

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4531 OF 2014

Employees State Insurance Corporation Petitioner

VS

1 State of Maharashtra

2 Pune Mahila Mandal

.... Respondents

Mr. Shailesh S. Pathak for the petitioner.

Mr. V.N. Sagare, AGP for respondent/State.

Mr. A.R. Belge I/by Mr. N. A. Kulkarni for respondent No.2.

**CORAM: ANOOP V. MOHTA AND
G. S. KULKARNI, JJ.**

DATE : August 02, 2016

ORAL JUDGMENT(Per Anoop V. Mohta, J.):

The Petitioner/Corporation - a State within the meaning of Article 12 of the Constitution of India, has filed the present writ petition thereby challenge is made to Notification dated 23 October 2007 by filing the present Petition on 21.01.2014, and after the order passed by the ESI Court, Pune on Application (ESI) No. 17 of 2006 filed by Respondent No.2. After hearing the parties including the Petitioner and considering the issues so raised about the applicability

of the provisions of the Employees State Insurance Act, 1948 (for short, ESI Act) and the subsistence of Notification, the ESI Court held as under :

“1 The Application (ESI) No. 17/2006 is partly allowed.

2 The order passed by the Opponent u/s 45-A on 29.7.2005 for the period 5/96 to 3/99 is partly set aside, and it is declared that the applicant is liable to pay E.S.I contribution of Rs.6002/- only for the period 5/96 to 4/97, and it is further declared that the applicant is not liable to pay E.S.I. Contribution, in view of the exemption granted from 1.5.1997 onwards, till the said exemption is in existence.

3 The Opponent is directed to refund the amount to the applicant with interest as per rules, within two months from today.

4 No order as to costs.”

2 Admittedly, this order remained in tact as there is no averment of the challenge to the same though statutory remedy was available. However, in this Petition a prayer is made for a stay of the said order dated 11.01.2013.

3 The learned counsel appearing for the Petitioner submitted that this is a case where such exemption retrospectively ought not to have been granted in view of objection dated 22.05.2007.

Respondent No.1-the State Government, after considering the provisions, including the objections so raised, has decided to grant exemption and issued Notification on 23.10.2007. The challenge to the power of State to grant exemption, in our view, at the instance of the Petitioner, in view of the present facts and circumstances, at this late stage, is difficult to accept. It is settled that in every matter delay should not be the reason to dismiss the writ petition on the said ground. However, it is also settled that the High Court need to consider facts and circumstances and conduct of the parties before entertaining the delayed writ petition so filed. The law in this regard is settled in *State of Jammu and Kashmir v. R.K. Zalpuri*¹, whereby the Supreme Court re-iterated that the Court should take note of the factual background and must keep in mind the aspect of delay while entertaining the writ petition. The Supreme Court in paras 26, 27 and 28 has observed as under:

“26 In the case at hand, the employee was dismissed from service in the year 1999, but he chose not to avail any departmental remedy. He woke up from his slumber to knock at the doors of the High Court after a lapse of five years. The staleness of the claim remained stale and it could not have been allowed to rise like a phoenix by the writ Court.

1 AIR 2016 SC 3006

27 The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim “Deo gratias” - “thanks to God”.

28 Another aspect needs to be stated. A writ Court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. The present case, need less to emphasise, did not justify adjudication. It deserved to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present.”

4 This is not a case of grave injustice and/or hardship caused to the Petitioner whereby the delay as contended need to be condoned in the writ petition and thereby consider the challenge of Notification of 23.10.2007 after so many years.

5 We have also noted the actual participation of the Petitioner in the proceedings, where the learned Authority considered the rival contentions and passed the order so referred above. The remedy though available is also not exhausted. The challenge to the

Notification now at the instance of the Petitioner, in our view, is not entertainable also on the ground of delay.

6 In the result, the writ petition is dismissed. No costs.

(G. S. KULKARNI, J.)

(ANOOP V. MOHTA, J.)