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

Date of Decision:- 17.01.2020

+ W.P.(C) 4983/2018

JHARKHAND URJA VIKAS NIGAM LIMITED, RANCHI

..... Petitioner

Through: Mr.Aabhas Parimal with
Mr.Himanshu Shekhar & Mr.Jamnesh
Kumar, Advs.

versus

REGIONAL PROVIDENT FUND COMMISSIONER, RANCHI

..... Respondent

Through: Ms.Santawana, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the employer assails the order dated 15.02.2017 passed by the Employees Provident Fund Tribunal in ATA No.69(18)/2017. Under the impugned order, the Tribunal has rejected the petitioner's application for condonation of delay and, resultantly, its appeal assailing the assessment order passed by the respondent under Section 7A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 ('the EPF Act' for short) on 09.06.2014 as also the consequential order passed under Section 14B of the EPF Act on 20.11.2014, for being time barred.

2. That the petitioner establishment was registered with the Employees Provident Fund Organisation on 04.08.2013 but the said

registration was directed to be effective retrospectively, i.e., from July 2007. Since the petitioner failed to make the requisite deposit on time, despite reminders, the respondent passed an order dated 09.06.2014 under Section 7A of the EPF Act, holding the petitioner liable to pay a sum of Rs.1,02,08,850/- towards any balance outstanding dues of the provident fund. Consequently, the respondent passed another order on 20.11.2014, this time under Section 14B of the EPF Act, levying interest and damages totalling a sum of Rs.1,26,53,102/- on the petitioner. It appears that both the aforesaid amounts were immediately recovered from the petitioner's account at Allahabad Bank, Dhurwa, Ranchi.

3. Two years later, i.e., on 27.01.2017, the petitioner preferred an appeal under Section 7-I of the EPF Act challenging the orders dated 09.06.2014 and 20.11.2014. Along with its appeal, the petitioner also preferred an application under Rule 7 of the Employees Provident Fund Appellate Tribunal Rules, 1997 ('EPFAT Rules' for short) seeking condonation of delay in filing the appeal which was required to be filed within sixty days, in terms of the aforesaid Rule 7.

4. However, the petitioner's application and appeal came to be rejected by the Tribunal vide its impugned order dated 15.02.2017 by observing that the plea of administrative reason furnished as a ground for seeking condonation of delay was not sufficient for condoning such a long delay of more than two years.

5. The present writ petition has been filed by the petitioner on 06.02.2018 assailing the impugned order after a further delay of one year.

6. In support of the petition, learned counsel for the petitioner submits that the Tribunal has gravely erred in rejecting the petitioner's appeal without even examining the merits of its case. He submits that the Tribunal failed to appreciate that the petitioner is a public sector undertaking which could not file an appeal without obtaining the requisite approvals and therefore, the petitioner's right to demonstrate the illegality of the orders passed by the respondent could not be denied on the ground of technicalities. He therefore, prays that the writ petition be allowed and the matter be remanded back to the Tribunal for consideration on merits.

7. On the other hand, learned counsel for the respondent vehemently opposes the writ petition. She submits that not only had the petitioner filed the appeal after an inordinate delay of over two years, but it had also failed to give any explanation whatsoever in its application for condonation of delay and therefore, the Tribunal was justified in rejecting the same. She submits that even before this Court, the petitioner has failed to give any explanation for filing the appeal belatedly or for approaching this Court after a further delay of one year. She therefore, prays that the writ petition be dismissed.

8. I have considered the submissions of the learned counsel for the parties and with their assistance perused the record.

9. Before dealing with the rival contentions of the parties, it may be appropriate to notice that Rule 7(2) of the EPFAT Rules provides that an appeal challenging any order passed by the Central Government under the provisions of the EPF Act must be preferred within sixty days from the issuance of the said order. The said

provision also empowers the Tribunal to extend this period by a further period of sixty days in case it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period of sixty days. To that end, it is imperative for the party seeking condonation of delay to set out the reasons which prevented it from filing the appeal within the period of limitation prescribed in the statute itself. In the present case, the Tribunal did not find any reason to condone the inordinate delay of two years in filing the appeal and therefore, rejected the same in the following terms:-

“1. Present appeal filed on behalf of appellant u/s 7-1 of the EPF & MP Act, 1952 (the Act) challenging order dated 09.06.2014 and 20.11.2014 passed by respondent u/s 7-A of the Act. Along with appeal, application for condonation of delay also filed.

