
(2025) 11 DEL CK 1888

In the Delhi High Court

Case No : Writ Petition (C) No.5039 Of 2018, Civil Miscellaneous Application
Nos. 31423 Of 2018 & 2526 Of 2020

M/s Sanghvi Writing Points Pvt. Ltd.

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 11-11-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 7Q
Limitation Act, 1963 — Section 5, 14, 14B

Citation : (2025) 11 DEL CK 1888

Hon'ble Judges : Chandrasekharan Sudha, J

Bench : Single Bench

Advocate : Anushree Kapadia, Shivank Saran Singh, Vinod Tiwari, Rajesh Kumar, Manish Mohan

Final Decision : Dismissed

Judgement

Chandrasekharan Sudha, J.

1. This writ petition under Article 226 of the Constitution of India has been filed challenging Annexure A1 order dated 16.04.2010 of the Employees' Provident Fund Appellate Tribunal, New Delhi (the Tribunal) in ATA No. 553(5) of 2009, whereby the order dated 18.05.2009 passed by respondent no. 3 directing the petitioner to pay damages amounting to ₹ 23,56,669/- for the delay in payment of provident fund and administrative charges for the period from May 1983 to February 2006 in addition to an amount of ₹ 4,82,496/- towards interest under Section 7Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (The Act) was confirmed.

2. According to the writ petitioner/ a Company, engaged in the manufacture of different types of pens, at one point of time, they had about 140 workers in its employment. The petitioner had been paying all its dues under the Act till March 2002. However, from the year 2002 onwards, due to managerial problems, the

Company had been incurring huge losses due to which some of the dues were remitted belatedly. On 31.07.2001, the petitioner filed a reference before the Board for Industrial and Financial Reconstruction (the BIFR) being case No. 316/2000, pursuant to which the petitioner was declared a Sick Industrial Company. On 01.03.2006, the petitioner sought waiver/reduction in respect of the damages that became payable under the Act. However, there was no response from the respondents. The petitioner on 28.08.2006 received a show cause notice from respondents no. 3, as per which the petitioner was directed to pay a sum of ₹ 7,84,881/- under Section 7Q of the Act and damages to the tune of ₹ 23,56,669/- under Section 14B of the Act for the period starting from May 1983 to February 2006. Such a show cause notice is contrary to the provisions of law. On 13.09.2006, the petitioner replied stating that the Company had been declared a Sick Unit by the BIFR and that it had addressed BIFR and the respondents seeking a waiver of damages. Thereafter, several communications took place between the petitioner and the respondents pertaining to waiver of interest and damages. However, vide letter dated 09.05.2007, respondent no. 2 rejected the request for waiver of interest. On 18.05.2009, the petitioner was directed to pay damages to the tune of ₹ 23,56,669/- for the delay in making contributions to the provident fund along with administrative charges for the period commencing from May 1983 to February 2006 in addition to an amount of ₹ 4,82,496/- towards interest under Section 7Q of the Act within 15 days from the date of receipt of the order. The said order is unsustainable as dues under Section 7Q of the Act had already been paid and as damages was imposed without considering the request for reduction/waiver and that too at a time when the Company was a sick unit. Aggrieved by the said order, the petitioner preferred an appeal, i.e. ATA No. 553(5) of 2009 before the Tribunal. The Tribunal on 16.04.2010 dismissed the appeal, thereby confirming the order dated 18.05.2009 of respondent no. 3.

2.1 Aggrieved by the order of the Tribunal dated 16.04.2010, the petitioner on 27.09.2012 filed a writ petition before this Court, the diary number being 159430/2012. Respondent no. 3 was informed about the same and they were requested to await the outcome of the petition. As and when the petitioner received reminders and demand notices from respondent no. 3, the petitioner was made to understand by their counsel that a writ petition had already been filed before this Court and that it continues to be with the Registry. On 08.01.2018, the petitioner again received a demand notice directing them to deposit an amount of ₹ 2,37,888/- towards interest under Section 7Q of the Act. This was followed by another demand notice dated 29.01.2018 from respondent no. 3 directing the petitioner to deposit a sum of ₹ 25,95,557/- within 15 days from the date of receipt of the notice. When the petitioner continued to receive demand letters from the respondents, the petitioner in March 2018 made further inquiries with their counsel. However, the counsel replied by e-mail dated 17.03.2018 that he was not inclined to represent them any further. Hence, the petitioner availed the services of another lawyer and on inquiries with the

Registry of this Court came to know that no paper(s) relating to the matter were available with the Registry and that the file had been returned to the earlier counsel as they were defective. The petitioner was all along under the bona fide belief and faith that the counsel who had been engaged earlier had done the needful and that the writ petition was pending consideration of this Court. On realising that no writ petition had been filed, another counsel was engaged and the present writ petition was filed. The delay in challenging the impugned order is unintentional and was beyond the control of the petitioner.

