AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9921 OF 2022

Alandi Nagarparishad, Alandi Devachi …Petitioner

V/s.

Union of India, through the Ministry of Labour and Employment & Ors. …Respondents

Mr. Nitin B. Borkar for the petitioner.

Ms. Shehnaz V. Bharucha with Mr. Ashutosh Mishra i/by Mr. A. A. Ansari for respondent no. 1-Union of India.

Mr. Vijay Ghedia i/by Mr. Rakesh Sawant for respondent nos. 2 and 3.

CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.

DATE: AUGUST 26, 2022

P.C.:

1. This is a writ petition at the instance of Alandi Nagarparishad, which is a municipal council governed by the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereafter "the 1965 Act", for short).

2. By instituting this writ petition on 18th January, 2022, the petitioner seeks orders from this Court to set aside (i) notification dated 8th January, 2011 (Exhibit "A"); (ii) letter of coverage dated 9th August, 2012 (Exhibit "B"); (iii) order dated 26th November, 2018 (Exhibit "E"); (iv) order dated 21st

January, 2019 (Exhibit "F"); and (v) order dated 13th February 2019 (Exhibit "H").

3. Vide notification dated 8th January 2011 issued by the Ministry of Labour & Employment, Government of India in exercise of powers conferred by clauses (b) and (c) of sub-section (3) of section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereafter "the EPF Act" for short), the Government has specified that Municipal Councils and Municipal Corporations constituted under sub-clauses (b) and (c) of clause (1) of Article 243Q of the Constitution of India, employing twenty (20) or more persons, would be the class of establishments to which the EPF Act would apply with effect from the date of publication of such notification in the official gazette. The gazette is of even date, i.e., 8th January 2011.

4. By an order dated 9th August 2012 issued by the Regional Provident Fund Commissioner, Regional Office, Pune, the petitioner was allotted code number. This order purported to extend coverage of the EPF Act to the employees of the petitioner. On 17th September 2013, summons was issued by the Assistant Provident Fund Commissioner, for the Regional Provident Fund Commissioner, Pune under section 7-A of the EPF Act calling upon the Chief Officer of the petitioner to appear in person to give evidence and to produce all relevant records including those mentioned therein for conducting inquiry and determining the amount due from the petitioner.

5. On 26th November, 2018, an order was passed under section 7A of the EPF Act by the Assistant Provident Fund

Commissioner ordering the petitioner to pay a sum of Rs. 58,79,888/- (Fifty-eight lakh seventy-nine thousand eight hundred eighty-eight only) towards dues on account of employees' provident fund and allied dues for the period from January 2011 to March 2014. It was clarified that failure to make payment of the dues would entail interest under section 7Q and damages under section 14B of the EPF Act.

6. Aggrieved by the order dated 26th November 2018, the petitioner applied for review on 11th January 2019 under section 7-B(1) of the EPF Act. Such application for review was rejected as time-barred by an order dated 25th January 2019. This order was followed by an order dated 13th February 2019 rejecting an application of the petitioner dated 28th January 2019 for the reasons recorded therein.

7. These are in brief the notification/orders which are impugned in the writ petition.

8. It is the admitted case of the petitioner that the amount of Rs.58,79,888/- (Fifty-eight lakh seventy-nine thousand eight hundred eighty-eight only) has already been recovered from the petitioner in the years 2019 and 2021. Resting on the grounds urged in support of the writ petition, there is a further prayer of the petitioner seeking refund of such amount recovered by the respondents from the petitioner together with interest.

9. Section 7-I of the EPF Act provides a remedy of appeal to any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, within such time and in such manner as may be prescribed to the Tribunal constituted by the Central Government.

10. In terms of the rulemaking power conferred by the EPF Act, the Central Government has framed the Tribunal (Procedure) Rules, 1997.

11. Sub-rule (2) of rule 7 provides that an appeal may be filed within sixty (60) days from the date of issue of notification/order, subject to the condition that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from approaching the Tribunal within the prescribed limit, extend the said period by a further period of sixty (60) days.

12. Having regard to the aforesaid provision, it seems to be clear that even the Tribunal does not have the power to condone delay in presentation of an appeal which is carried to it beyond a hundred and twenty (120) days of the impugned notification/order.

13. From the factual narration as above above, it would appear that the petitioner has approached this Court more than a decade after the impugned notification/coverage order and more than three (3) years after the orders passed under sections 7A and 7B of the said Act.

14. It is true that there is no period of limitation prescribed for invoking the writ jurisdiction of a High Court under Article

226 of the Constitution of India. However, the law is well settled that the approach must be with utmost expedition and even if there is delay in approaching the Court, which may appear to be gross, such delay can only be over-looked by the Court if sufficient and reasonable explanation is provided therefor. In the present case, we have noted that there is no explanation for the delay.

15. However, assuming that the delay in approaching the Court was sought to be explained, it would need consideration as to whether the petitioner could have urged the writ court to exercise its discretion even after the period prescribed for presenting appeals against the impugned notification/orders has expired. We may, in this connection, profitably refer to the decision of the Supreme Court reported in AIR 1961 SC 1506 (**A. V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani & Anr**.). It has been held there that if a petitioner has disabled himself from availing himself the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Article 226 to exercise its discretion in his favour. The sequitur of the aforesaid statement of law, as we read and understand it, is that the delay caused by one’s own conduct in approaching the writ court after expiry of the prescribed period for filing an appeal in terms of the relevant statute would be an absolute bar for entertaining this writ petition.

16. That apart, there is one other aspect which needs consideration. The prayer for refund made by the petitioner is nothing but a claim for money. If indeed the petitioner were entitled to refund on some valid ground, the Court ought to have been approached within the period prescribed by the Limitation Act for instituting an action before the civil court for recovery of money paid by mistake. Paragraph 21 of the decision of the Supreme Court reported in (1964) 6 SCR 261 **(State of Madhya Pradesh vs. Bhailal Bhai)** throws sufficient light to deal with such a situation in the following words:

> "21. *** Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956 the delay in making these applications should be considered unreasonable. If, on the other hand, as Mr Andley seems to argue, that the mistake discovered much later this would be a controversial fact which cannot conveniently be decided in proceedings. In either view of the matter we are of opinion the orders for refund made by the High Court in these seven cases cannot be sustained."

17. Having regard to the aforesaid dicta, we are unable to look into the merits of the writ petition.

18. Learned counsel for the petitioner laments that public money is involved and hence we ought not to throw out the writ petition at the threshold. If a private employer had approached us in similar circumstances after similar delay, we would certainly not have come to his aid having regard to the objects that the EPF Act seeks to achieve. There cannot be any distinction in treatment when a public employer approaches us.

19. There being gross delay in invoking the writ jurisdiction, we have no other option but to dismiss the writ petition. Ordered accordingly.

20. No costs.

(M. S. KARNIK, J.) **(CHIEF JUSTICE)**

PRAVIN DASHARATH PANDIT

Digitally signed by PRAVIN DASHARATH PANDIT
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