2. Heard on application for condonation of delay.

3. As per Rule 7(2) of EPFAT (Procedures) Rule 1997, Appeal is to be filed within 60 days of order. Appellant filed present appeal on 27.01.2017, after a period of more than 02 years of passing of impugned order. The grounds for seeking condonation of delay that due to administrative reason appeal could not be filed within statutory period, is not cogent ground for seeking condonation of such long delay. Present appeal is highly time barred hence application for condonation of delay and appeal filed by appellant dismissed. File be consigned to the record room after due compliance.”

10. Since the short question before this Court is as to whether the Tribunal was justified in rejecting the petitioner's application for condonation of delay and, consequently, its appeal, it would be apposite to reproduce the said application in extenso:-

"1. That the Instant Appeal has been filed by the Appellant against the order dated 09.06.2014 passed by Regional Provident Fund Commissioner, Ranchi whereby the liability to the tune of Rs. 1,02,08,850/- has been imposed upon the appellant and order dated 20/11 /2014 whereby an additional I amount of Rs. 1,26,53,102/- towards (interest ,Rs.44,80,200/- + damages 81,72,902/-) has been ordered on account of default in payment of PF Contribution.

2. The necessary facts have been fully set out in the accompanying Appeal and the same are not being reproduced for the sake of brevity. The Appellant crave leave of this Hon'ble Tribunal to rely upon the same at the time of hearing of this application.

3. That the order passed by Respondent is without application of mind and without averting to various contentions raised in the memo of appeal and without referring and looking to the documents. The Respondent has passed cryptic and cudgel order in cursory manner.

4. That a delay of days has occurred in filing the appeal because of administrative and other reasons. The details showing reason for delay due to administrative reasons would, be furnished during the course of hearing.

5. That the Regional Provident Fund Commissioner Tribunal since has ignored vital aspects of law and has not taken into consideration important precedents and provisions of the Act, non condonation of delay would have far reaching effect not only on the Provident Fund collection for the past period but, also on the question of law.

6. That it is humbly submitted that once the technicality and the substantive law is pitted against each other, tilt must be towards substantive justice.

7. The appellant has a good case on merit and important issue has been raised having larger repercussions as default in paying PF Contribution has been imposed which could be waived off under the Act.

8. That the intention of the appellant is not to adopt dilatory tactics, however, despite best of the efforts when the appeals could not be filed within the time; considering the details made in the application and further affidavit, the Court may condone the delay.

9. Therefore, this Honble Tribunal may condone the delay in filing of the appeal and take a liberal view in the matter so as to subserve the cause of justice by deciding the appeal on merits.

10. That the delay in filing the appeal is neither intentional nor deliberate.

11. That the instant application is being moved bonafide and in the interest of justice.”

11. The petitioner's averments in its application leaves no manner of doubt that the petitioner was not only utterly negligent but it also acted most casually without giving any reason whatsoever for seeking condonation of such a huge period of delay of about 850 days delay viz. order dated 09.06.2014 and of 700 days viz. the order dated 20.11.2014. Interestingly, even the writ petition is conspicuously silent on the reasons which prevented the petitioner from filing the appeal within the statutorily prescribed time.

12. Undoubtedly, when the delay is *bona fide*, and the party concerned has acted diligently, the Courts must endeavour to decide the matter on merits but when the party itself fails to give any justifiable reason whatsoever for the delay, the Courts ought not to come to the aid of such a party.

13. In this regard, reference may be made to the decision in ***Basawaraj vs. Land Acquisition Officer*** AIR 2014 SC 746, where the

Supreme Court held as under:-

“12. 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. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” 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.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:

“605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510] , Rajender Singh v. Santa Singh [(1973) 2 SCC 705 : AIR 1973 SC 2537] and Pundlik Jalam Patil v. Jalgaon Medium Project [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907] .)

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.” (emphasis supplied)

14. When the facts of the present case are considered in the light of the aforesaid decision of the Supreme Court, I am unable to persuade myself to differ with the findings of the Tribunal, there is absolutely no infirmity or perversity in the impugned order.

15. The writ petition, being meritless, is dismissed.

JANUARY 17, 2020

gm

REKHA PALLI, J