

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on May 20, 2014

+ **W.P.(C) 2839/2014**

SAINT SOLDIER MODERN SENIOR SECONDARY SCHOOL

..... Petitioner

Represented by: Mr.S.K.Gupta, Advocate with
Mr.Gaurav Kumar, Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER

..... Respondent

Represented by: Mr.R.C.Chawla, Advocate

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. The challenge in this writ petition is to the order dated October 29, 2013 passed by the Employees' Provident Fund Appellate Tribunal (Tribunal in short) in appeal No. A.T.A. 685 (11) 2010, whereby the appeal filed by the petitioner challenging the order dated April 20, 2007 passed by the Assistant Provident Fund Commissioner, Amritsar under Section 7A of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (Act in short), was dismissed on the ground that the appeal was barred by limitation.

2. Even though, I may state here that the Tribunal has made some observations on the merits of the case, I refrain from going into the merits of the case in view of my conclusion here-in-under.

3. The learned counsel appearing for the petitioner would submit that after the order dated April 20, 2007 in proceedings under Section 7A of the Act was passed, the petitioner filed a review petition on May 27, *W.P.(C) 2839/2014*

2007. The review petition was rejected by the Assistant Provident Fund Commissioner on July 10, 2007. It is his submission that on wrong legal advice, a suit for declaration was filed by the petitioner before the Court of Civil Judge, Senior Division, Gurdaspur on August 14, 2007. The suit was decided on August 26, 2010, wherein the Court had held that the suit before the Civil Court is barred by the provisions of the Act. The Civil Judge returned the plaint to the petitioner to file the same in an appropriate forum. It is also his submission that a certified copy of the order of the Civil Court was applied on September 04, 2010 and the certified copy was received on September 23, 2010. Immediately thereafter, the appeal was filed before the Tribunal on October 23, 2010.

4. The only submission made by the learned counsel for the petitioner is that the period spent by the petitioner in pursuing his remedy before the Civil Court need to be condoned. If the said period is condoned, then the appeal is within time. He relied upon the following judgments in support of his contentions:

1. *The State of West Bengal Vs. The Administrator, Howrah Municipality and Ors., AIR 1972 SC 749*
2. *State of Haryana Vs. Chandra Mani and others, (1996) 3 SCC 132*
3. *Kranti Associates Pvt. Ltd. and Anr. Vs. Sh. Masood Ahmed Khan and Ors., (2010) 9 SCC 496*
4. *Shankarrao Vs. Chandrasenkunwar, AIR 1987 SC 1726*
5. *M/s General Sales and Service Thru its Proprietor vs. Union of India, W.P.C. No 62147/2009, Allahabad High Court*
6. *G. Ramegowda, Major and Ors. Vs. Special Land*

Acquisition Officer, Bangalore, (1988) 2 SCC 142

7. *Shakuntala Devi Jain Vs. Kuntal Kumari and Ors., AIR 1969 SC 575*

8. *Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Ors., (1979) 4 SCC 365*

9. *Mata Din Vs. A. Narayanan, (1969) 2 SCC 770, AIR1970SC1953*

5. On the other hand, Mr. R.C.Chawla, learned counsel appearing for the respondent would submit that the appeal is clearly barred by time. He would state that the Tribunal had no power to condone the delay. He relied upon the provisions of Section 7-I of the Act to show that the maximum time within which an appeal can be filed is 60 days and the power to condone any delay is only to the extent of further 60 days. He would rely upon the judgment of the Division Bench of this Court in the case of *Assistant Regional Provident Fund Commissioner, Meerut Vs. Employees' Provident Fund Appellate Tribunal and Ors., 2005 (VII) AD (Delhi) 155*. He specifically referred to para 29 of the said judgment wherein, the Supreme Court was dealing in an identical fact in the case of *Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, AIR 1975 SC 1039* to contend that when Section 5 of the Limitation Act itself is not applicable to condone the delay, the power to condone delay because of pursuing a remedy elsewhere on a principle akin to Section 14(2) of the Limitation Act, would also not be available.

6. Having considered the submissions made by the learned counsel for the parties, at the outset, I may state here that the provision of appeal is provided under Section 7-I of the Act read with Rule 7(2) of the W.P.(C) 2839/2014

Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997
[Rules in short], which are reproduced as under:

“7- I. Appeals to the Tribunal. – (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government, or any authority, under the proviso to sub-section 3, or sub-section 4, of section I, or section 3, or sub-section 1 of section 7A, or section 7B except an order rejecting an application for review referred to in sub-section 5 thereof, or section 7C, or section 14B may prefer an appeal to a Tribunal against such order.

