing the review application dated 20.11.2001 and to direct the respondent to decide the review application of the petitioner on merits.

2 . Ms. Anjana Gosain, counsel appearing for the petitioner submitted that Ms. M.D. Rajput, Managing Director of the petitioner company had received a copy of the recovery notice along with the copy of the ex parte order from the official of respondent No. 2 on 22nd June, 1999. Counsel further submitted that after receiving the same the petitioner wrongly filed an appeal before the office of the Recovery Commissioner instead of preferring the same before the Appellate Tribunal under the Employees Provident Fund and Miscellaneous Provisions Act. The said appeal of the petitioner was rejected by the Recovery Commissioner vide orders dated 29th October, 2001 on the ground that the said Authority was not competent to hear the appeal. Counsel further submitted that thereafter the petitioner had filed a review application under the said Act on 21.11.2001, but the same was not taken up for hearing as it was filed beyond the statutory period of 45 days. Since the application of the

petitioner filed under Section 7-B was not taken up by the Provident Fund Commissioner so, therefore, the petitioner had filed a writ petition before this Court to seek directions to the Provident Fund Commissioner to decide the application of the petitioner for condonation of delay as well as the review application filed by the petitioner under Section 7-B of the Act.

3 . This Court vide orders dated 27th August, 2003 gave directions to the respondent Additional Provident Fund Commissioner to examine the condonation of delay application of the petitioner and if he decides to condone the delay, then to examine the review application of the petitioner moved under Section 7-B of the Act on its merits. In the said order this Court also observed that the petitioner was not receiving its official dak at the address given as the Division Bench of this Court vide orders dated 3rd July, 1996 in CM No. 6267/95 in CW 3732/95 gave the direction for the delivery of the personal dak of the petitioner and not the official dak. Counsel further submitted that pursuant to the directions given by this Court, the petitioner had moved an application under Section 151 CPC to seek condonation

of delay in filing the review application along with another application praying for deciding the review application which was filed earlier. The said application of the petitioner came to be rejected by the Assistant Provident Fund Commissioner vide order dated 9th February, 2004. The said order is now assailed by the petitioner in the present writ petition.

4 . Mr. Khemka, counsel appearing for the respondent while opposing the present petition submitted that no illegality or perversity can be found in the impugned order as the mandate of the law as envisaged under Section 79A of the Scheme is that such an application seeking review can be preferred only within a period of 45 days from the date of passing the order. Counsel thus submitted that since the application as preferred by the petitioner was much beyond the period of limitation, therefore, Assistant Provident Fund Commissioner has rightly exercised its discretion to dismiss the said application. Counsel further submitted that once the condonation application of the petitioner was dismissed then there was no occasion for the respondent to have decided the review application of the petitioner. Counsel

also submitted that the present writ petition is not maintainable as the order is an appealable order under Section 7(i) of the Employees Provident Fund and Miscellaneous Provisions Act. Counsel also submitted that if the present writ petition is allowed then the petitioner will unnecessarily take advantage of it by not paying interest and penalty amount on the impugned recovery.

4 . I have heard learned counsel for the parties and perused the records.

5 . Undoubtedly, the Assistant Provident Fund Commissioner is not conferred with the powers to condone the delay as prescribed under paragraph 79 (a) of the Scheme and, therefore, to that extent no fault can be found by this Court with the said order. However, this fact was not brought to the notice of this Court when the order dated 27th August, 2003 was passed as then the Court directed the said Assistant Provident Fund Commissioner to decide the condonation application of the petitioner although by that time the same was already barred by time.

6. In the backdrop of the aforesaid position, I am of the view

that at that point of time this Court could have given direction to decide the review application of the petitioner after condoning the delay in the matter. Be that as it may, since the petitioner had earlier taken a wrong remedy by filing an appeal before the Recovery Commissioner and thereafter had filed a review application under Section 7-B of the said Act and also that this Court, in the order dated 27th August, 2003, has observed that the petitioner was not able to receive its official dak at the given address, therefore, the delay in filing the review application is condoned.

7 . So far the contention of Mr. Amit Khemka that the present writ petition is not maintainable before this Court, I do not find any merit in the said submission as admittedly the Provident Fund Commissioner has no power to condone the delay and even if the petitioner had taken a remedy before the Appellate Tribunal the same hurdle would have come in the way of the petitioner. Therefore, while exercising inherent powers under Article 226 of the Constitution of India, delay in filing the review application is condoned.

8 . So far as the contention of Mr. Amit Khemka with regard to the penalty and interest amount is concerned the same will ultimately depend on the fate of the decision of the review application of the petitioner and, therefore, if at last the petitioner does not succeed in the said review application then it will be for the appropriate Authority to take a decision on imposing the penalty and interest on the amount as was found due from it.

9 . Henceforth, the parties are directed to appear before the concerned Authority on 8th February, 2010. The Assistant Provident Fund commissioner shall expeditiously decide the review application of the petitioner within a period of two months from the date of this order.

10 . In view of the above, the writ petition stands disposed of.

Dasti.

JANUARY 22, 2010
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KAILASH GAMBHIR,J