

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20579 of 2014

Central Board Of Trustees, Employees Provident Fund Organization through the
Assistant Provident Fund Commissioner (Legal) Regional Office, Patna having his
office at R. Block, Road No. 6, P.S. Sachivalaya, District Patna

.... Petitioner/s

Versus

M/s S.K. Nasiruddin Biri Merchant Pvt. Ltd. Shaluganj, Bihar Sharif (Nalanda)

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajeev Verma, Sr. Advocate

Mr. Prashant Sinha

For the Respondent/s : Mr. Maheshwar Prasad Srivastava

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 10-09-2015

Heard Sri Rajeev Kumar Verma, learned senior counsel,
who was assisted by Sri Prashant Sinha, learned counsel for the
petitioner and Sri Maheshwar Prasad Srivastava, learned counsel,
who has appeared on behalf of the sole respondent.

The petitioner, invoking writ jurisdiction of this Court
under Article 226 of the Constitution of India, has prayed for
quashing of an Order Dated 24th September, 2014 passed by
Employees Provident Fund Appellate Tribunal, New Delhi
(hereinafter referred to as the “Appellate Tribunal”) in ATA No. 346
(3) of 2014. By the said order the learned Appellate Tribunal has set
aside the Order Dated 22.5.2013 passed by the Regional Provident

Fund Commissioner, Bihar, Patna, in a proceeding under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act 1952").

Short fact of the case is that though the respondent / establishment was under the cover of the Act, 1952, a complaint was received on an allegation that the establishment had denied membership of Employees Provident Fund to about 260 workers. Accordingly after conducting some necessary formalities a proceeding under Section 7A of Act 1952 was initiated. Finally the Assessing Authority i.e. the Regional Provident Fund Commissioner on the basis of balance sheet and other materials, had concluded that huge amount was not deducted and deposited in the account of E.P.F. Accordingly, assessment order was passed directing the respondent / establishment to deposit the balance amount of Rs. 3,36,30,306/- within specified time. The Order of assessment order under Section 7A of the Act was passed on 22.5.2013. It is case of the respondent that since direction was given to pay the amount within short period in terms of the order of the Regional Provident Fund Commissioner, the respondent requested the Recovery Officer to allow him to deposit the amount in installments, which was paid in installments. The first installment was paid on 28.6.2013 and the last installment was paid on 29.3.2014. Thereafter, the Appeal was preferred by the



sole respondent before the Employees Provident Fund Appellate Tribunal, New Delhi, which was registered as ATA No. 346 (3) of 2014. Along with the Memo Of Appeal, the respondent also filed a petition for condonation of delay. The learned Appellate Tribunal after hearing the parties condoned the delay and finally, after hearing the matter on merit, set aside the order of the Regional Provident Fund Commissioner, Bihar. The petitioner aggrieved with the order of the Appellate Tribunal has approached this court by filing the present writ petition questioning the legality of the impugned order.

Sri Rajeev Kumar Verma, learned senior counsel for the petitioner, at the very outset has argued that the order impugned is liable to be set aside solely on the ground that the Appellate Tribunal was not at all authorized to condone delay, even on any ground beyond the extended period of 60 days as prescribed under Rule 7 of the Employees' Provident Funds Appellate Tribunal (Procedure) Rules 1997 (hereinafter referred to as the "Rules 1997"). It has been argued that as per Rule 7 of Rules 1997 an Appeal can be preferred by an aggrieved person against an Order passed by the Central Government or any authority under the Act within 60 days from the date of issuance of such notification / order. He further submits that the Appellate Tribunal has also been authorized to condone delay for further 60 days and that has to be condoned on sufficient grounds



being placed to show that the appellant was restrained / prevented from filing such Appeal within time. According to Sri Verma, once in the Rule there was provision for condoning delay up to 60 days, after expiry of 60 days the Appellate Tribunal was not at all authorized to entertain the Appeal and he was required to reject the Appeal outrightly on the ground of delay. To substantiate his submission he has placed reliance on **(2009) 5 SCC 791 (COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE Versus HONGO INDIA PRIVATE LIMITED AND ANOTHER).** He has specifically placed paragraph no. 32 of the said judgment which is quoted hereinbelow:-

“32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.”

He has further referred to a judgment of the Apex Court reported in **(2013) 10 SCC 765 (POPAT BAHIRU GOVARDHANE AND OTHERS Versus SPECIAL LAND ACQUISITION OFFICER AND ANOTHER)** and he has placed paragraph 16 of the said judgment which is quoted hereinbelow:-

“16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what in considers a distress resulting from its operation.”

Besides this, he has also relied on a Single Bench judgment of this Court in similar circumstances. The order of a Single Bench dated 18.11.2014 passed in CWJC No. 6920 of 2010 has been brought on record as Annexure – “6” to the rejoinder filed by the petitioner. He has specifically referred to paragraph no. 18 of the said judgment and the same is quoted hereinbelow:-



“18. Now, question arises as to whether Tribunal has got jurisdiction to extend the period of limitation as prescribed in rule 15 of the Rules. A similar question arose before Apex Court in the case of Commissioner of Custom and Central Excise (supra). The aforesaid case was of Central Excise Act and there was provision in Section 35H of the Central Excise Act that appeal and reference to High Court should be made within 180 days from the date of communication of the decision of the order. The apex court took note of the aforesaid provision and held that time limit prescribed for making reference to the High Court is absolute and unextendable by the court under section 5 of the Limitation Act is to be judged from the terms of the special law and in the very terms of Limitation Act. It has further been held that the court is bound to respect legislative intention and not to extend limitation period by giving liberal interpretation.”