3. The petition is opposed by respondents no. 2 to 4 who have filed counter affidavit contending that the petition is not maintainable as it has been filed after a period of 8 years of the passing of the impugned order by the Tribunal. It is also contended that this Court lacks territorial jurisdiction as the impugned order has been passed by the Tribunal in Gujarat.

4. It was submitted on behalf of learned counsel for respondents no. 2 to 4 that Annexure A-1 impugned order in this case was passed in the year 2010. However, the present petition has been filed after a delay of more than 8 years, which aspect alone is sufficient to dismiss this petition. My attention was also drawn to Rule 7 of the Tribunal (Procedure) Rules, 1997 (the Rules). In support of the argument, reference was made to the dictums in *Saint Soldier Modern Senior Secondary School versus Regional Provident Fund Commissioner*, (2014) SCC OnLine Del 3140; *Prudential Spinners Ltd. Versus Employees P.F. Appellate Tribunal*, 92007) SCC OnLine Del 203; *Horticulture Experiment Station Gonikoppal, Coorg versus Regional Provident Fund Organization*, (2022) 4 SCC 516 and *Latheef K.A. versus Union of India and Ors.* and W.P.(C) No. 2191/2020(Y).

5. On the other hand, it was submitted by learned counsel for the petitioner that they were under the bona fide belief that the counsel engaged earlier had in fact filed a writ petition challenging the impugned order. As and when they received demand notices and reminders from respondent no. 3, they had made enquiries and on all such occasions, they were made to understand that the writ petition was pending. It was only much later, the counsel concerned expressed his reservation in continuing with the brief. Hence, the petitioner engaged a new lawyer and filed the present petition. To substantiate the arguments, he draws my attention to Annexures A/40, A/45, A/46, A/48 and A/52. Reference was also made to the dictums in *M/s Solidaire India Limited versus The Employees Provident Fund Appellate Tribunal and Anr.*, (2011) SCC OnLine Mad 1647; *Rafiq and Anr. versus Munshilal and Anr.*, (1981) 2 SCC 788; *Bank of India versus M/s Mehta Brothers and Ors.*, 1991 SCC Online Del 140; *N. Balakrishnan versus M. Krishnamurthy*, (1998) 7 SCC 123; *Perumon Bhagvathy Devaswom, Perinadu Village versus Bhargavi Amma*, (2008) 8 SCC 321; *Oryx Fisheries (P) Ltd. Versus Union of India*, (2010) 13 SCC 427; *Gujarat Electricity Board versus Assistant Provident Fund Commissioner*, (2011) SCC OnLine Guj 2050 and *Indian Telephone Industries Ltd. Versus Asstt. P.F. Commissioner and Ors.*, (2006) SCC

OnLine Ker 726.

6. Heard both sides.

7. In *M/s Solidaire India Limited (supra)*, it has been held that levy of damages under Section 14B of the Act is not automatic and the same being a penal provision, it must be construed strictly. The existence of mens rea or willful default is a necessary element before imposing damages. The authorities should not act mechanically by applying the maximum rate without considering the mitigating circumstances such as sickness of the establishment, attachment of assets or suspension of operations.

7.1 In *Rafiq (supra)*, it has been held that a party should not suffer due to the inaction, deliberate omission or misdemeanor of their counsel.

7.2 In *M/s Mehta Brothers (supra)*, it has been held that negligence of the counsel concerned should not automatically defeat a litigant's right to justice and delay ought to be condoned when sufficient cause is shown by the party as procedure lapses by lawyers cannot always be attributed to the client.

7.3 In *N. Balakrishnan (supra)*, it has been held that condonation of delay is a matter of discretion of the Court. In the absence of anything to show mala fide or deliberate delay as a dilatory tactic, the Court should normally condone the delay.

7.4 In *Perumon Bhagvathy Devaswom (supra)*, the circumstances under which Courts normally condone delay have been referred to.

7.5 In *Oryx Fisheries (P) Ltd. (supra)*, it has been held that a quasi-judicial authority while acting in exercise of its statutory power must act fairly and with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objections and prepare his defence against the proposed charges indicated under the notice. The authorities must record reasons in its order and absence of reasons in the original order cannot be compensated by disclosure of the reasons in the appellate order.

7.6 In *Gujarat Electricity Board (supra)*, it has been held that where default is found, but there is no apparent fault, the quantum of damages under Section 14B of the Act should be compensatory rather than penal.

7.7 In *Indian Telephone Industries Ltd. (supra)*, it has been held that damages under Section 14B of the Act are penal and not automatic and the authorities must exercise discretion on culpability with speaking order.

8. Now coming to the decisions relied on by the respondents. In *Saint Soldier Modern Senior Secondary School (supra)*, it has been held that the provisions of the Limitation Act, 1963 including Sections 5 and 14 cannot be invoked to extend or exclude any period beyond the statutory limit. Accordingly, the Tribunal cannot condone or exclude any delay exceeding the time expressly allowed under the Act.

