

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 20721 of 2021

M/s. C.D. Steel Pvt. Ltd. & Ors.

Vs.

The Assistant Provident Fund Commissioner, Regional Office & Ors.

For the Petitioners:

Mr. Amarnath Sen, Adv.
Mr. Malay Dhar, Adv.,
Mr. P.K. Ghosh, Adv.,
Mr. Amit Bikram Mahata, Adv.,

For the P.F. Authorities:

Mr. Anil Kumar Gupta, Adv.,

Hearing Concluded on:

02.05.2022

Date:

13.05.2022

SUVRA GHOSH, J. :-

1. The order of the Central Government Industrial Tribunal, Kolkata in Appeal No. EPF-19 of 2019 passed on 20th September, 2019 dismissing the appeal preferred by the petitioners against an order under section 14B and 7Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 passed on 7th May, 2018 is under challenge in the writ petition.
2. It is submitted on behalf of the petitioners that proceeding under section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 was initiated against the petitioner company by the first respondent for alleged delayed payment of provident fund contribution for the period 1st

April, 1996 to 31st December, 2013. The authorised representative of the petitioner company participated in the proceedings and submitted before the authority that though the company's business closed down in 2008, the company somehow managed to deposit the contribution for the entire period in question as demanded by the provident fund authority and is not a defaulter. The company also prayed for waiver of damages under section 14B of the Act of 1952 as claimed by the provident fund authority. The proceeding was disposed of by an order dated 7th May, 2018 determining damages payable by the petitioner company under section 14B of the Act to the tune of Rs. 12,02,967/- and penalty payable under section 7Q of the Act to the tune of Rs. 18,11,898/-. The petitioner company preferred an appeal against the said order before the Employees' Provident Fund Organisation, Ministry of Labour and Employment, Government of India which is pending. Despite pendency of the appeal, the provident fund authorities took steps for recovery of the amount from the petitioner by issuing notice upon the latter. The petitioners filed an application under Article 226 of the Constitution before this Court, being W.P. No. 9729(W) of 2019 challenging the order dated 7th May, 2018 passed by the Assistant Provident Fund Commissioner, Regional Office, Howrah and by an order dated 8th July, 2019, this Court directed the petitioners to file an appeal before the Tribunal within 14 days from the date of order and also directed the Tribunal to consider the application for condonation of delay in a liberal manner keeping in mind the principles of Rule 21 of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997.

3. It is further contended that in compliance with the said order the petitioners filed an appeal before the Central Government Industrial Tribunal at Kolkata being Appeal No. EPF-19 of 2019 under section 7-I of the Act of 1952 and the Learned Tribunal, by an order dated 20th September, 2019 dismissed the appeal on the ground of limitation.
4. Learned counsel for the petitioners has placed reliance upon authorities in Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper & Another v/s. Excise and Taxation Officer, Sunder Nagar/Assessing Authority in Civil Appeal No. 8278 of 2019, Mukri Gopalan v/s. Cheppilat Puthanpurayil Aboobacker reported in (1995) 5 Supreme Court Cases 5 and P. Sarathy v/s. State Bank of India reported in (2000) 5 Supreme Court Cases 355 and has submitted that the provisions of Section 14(1) of the Limitation Act, 1963 is applicable in this case as the petitioners initially preferred the appeal before a wrong forum and as such, the period of time from the date of institution of the appeal which is still pending should be excluded for computing the period of limitation for filing the appeal before the Central Government Administrative Tribunal. According to the learned counsel, the Tribunal has ample jurisdiction to condone the delay in filing the appeal by invoking the provisions under section 5 and section 29(2) of the Limitation Act, moreso, as the provisions of section 29(2) of the Limitation Act has not been expressly excluded from the provisions of Rule 7(2) of the Rules of 1997.
5. Per contra, learned counsel for the respondent authorities, at the outset, has challenged the maintainability of the writ petition on the ground that an

order under section 14B of the Act is appealable under section 7-I of the Act of 1952 and this Court has no jurisdiction to entertain the writ petition.

6. On merits, learned counsel has drawn the attention of this Court to the authorities in Assistant Regional Provident Fund Commissioner, Meerut and Ors. v/s. Employees Provident fund Appellate Tribunal reported in 2005 (83) DRJ 647 (DB) and Commissioner of Customs and Central Excise v/s. Hongo India Private Limited and Another reported in (2009) 5 Supreme Court Cases 791 and has submitted that when a prescribed period of limitation is given by the legislature in the Act itself, the Tribunal has no authority to apply section 5 of the Limitation Act for condonation of delay or travel beyond the provisions of the statute itself.
7. In reply, learned counsel for the petitioners has submitted that the authorities relied upon by the respondents deal with fiscal statute which ought to be strictly interpreted whereas the Act of 1952 is a beneficial legislation which calls for lenient interpretation. The authorities do not deal with Rule 21 of the Tribunal (Procedure) Rules, 1997.
8. At the outset, the respondents have challenged the maintainability of the writ petition on the ground that alternative efficacious remedy was available to the petitioners under section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
9. Record reveals that pursuant to direction of this Court passed on 8th July, 2019 in W.P. 9729 (W) of 2019, the petitioners preferred an appeal under section 7-I of the Act of 1952 before the Central Government Industrial

Tribunal which was dismissed on the ground that the appeal was barred by limitation, by an order dated 20th September, 2019. Therefore the petitioners had in fact preferred an appeal before the Tribunal under section 7-I of the Act and have approached this Court in the writ petition against the order of dismissal. And such, the writ petition has not been directed against the order passed under section 14B/7Q of the Act. In the result, the writ petition cannot be dismissed on the issue of maintainability on that score.

