

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7131 of 2016

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1. Bihar Shiksha Pariyojna Parishad through its State Project Director, Shiksha Bhawan, Saidpur, Rajendra Nagar, Patna.

.... Petitioner/s

Versus

1. The Regional Provident Fund Commissioner, Employee Provident Fund Organization, Regional Office at R-Block, Road No. 6, Bihar Patna.
2. Sheo Shankar Prasad, son of Mr. Shyamlal Prasad, resident of village + Post- Jiradei, P.S.- Jiradei, District- Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Girijish Kumar, Adv.
For Respondent No.1 : Mr. Prashant Sinha, Adv.
For Respondent No.2 : Mr. Abhinav Shrivastava, Adv.
Mr. Raushan, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-06-2017

The petitioner has challenged the order dated 21.03.2016 passed by the Employees Provident Fund Appellate Tribunal, New Delhi (for short 'the Tribunal') in ATA No. 1364(3) of 2015 whereby the Tribunal has dismissed the appeal preferred by the petitioner on the ground of delay. The petitioner has also challenged the order dated 11.06.2013 passed by the Regional Provident Fund Commissioner (C & R), Regional Office, Patna whereby it has been held that the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act') is applicable upon the petitioner establishment. The petitioner has also sought a declaration that 'the Act' is not applicable upon it and has prayed for refund of



the entire amount deposited by it.

2. It is submitted by Mr. Girijesh Kumar, learned counsel for the petitioner that the petitioner is a Society registered under the Societies Registration Act, 1860, which belongs to the class of the establishments, which have been exempted by law issued in the form of Notification issued under Section 16(2) of 'the Act'. He submitted that the petitioner society runs on the fund provided by the Central Government and the State Government and it has no other source of income except grant-in-aid received from the Central and State Government. He submitted that the Central Government vide notification dated 14.05.2010 exempted those establishments, which were being wholly financed by the grants-in-aid received from the Central Government or any State Government or State Governments or partly by the Central Government and partly by one or more State Governments in exercise of powers conferred by sub-section (2) of Section 16 of 'the Act'. He submitted that the Tribunal has erroneously dismissed the appeal filed by the petitioner on the ground of delay. He contended that in view of the order passed by this Court, the Tribunal ought to have decided the case on merits.

3. On the other hand, Mr. Prashant Sinha, learned counsel for the respondent no.1 submitted that the Tribunal has committed no error in dismissing the appeal on the ground of delay. Referring to the



earlier order dated 11.06.201 passed under Section 7-A of 'the Act', which was communicated to the petitioner vide letter dated 12.06.2013, he submitted that Rule 7(2) of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 (for short 'the Rules') provides that any person aggrieved by the notification issued by the Central Government or an order passed by the Central Government or any other authority under 'the Act' may prefer an appeal to the Tribunal within 60 days from the date of issue of notification/order. The proviso to Rule 7(2) provides that if the Tribunal is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, it may extend the period of limitation for a further period of 60 days. He submitted that since the appeal was preferred beyond the period of 120 days from the date of issuance of the order, the Tribunal has rightly dismissed the appeal on the ground of delay. He contended that even on merits, the petitioner has no case. According to him, the notification of the Central Government on which the petitioner is placing reliance is of no help to the case of the petitioner as the same lapsed on 31st March, 2015 itself. He submitted that as per the notifications issued by the Central Government, the Society, which were running mainly on grand-in-aid received from the Central Government or the State Government were exempted from the



purview of 'the Act' subject to the condition that such grant-in-aid do not include any amount for the purpose of meeting the liability of the employees towards employers contribution to the provident fund. However, the condition prescribed by the Central Government for exempting the establishments was not available to the petitioner establishment.

4. Mr. Abhinav Shrivastava, learned counsel appearing for the respondent no.2, submitted that the writ application filed on behalf of the petitioner is devoid of merit. He submitted that in terms of the provisions contained under Regulation 43 of the service conditions of the petitioner society duly framed by the concerned authorities, the employees other than the employees on deputation are entitled to the benefits of provident fund subject to and in accordance with the provisions of the Regulations of the society that may be framed and in this manner those who are employed in the petitioner society, even on contractual basis, are entitled for being extended the benefits of provident fund. He submitted that by letter dated 21.02.2017 issued by the Chief Secretary, Government of Bihar addressed to the Principal Secretary/Secretary of different departments under the Government of Bihar, it was communicated that all those employees, who have not been extended the benefits of 'the Act', will be provided with the benefits of the provisions of 'the