7. Fee, time for filing appeal, deposit of amount due on filing appeal.—

(2) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal.

Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from referring the appeal within the prescribed period, extend the said period by a further period of 60 days.

Provided further that no appeal by the employer shall be entertained by the Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75% of the amount due from him as determined under Section 7-A.

Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O”.

7. The vires of Rule 7(2) was questioned in the proceedings before the Division Bench of this Court in the case of *Assistant Regional Provident Fund Commissioner, Meerut (supra)*. Suffice to state, this Court has upheld the vires of the Rule 7(2) of the Rules in the said case.

8. Further, I may state here that this Court had occasion to deal with the power of the Tribunal to condone a delay beyond a period of 120 days. This aspect was decided in *Writ Petition (C) No.350/2014, titled as University of Delhi Vs. Vijay Prakash Vijay and Ors.* on January 20, 2014, wherein this Court has held as under:

“5. I have considered the submissions of the learned counsel for the petitioner. The issue is no more res integra. A Single Judge of this court in the case Prudential Spinners Ltd. Vs. Employees P.F.Appellate Tribunal, 142 (2007) Delhi Law Times 361, while dealing with a similar provision under Employees Provident Fund and Miscellaneous Provisions Act, 1952 wherein an appeal is required to be filed in the similar manner as has been provided in Section 7(7) of the Act, has held as under:

“12. Having gone through the records and given my thoughtful consideration to the submissions made by the learned Counsel for the parties, this Court cannot but arrive at the conclusion that there is no error, infirmity or perversity in the impugned order dated 13th November, 2006 passed by the tribunal. The tribunal has rightly adopted and applied the law as laid down by a Division Bench of this Court in the case of Assistant Provident Fund Commissioner, Meerut (supra), which holds the field as on date. In view of a specific provision contained in Rule 7(2) of the Rules, the tribunal could not have condoned the delay beyond a maximum period of 120 days as sought to be contended by the petitioner. There is no force in the plea of the petitioner that the aforesaid judgment rendered by the Division Bench is in "jeopardy" and has lost its binding force as a precedent merely because leave to appeal has been granted by the Supreme Court in a Special Leave Petition pending before it, as admittedly, there is no stay operating against the order impugned in the aforesaid Special Leave Petition. In this view of the matter, this Court is bound to follow the judgment rendered by a Division Bench of this Court referred to hereinabove, and also followed by two single Judges in the cases of Manu Tea Valley Company and Megacity Cement Pvt. Ltd, referred to hereinabove. Reliance placed by the learned Counsel for the petitioner on the judgments of the Supreme Court in the cases of N. Balakrishnan (supra) and Smt. Rani Kusum (supra) is also misconceived for the reason that the general observations with regard to extension/enlargement of time in condoning the delay, cannot be imported into statutes which not only prescribe

a specific period of limitation but also further goes on to prescribe a period for condoning the delay, if any, in preferring the appeal. It may also be noted that in the case of N.Balakrishnan (supra), the observations of the court were in the context of condensation of delay under Section 5 of the Limitation Act which provision has been held by the Division Bench in the case of Assistant Provident Fund Commissioner, Meerut (supra) to be expressly excluded in considering an application made under the provisions of the Act and Rules, in view of existence of a specific provision of Rule 7(2) made in the Rules, for limitation.

13. In view of the fact that limitation is prescribed by a specific Rule, and condensation has also to be considered within the purview of that Rule alone and the provisions of the Limitation Act cannot be imported into Act and Rules, the inevitable conclusion is that the tribunal did not have the powers to condone the delay beyond a maximum period of 120 days as stipulated in Rule 7(2) of the Rules.

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15. This Court shall, however, refrain from examining the relative merits/ demerits of the sufficiency of cause offered by the petitioner for seeking condonation of delay, as discussed in the impugned order, and sought to be supported by the learned Counsel for the respondent, for the reason that once it has been held that the appeals were ex facie barred by limitation and could not have been entertained by the tribunal and were rightly rejected on the ground of limitation, there arises no occasion to delve further in the matter by examining the explanation furnished by the petitioner juxtaposed against the arguments offered by the RPFC to puncture holes in the said explanation. It is suffice to hold that no power vested with the tribunal to condone the delay in filing the appeals preferred by the petitioner, after expiry of a total of 120 days from the date of the order passed by the Assistant Provident Fund, Commissioner, Hyderabad, Andhra Pradesh”.