10. On merits, the petitioners are aggrieved by the order of dismissal passed by the Tribunal holding the appeal to be time barred. The order under section 14B/7Q of the Act of 1952 was passed on 7th May, 2018 and the appeal was filed on 17th July, 2019.

11. In this context, it shall be useful to reproduce Rule 7(2) of the Tribunal (Procedure) Rules, 1997.

“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:”

12. So ordinarily the appeal before the Tribunal ought to have been filed within 60 days from the date of order and the said period could be extended by the Tribunal by another 60 days if it was satisfied with the appellant was prevented from sufficient cause from preferring the appeal within the prescribed period.

13. Record reveals that the order dated 7th May, 2018 was challenged by the petitioners before the Employees Provident Funds Organisation by a representation submitted on 21st May, 2018. It is not in dispute that the representation is still pending before the concerned authority.

14. It is pertinent to refer to section 14(2) of the Limitation Act, 1963 which is set out:-

“14(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.”

15. In interpreting the term “Court’ as stated in the said provision, the Hon’ble Supreme Court, in the authority in P. Sarathy (supra) has observed that the term “Court” is not necessarily the “Civil Court” and any authority or Tribunal having the trappings of a Court would be a “Court” within the meaning of this section.

16. In the case in hand, the authority before which the petition filed by the petitioners is pending, therefore, falls under the definition of “Court” in terms of section 14(2) of the Act of 1963. The petitioners having proceeded with the matter in good faith before the authority within the statutory period of time, are protected under section 14 of the Act of 1963. The petition dated 21st May, 2018 not being disposed of till date, the subsequent appeal preferred by the petitioners before the Tribunal within 14 days from the date of order passed by this Court, in compliance with the direction of the Court, cannot be said to be barred by limitation. In a case where the proceeding suffers from defect of jurisdiction or cannot be entertained due to other cause of like nature, the period of pendency of such proceedings shall be excluded in computing the period of limitation in filing the appeal before the Tribunal. In this case, as the proceeding is still pending, the appeal filed by the petitioners before the Tribunal cannot be said to be barred by limitation.

17. Bar to the Tribunal to condone the delay beyond the period prescribed under Rule 7(2) of the Rules of 1997 and applicability of section 29(2) of the Act of 1963 have been strenuously argued by learned counsels for both the parties. Placing reliance on the authority in Commissioner of Customs and Central Excise (supra), learned counsel for the respondents has submitted that in absence of any clause condoning the delay in filing an application under a Special Act, there is complete exclusion of section 5 of the Limitation Act and the interpretation of limitation given in the Special Act cannot be diluted by the Court.

18. In *Superintending Engineer/Dehar Power House (supra)*, the Hon'ble Supreme Court has observed that because of the provisions of the Central Excise Act, it was held that the time limit prescribed for making a reference to the High Court was absolute and unextendable by the Court under section 5 of the Limitation Act.
19. The Excise Act being a fiscal statute cannot be equated with the Act of 1952 which is a beneficial legislation and should be dealt with leniently.
20. At this juncture, reference to section 29(2) of the Limitation Act, 1963 may be relevant.

“29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24(inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.”

21. In other words, the provisions of the Limitation Act shall apply to any suit, appeal or application under any special or local law to the extent to which they are not expressly excluded by such law. This proposition of law has been endorsed by the Hon'ble Supreme Court in the authorities in *Superintending Engineer/Dehar Power House (supra)* and *Mukri Gopalan (supra)*. In this case, there being no express exclusion of the Limitation Act

in the Rules of 1997, the proceeding will attract section 29(2) of the Limitation Act and consequently section 5 of the Limitation Act shall apply to the proceeding before the Tribunal. The Tribunal, therefore, has the authority to invoke section 5 of the Limitation Act to condone the delay, if at all, in preferring the appeal.

22. Even otherwise, in view of the discussion made hereinabove, the appeal cannot be said to be barred by limitation and the Tribunal ought to decide the appeal on merits.

23. In the result, the writ petition succeeds.

24. The order impugned dated 20th September, 2019 passed by the Central Government Industrial Tribunal, Kolkata is set aside.

25. The Central Government Industrial Tribunal is directed to deal with the appeal on merits in accordance with law.

26. The writ petition being WPA 20721 of 2021 is allowed.

27. There shall however be no order as to costs.

28. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)