He further submits that it is true that the respondent had requested for depositing the amount in installments, but the reasons assigned in the petition for condonation of delay i.e. Annexure – “3” to the writ petition, was not sufficient for the Appellate Tribunal to condone delay that too, contrary to the statutory provisions. On merit also he wanted to persuade the Court that the Appellate Tribunal has not proceeded with the case of the petitioner in its right perspective.

Sri Srivastava, learned counsel for the respondent opposing the prayer of the petitioner submits that for the ends of justice it was necessary for the Appellate Tribunal to condone the delay. By



referring to Annexure - “3” to the writ petition he submits that in the petition filed for condonation of delay before the Appellate Tribunal, it was categorically stated that the respondent was constrained to deposit the amount. However since the amount which was to be deposited was huge amount and it was difficult for the respondent to deposit the same amount at once, he had requested for extending the time for depositing the amount in installments. He submits that once time was granted to the respondent to deposit the amount in installments, certainly period of limitation shall start from the date of last deposit of the installment, which was deposited on 29.3.2014. Immediately thereafter i.e. within 60 days, Appeal was filed and as such, the Appellate Tribunal has rightly condoned the delay. Learned counsel for the respondent by way of referring to the counter affidavit has also raised an objection that the Department being *quasi* judicial authority was not empowered or authorized to maintain the present writ petition that too, against the order passed by the Appellate Tribunal.

Without going into the merit of the case, the Court is persuaded to decide the present writ petition only on the ground of preliminary objection raised by learned counsel for the petitioner. It is true that period of limitation is liberally required to be examined and for substantial justice a petition may not be rejected only on the



ground of limitation. However, if for condoning delay there is special Act prescribing period for filing an application / or Appeal, certainly in that event beyond legislation the Court may not exercise its jurisdiction. It is a settled law that if Statute states to do a thing in a particular manner then every thing is to be done in the same manner not in any other way. Before proceeding it would be appropriate to quote the provisions which deals with limitation in such situation. In respect of cases arising out of the Employees' Provident Funds And Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act 1952") a Rule has been framed exercising power under sub Section 1 of Section 21 of the Act 1952. The Central Government has framed a Rule in respect of procedure to be adopted by the Appellate Tribunal which is called as Employees' Provident Funds Appellate Tribunal (Procedure) Rules, 1997. Rule 7 of the Rules 1997 deals with the time of filing of Appeal, deposit of amount etc. For just decision in the matter it would be appropriate to quote Rule 7 as follows:-

“7. Fee, time for filing appeal, deposit of amount due on filing appeal.- (1) Every appeal filed with the Registrar shall be accompanied by a fee of rupees five hundred to be remitted in the form of Crossed Demand Draft on a nationalized bank in favour of the Registrar of the Tribunal and payable at the main branch of that Bank at the station where the seat of the said Tribunal situate.

(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 preferring the appeal within the prescribed period, extend the said period by a further period of 60 days:

(3) Provided further that no appeal by the employer shall be entertained by a Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75 per cent 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.”

On perusal of the aforesaid provisions it is evident that an aggrieved person can file an Appeal within a period of 60 days from the date of issuance of order / notification. However, the Appellate Tribunal has been authorized to condone further delay of 60 days. Meaning thereby, that in any event after expiry of 120 days from the date of issuance of the order no Appeal can be entertained nor delay can be condoned by the Appellate Tribunal. In view of observation of Hon'ble Supreme Court in paragraph no. 32 of **COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE CASE (Supra)** and paragraph no. 16 of **(2013) 10 SCC 765 (POPAT BAHIRU GOVARDHANE AND OTHERS Versus**

SPECIAL LAND ACQUISITION OFFICER AND ANOTHER)

it is sufficient for coming to the conclusion that in absence of any special power to condone delay beyond 120 days as prescribed under Rule 7 of Rule 1997, the Appellate Tribunal has grossly erred in condoning the delay in filing Appeal and allowing the same. It is true that such restriction may cause hardship or inconvenience to the party but as held this Court has no option but to inference. The Maxim *dura lex sed lex* which means “law is hard but it is the law” stands attracted in such a situation. Accordingly, without going into the merit of the case the court is satisfied that the learned Appellate Tribunal was not justified in entertaining the Appeal after expiry of statutory period of limitation. Accordingly, the Order Dated 24th September 2014 passed in ATA No. 346 (3) of 2014 passed by the Employees Provident Fund Appellate Tribunal, New Delhi is hereby set aside.

So far as the submission of learned counsel for the respondent regarding maintainability of the present writ petition on the ground that the petitioner was not authorized to file the writ petition is concerned, the Court is of the opinion that the Act 1952 has primarily been enacted for the welfare of the employees and to protect the right and interest of the employees, certainly the petitioner is entitled to assail illegal / incorrect order passed by Appellate

Tribunal.

The writ petition stands allowed.

(Rakesh Kumar, J)

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