9. A perusal of the Section 7-I of the Act and Rule 7 of the Rules would reveal that the time period for filing an appeal is within 60 days from the date of issue of the notification/order, provided, the Tribunal, if satisfied that for certain sufficient cause, the appeal could not be preferred within the period of 60 days, then, the period to file appeal can be extended to 60 days thereafter. Suffice to state, the provisions does

not vest any power with the Tribunal to condone a delay beyond that period. This issue is no more res-integra in view of the judgment of the Supreme Court in the case of *Commissioner of Sales Tax, U.P., Lucknow (supra)*, wherein, the Supreme Court was dealing with a case wherein the respondent, who was carrying business in Kanpur, was assessed for Sales Tax for the year 1958-59 and 1959-60 by two separate orders. The assessee filed appeals against those orders before the Appellate Authority. On May 10, 1963, when the appeals came up for hearing, the assessee was absent. The appeals were therefore dismissed in default by virtue of Rule 68 (5) of the U.P. Sales Tax Rules. Sub-rule (6) of Rules 68 provided for setting aside such dismissal and readmission of the appeal. In the same day (May 10, 1963), the assessee made two applications in accordance with Sub-Rule (6) for setting aside the dismissal. During the pendency of those applications, Sub-Rule (5) of Rule 68 was declared ultra vires the rule – making authority by the High Court, which further held that the Appellate Authority could not dismiss an appeal in default, but, was bound to decide it on merits even though the appellant is absent. When the applications as referred above, under Rule 68(6) of the Rules came up for hearing on October 20, 1964, the Appellate Authority dismissed them outrightly in view of the ruling of the Supreme Court. Against the order of the dismissal of his appeals, the assessee on December 16, 1964 filed two revision petitions under Section 10 of the Sales Tax Act, before the Revisional Authority. Those revision petitions having been filed more than 18 months after the dismissal of the appeals, which was the maximum period of limitation prescribed by Section 73 of Section 10 of the Sales Tax Act were prima facie time barred. They were however accompanied by two applications

in which the assessee prayed for exclusion of the time spent by him in prosecuting the abortive proceedings under Rule 68(6) for setting aside the dismissal of his appeals. The Revisional Authority found that the assessee spent time in pursuing his remedy under Rule 68(6) with due diligence and good faith. It, therefore, excluded the time spent in those proceedings from computation of limitation by applying Section 14, Limitation Act and in consequence, held that the revision petitions were within time. The Supreme Court on the aforesaid facts, was of the following view:

“23. Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, than the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of s. 14(2) of the Limitation Act.

24. We have said enough and we may say it again that where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver; more so if the statute is a taxing statute. We will close the discussion by recalling what Lord Hailsham (1) has said recently, in regard to importation of the principles of natural justice into a statute which is a clear and complete Code, by itself:

"It is true of course that the courts will lean heavily ,against any construction of a statute which would be manifestly fair. But they have no power to amend or supplement the language

of a statute merely because in one view of the matter a subject feels himself entitled to a larger degree of say in the making of a decision than a statute accords him. Still less is it the functioning of the courts to form first a judgment on the fairness of an Act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgment."

25. *For all the reasons aforesaid, we are of the opinion that the object, the scheme and language of s.10 of the Sales-tax Act do not permit the invocation of s.14(2) of the Limitation Act, either, in terms, or, in principle, for excluding the time spent in prosecuting proceedings for setting aside the dismissal of appeals in default, from computation of the period of limitation prescribed for filing a revision under the Sales-tax. Accordingly, we answer the question referred, in the negative".*

10. From the above decision of the Supreme Court, even in the case in hand, it is clear from the provisions of the Act, which is a special statute, a certain period of limitation is prescribed for filing the appeal. In the eventuality, the appeal is not filed within the said period, the power to condone the delay is for a further period of 60 days and no more. As held by the Supreme Court, the Tribunal has no jurisdiction to treat within limitation an application filed before it, beyond such maximum time limit specified by the statute. The ratio of the Supreme Court judgment is applicable in the facts.

11. Insofar as the judgments relied upon by the learned counsel for the petitioner, more specifically, in the case of *M/s General Sales and Service Thru its Proprietor (supra)*, wherein, according to the learned counsel for the petitioner, the Allahabad High Court while allowing the writ petition and remanding the matter back to the Tribunal under the Act, had observed to exclude the period during which, the writ petition and SLP remained pending, is concerned, the same would not be the

correct position of law in view of the judgment of the Supreme Court in the case of *Commissioner of Sales Tax, U.P., Lucknow (supra)*.