Act’ and, as such, directed for registration of all those employees between January, 2017 and March, 2017 in a special drive for extending them the benefits of ‘the Act’. He submitted that pursuant to the letter issued from the office of the Chief Secretary, Government of Bihar, a letter dated 03.03.2017 was issued by the Director (Administration)-cum-Additional Secretary, Education Department, Government of Bihar to the Directors/Managing Directors of different sections of the Education Department, Government of Bihar including the Director of the petitioner society for registration of all those employees, who have not been extended the benefits of ‘the Act’.

5. In reply, Mr. Girijesh Kumar, learned counsel for the petitioner submitted that the aforementioned letter dated 21.02.2017 issued by the Chief Secretary, Government of Bihar was issued pursuant to the notification of the Central Government to various departments of the State and no specific letter was issued for coverage of the employees of the petitioner society under ‘the Act’.

6. I have heard learned counsel for the parties and perused the record.

7. The facts of the case are not in dispute. The petitioner was brought within the purview of ‘the Act’ with effect from 19.08.1994. It submitted a report on 16.05.1995 on the basis of which



the office of the Regional Provident Fund Commissioner, Bihar issued coverage letter in respect of the petitioner. Thereafter, the petitioner deposited Rs.93,74,765/- as EPF and allied dues till October, 1999. Since it was noticed that the petitioner had disbursed a sum of Rs.5,63,74,738/- as wages/salary to its employees and as such the petitioner was required to deposit Rs.1,32,10,828/- as EPF and allied dues.

8. Accordingly, a proceeding under Section 7-A of 'the Act' was initiated against the petitioner for the period from September, 1994 to August, 2000, but during pendency of the proceeding the petitioner deposited Rs.38,36,063/- against the balance amount of EPF and allied dues. Thereafter, the proceeding under Section 7-A of 'the Act' was concluded vide order dated 30.10.2000. After conclusion of the 7-A proceeding, the petitioner filed a review application under Section 7-B of 'the Act' for review of the order dated 30.10.2000. In the review application, the petitioner admitted that it is regularly making payment of contributions with Employees Provident Fund Organization. However, it raised an issue that the Authority under Section 7-A of 'the Act' has wrongly included the employees working on deputation as well as Sakhis, Sahelis, Sahyognis and Balmitras under the purview of the assessment. The review application was dismissed



vide order dated 30.07.2003. Thereafter, the petitioner filed a writ application before this Court bearing C.W.J.C. No. 17 of 2005 challenging the order passed by the Authority under Section 7-A of 'the Act' as well as contending that the petitioner does not fall within the ambit of 'the Act' in view of provisions of Section 16(2) of 'the Act'. The said writ application was disposed of vide order dated 05.05.2011 with an observation that the order passed by the Authority under Section 7-A of 'the Act' is appealable before the EPF Appellate Tribunal, New Delhi. The petitioner challenged the order passed by the learned Single Judge in intra-court appeal vide LPA No. 1112 of 2011, which was disposed of by the Division Bench with an observation that the petitioner can file its objection regarding its liability under Section 7-A of 'the Act'. Pursuant to the aforementioned order passed by the Division Bench in the LPA, the petitioner filed a detailed representation and challenged the applicability of 'the Act' on the basis of a notification issued by the Ministry of Labour and Employment under sub-section (2) of Section 16 of 'the Act' whereby certain establishments registered under the Societies Registration Act, 1860 or any other law for the time being in force in any State relating to the registration of Society, which were being run mainly on grant-in-aid received from the Central Government or the State Government were exempted from the



purview of 'the Act'.

9. The Authority under Section 7-A of 'the Act', on consideration of the submissions made by the petitioner as well as the departmental representative, framed two issues for adjudication, which are as under :-

- (i) Whether the establishment is barred by the principle of estoppel and acquiescence to raise the issue of exemption after almost fourteen years, particularly when it made the compliance with the provisions of the Act and a right has been vested in favour of such employees for whom it has deposited contribution as well as submitted returns for these years to receive the benefit of EPF&MP Act, 1952 ?
- (ii) Whether the establishment can take the advantage of notification issued by the Central Government ?