12. Insofar as the other judgments relied upon by the learned counsel for the petitioner are concerned, suffice to state, in the case of *State of West Bengal (supra)*, the Supreme Court was dealing with a case where a wrong advice was given by the Legal Advisor. It was held that because of this reason, a party cannot be held guilty so as to disentitle the party to plead sufficient cause under Section 5 of the Limitation Act. I may state here, that, in the said case, the power to condone the delay was available to the Court concerned. In the case in hand, when no such power is vested with the Tribunal beyond 120 days, even the power under Section 5 of the Limitation Action cannot be exercised.

13. Insofar as the case of *State of Haryana Vs. Chandra Mani (supra)* is concerned, the Supreme Court was dealing with similar facts as in the case of *State of West Bengal (supra)* has held as under:

“3. In *Shakuntala Devi Jain v. Kuntal Kumar and Ors.*, [1969] 1 SCR 1006, a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

4. What constitute sufficient cause cannot be laid down by hard and fast rules. In *New India Insurance Co. Ltd. v. Shanti Misra* [(1975) 2 SCC 840 : AIR 1976 SC 237] this Court held that discretion given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression “sufficient cause” should receive a liberal construction. In *BrijIndar Singh v. Kanshi Ram* [AIR 1917 PC 156 : 44 IA 218 : ILR 45 Cal 94] it was observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting

the appeal. In Shakuntala Devi Jain v. Kuntal Kumari [(1969) 1 SCR 1006 : AIR 1969 SC 575] a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

5. In Concord of India Insurance Co. Ltd. v. Ninnala Devi and Ors., [1979] 118 ITR 507(SC), which is a case of negligence of the counsel which misled a litigant into delayed pursuit of his remedy, the default in delay was condoned. In Lala Mata Din v. A. Narayanan, [1970] 2 SCR 90, this Court had held that there is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose. In that case it was held that the mistake committed by the counsel was bona fide and it was not tainted by any mala fide motive.”

14. In the case of *Kranti Associates Pvt. Ltd and Anr. (supra)*, the Supreme Court was dealing with a case where it has summarized the necessity of passing a reasoned and speaking order. It has held, a quasi-judicial authority must record reasons in support of its conclusion.

15. In the case of *Shankarrao (supra)*, the Supreme Court, appears to be dealing with a case where an appeal is lodged in the Court of Additional District Judge instead of District Judge. The memo was returned for presentation to the Court of District Judge. It was presented in his Court on that very day. In the above background, the Supreme Court has held that the Court should not have therefore made an injustice oriented approach and rejected the application for condonation of delay. From the perusal of the order of the Supreme Court, the Supreme Court was not dealing with a similar issue, which falls for consideration of this

Court in the present case.

16. In the case of *G. Ramegowda, Major and Ors. (supra)* wherein the question was whether, High Court fell into manifest error in condoning inordinate and wholly unjustified delays. The Supreme Court has held that government could have moved with greater diligence and dispatch consistent with urgency of situation. However, conduct of Government was perilously close to such inaction as might, perhaps, had justified rejection of its prayer for Condonation. Moreover, as was implicit in reasoning of High Court, unarticulated thought, was that in interest of keeping stream of justice pure and clean awards under Appeal should not have been permitted to assume finality without examination of their merits. Further, High Court noticed that Government had applied for certified copies but Application was allowed to be dismissed for default - Thus, High Court thought that State should not have been penalized for lapses of some of its officers. Therefore, there were sufficient grounds justifying condonation of delay in filing Appeals.

17. In the case of *Shakuntala Devi Jain (supra)*, the Supreme Court has held that Section 5 of the Limitation Act gives the Courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood. The Court further stated that the words "sufficient cause" receiving a liberal construction so as the advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the Appellant. Further, the Court has stated that the memorandum of appeal from the order should have been accompanied by a certified copy of the order and in the absence of the

requisite copy, the appeal was defective and incompetent.

18. In the case of *Concord of India Insurance Co. Ltd. (supra)*, the Supreme Court has observed that where legal advice honestly sought and actually given without any mala fide or element of recklessness it must be treated as sufficient ground for condonation of delay under Section 5.

19. In the matter reported as *Mata Din (supra)*, the Supreme Court has observed that mistake of counsel may be taken into account in condoning delay.

20. A perusal of the aforesaid judgments would show that in none of the cases, the Supreme Court was concerned in identical facts/issue which falls for consideration of this case. I reiterate that the case in hand is covered by the judgment of the Supreme Court in the case of *Commissioner of Sales Tax, U.P., Lucknow (supra)*.

21. In view of the above conclusion, I do not find any merit in the writ petition. The same is dismissed.

22. No costs.

CM No. 5867/2014

In view of the order passed in the writ petition, the application is dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

MAY 20, 2014

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