10. The Authority under Section 7-A of 'the Act' decided the first issue in affirmative as the petitioner deposited the contribution during all these years and the contribution did not only include the employer's share rather it also included the deductions made from the salary of individual employee, which were deposited in the account of the employees of the petitioner and the amount had not only been credited in the provident fund account rather it were also credited in their pension account. The Authority under 'the Act' came to the conclusion that since a right had been vested in favour of the employees to get the benefit of pension and, thus, the petitioner was barred by the principle of estoppel and acquiescence to raise the



issue of exemption after almost fourteen years. The second issue was decided by the Authority in negative as the notifications, which were being relied upon by the petitioner did not grant total exemption rather exemption was subject to the condition that the grant-in-aid would not include any amount for the purpose of meeting the liability of the employer towards the employer's contribution to the provident fund. The Authority under Section 7-A of 'the Act' held that it is nowhere stipulated in the said letter or any other letter annexed by the petitioner that grant-in-aid do not include any amount for the purpose of meeting the liability of its employees towards employer's contribution to the provident fund account.

11. Since the Authority under Section 7-A of 'the Act' vide its order dated 11.06.2013 had held that the petitioner was required to comply with the provisions of 'the Act' and further directed the petitioner to deposit due amount against it, the petitioner challenged the aforementioned order dated 11.06.2013 before this Court vide C.W.J.C. No. 19300 of 2013. After hearing the parties, the writ application was disposed of vide order dated 21.09.2015 with liberty to the petitioner to avail statutory remedy. While disposing of the writ application, the Court observed that the period consumed by the petitioner since 23.09.2013 till the date of the order i.e. 21.09.2015 shall be excluded while considering the limitation matter.



12. The order under Section 7-A of 'the Act' was passed on 11.06.2013 and was communicated to the petitioner vide letter issued on 12.06.2013. It is not disputed that the petitioner preferred the writ application, which was registered on 23.09.2013 i.e. on 101st day from the date of issuance of the order by the authority under Section 7-A of 'the Act'. The writ application was disposed of on 21.09.2015 with an observation that the period consumed by the petitioner since 23.09.2013 till 21.09.2015 shall be excluded while considering the limitation matter.

13. Hence, it is evident that this Court had excluded the period of limitation from 23.09.2013 to 21.09.2015 only.

14. At this stage, it is apt to extract Rule 7(2) of 'the Rules', which deals with power to condone delay in filing appeal against the order passed by the Authority under 'the Act' herein :-

“7(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.”

15. It would be manifest that Rule 7(2) of 'the Rules' prescribes the period of 60 days from the date of issuance of



notification/order to prefer the appeal to the Tribunal whereas the proviso to Rule 7(2) of 'the Rules' empowers the Tribunal to extend a further period of 60 days on being satisfied that the petitioner was prevented from sufficient cause from preferring the appeal within the prescribed period.

16. Evidently, in the present case the petitioner had 19 days period for filing the appeal before the Tribunal as the writ application was filed on 101st day of issuance of the order. However, the petitioner filed the appeal before the Appellate Tribunal on 24.11.2015 and that too without any limitation petition and the limitation petition was filed on 12.01.2016. Thus, there is no dispute to the fact that the appeal was filed beyond the period of 120 days from the date of issuance of the order. I am of the view that the Tribunal was right in dismissing the appeal as beyond limitation.

17. In *Commissioner of Customs and Central Excise Vs. Hongo India Private Limited & Anr. [(2009) 5 SC 791]* the question that fell for determination before the Supreme Court was "***whether the High Court has power to condone the delay in presentation of the reference application under unamended Section 35-H(1) of the Central Excise Act, 1944 beyond the prescribed period by applying Section 5 of the Limitation Act, 1963***". After elaborate discussion over the issue, the Supreme Court held that whenever statutory



provision is made to file an appeal within a particular period then in such cases the provisions of the Limitation Act is not made applicable.

18. In *M/s Patel Brothers Vs. State of Assam & Ors. [AIR 2017 SC 383]*, the Supreme Court held that that the court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking Section 5 of the Limitation Act, 1963 so as to supplement the provisions of the VAT Act which excludes the operation of Section 5 by necessary implications. The Court observed in para 19 as under :-

“19. The High Court has rightly pointed out the well settled principle of law that “the court cannot interpret the statute the way they have developed the common law ‘which in a constitutional sense means judicially developed equity’. In abrogating or modifying a rule of the common law the court exercises the same power of creation that built up the common law through its existence by the judges of the past. The court can exercise no such power in respect of statute, therefore, in the task of interpreting and applying a statute, Judges have to be conscious that in the end the statute is the master not the servant of the judgment and no judge has a choice between implementing it and disobeying it.” What, therefore, follows is that the court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking Section 5 of the Limitation Act, 1963 so as to supplement the provisions of the VAT Act which excludes the operation of Section 5 by necessary implications.”

19. Thus, in view of the fact that the limitation is prescribed



by specific Rule 7(2) of 'the Rules' as also in view of the ratio laid down by the Supreme Court in *Commissioner of Customs and Central Excise Vs. Hongo India Private Limited & Anr.* (Supra) and *M/s Patel Brothers Vs. State of Assam & Ors.* (Supra), condonation of delay has also to be considered within the purview of the statutory provision and the provisions of the Limitation Act cannot be imported or made applicable into 'the Act' and 'the Rules'. In that view of the matter, no illegality can be found with the order impugned passed by the Tribunal.

20. So far as the contention of the petitioner in respect of its exemption from operation of 'the Act' in terms of sub-section (2) of Section 16 of 'the Act' is concerned, I think it appropriate to extract the statutory order issued vide S.O. 1431 dated 14th May, 2010 published in the Gazette of India so far as it is relevant for the present case herein :-

“S.O. 1431 In exercise of the powers conferred by sub-section (2) of section 16 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government, being of opinion that having regard to the circumstances of certain establishments registered under the Societies Registration Act, 1860 (21 of 1860), or under any other corresponding law for the time being in force it is necessary and expedient so to do, hereby exempts the following class of establishments from the operation of the said Act for a period upto the 31st March, 2015 with effect from the 1st April, 2010.

(a) those being wholly financed by the grants-



in-aid received from the Central Government or any State Government or State Governments, or partly by the Central Government and partly by one or more State Governments subject to the condition that grants-in-aid does not include any amount for the purpose of meeting the liability of the employer towards the employers' contribution to the provident fund; or

(b) XXX XXX XXX”

21. From a perusal of the aforementioned statutory order, it would be manifest that the exemption was allowed under Section 16(2) of ‘the Act’ by the Central Government only to a class of establishment fulfilling the terms and conditions as specified in the aforementioned notification only upto 31.03.2015. Nothing has been brought to the notice of this Court by the learned counsel for the petitioner to show that the Central Government has decided to extend the grant of exemption to such establishments and consequently all such establishments have been granted exemption after 31.03.2015. Thus, it would be evident that the Central Government has decided not to extend the grant of exemption to such establishments after 31.03.2015 and consequently all such establishments would come under the purview of ‘the Act’ with effect from 01.04.2015. In that view of the matter, even on the ground of exemption, the case of the petitioner cannot succeed.

22. The contention of the petitioner that ‘the Act’ is not applicable to it and therefore the amount deposited by it in the fund



under 'the Act' be ordered to be refunded is without merit. It is not disputed that the coverage letter to the petitioner was issued to the petitioner under 'the Act' with effect from 19.08.1994 on the basis of a report submitted by the petitioner itself. Since then the employees of the petitioner are being extended the benefits of provident fund. Regulation 43 of the service regulation of the petitioner society relating to its employees would make it evident that its employees have been extended with the benefits of provident fund. It reads as under :-

“43. Provident Fund :- An employee other than an employee on deputation shall be entitled to the benefits of Provident Fund of the Parishad subject to and in accordance with the provisions of the regulations of BSPP that may be framed.”

23. Furthermore, the notifications issued under Section 16(2) of 'the Act' on the strength of which the petitioner has built up its case for exemption from the operation of 'the Act' are of no help to the petitioner even otherwise. They do not grant total exemption for the period prior to 31.03.2015. The exemption was granted only to those establishments, which were fully financed by the grants-in-aid of the Government [Central Government and/or State Government(s)] subject to the condition that such grants did not include any amount for the purpose of meeting the liability of the employer towards the employer's contribution to provident fund. Since the petitioner failed



to produce any evidence that the grants-in-aid being received by it did not include any amount towards employer’s contribution to the provident fund account, the Authority and the Tribunal have rightly rejected its claim for exemption from the applicability of ‘the Act’.

24. Having regard to the discussions made above, I do not find any merit in this writ application. It is dismissed accordingly.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29-06-2017
Transmission Date	