8.1 In *Prudential Spinners Ltd.* (supra), it has been held that the Tribunal can condone the delay in filing an appeal only up to a maximum period of 120 days, i.e. 60 days prescribed plus an additional 60 days on sufficient cause(s) being shown. Once the statutory period expires, the appeal is barred by limitation and cannot be entertained on equitable or discretionary grounds.

8.2 In *Horticulture Experiment Station Gonikoppal, Coorg* (supra), it has been held that mens rea or actus reus is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities.

8.3 Finally, in *Latheef K.A.* (supra), it has been held that under Section 7Q of the Act, the levy of interest for delayed remittance of contribution is automatic and mandatory arising by operation of law and not dependent on any adjudicatory discretion of the authority. The provision does not permit any condonation or waiver of delay as interest is compensatory in nature and accrues for the benefit of the employees. It has been further held that while the right to appeal does not extend to Section 7Q of the Act, an employer must be allowed a limited opportunity to contest only the computation of interest which must be determined fairly in accordance with the statute.

9. Admittedly, the impugned order, i.e. Annexure A-1 was passed on 16.04.2010. As pointed out by learned counsel for respondents no. 2 to 4, as per Sub-Rule (2) to Rule 7 of the aforesaid Rules, any person aggrieved by an order of an authority under the Act has to file an appeal within 60 days from the date of the order. The 1st proviso says that if the Tribunal is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the statutory period, the time may be extended by a further period of 60 days. It is true that the petitioner Company has filed the appeal before the Tribunal within the time prescribed. It is also true that no time limit has been prescribed for filing a writ for challenging the order of the Tribunal. However, it has to be filed within a reasonable time of the passing of the impugned order.

10. During the course of arguments, a specific query was put by this Court to the learned counsel for the petitioner as to whether the petitioner had taken any action against the lawyer who is alleged to have misled the petitioner into believing that a writ petition had been filed as early in the year 2012, when actually no effective steps had been taken in the said direction. The reply was in the negative and it was submitted that no complaint or action had been taken against the lawyer as the petitioner did not want to cause any inconvenience to the lawyer concerned. If the petitioner is to be believed, the lawyer who had been engaged kept assuring them for about 8 years that necessary steps had been taken for challenging the impugned order. I will now examine whether this case of the petitioner is true from the documents relied on by them.

11. Annexure A-40 says that a petition had been presented before the Registry of this Court on 27.09.2012, the diary number of which is stated to be 159430/2012. Annexure A-45 dated 15.09.2016 is a letter sent by the petitioner

informing the Assistant Provident Fund Commissioner, Recovery Officer, Ahmedabad that a writ petition challenging the impugned order has been filed. Copy of the writ petition was also served on the authority concerned. Annexure A-46 is an e-mail dated 11.01.2017 stated to have been sent by the lawyer concerned to the petitioner stating that the matter filed in this Court continues to be with the Registry and that attempts are being made to ascertain the status of the same for which 4 weeks' time was sought. Annexure A-48 dated 13.03.2017 is yet another letter written by the petitioner to the Assistant Provident Fund Commissioner informing that the matter was still pending before this Court and also seeking time to ascertain the status of the writ petition. Annexure A-52 dated 17.03.2018 is stated to be a letter written by the counsel concerned, the relevant portion of which reads thus:-

"Case was file in delhi high court on 27/9/2012. Sincere (sic) were out of touch for the past 6 years I am not in a position to comment on the status of the same. additionally I am very busy. I may not be able to pursue above case." (emphasis supplied)

12. Annexure A-52, their own document, disproves the case put forward by the petitioner that they were all along in touch with the lawyer concerned and that the lawyer had misled them into believing that a writ petition had in fact been filed, which was pending consideration before this Court. Annexure A-52 makes it clear that for about 6 years, the petitioner Company never ever contacted the lawyer and hence the latter withdrew from the brief. Therefore, the reason cited that there was fault or omission on the part of the lawyer concerned is apparently false/incorrect. Had the petitioner been misled by the lawyer concerned and made to believe for years together that proceedings had been initiated against the impugned order when in fact, no effective steps had been taken, it is improbable for the former to have not taken any action against the lawyer concerned. As pointed out by the learned counsel for the respondents, the Act is a beneficial legislation meant for the benefit of the employees and hence the reason why specific time limit has been provided for challenging the orders of the authorities concerned. In the case on hand, more than sufficient time/opportunity is seen to have been granted to the petitioner to vindicate their grievances. Despite the same, no effective steps were taken to challenge the impugned order. The decisions cited by the petitioner do not in any way advance the case of the petitioner.

13. The reason given for the inordinate delay in filing the appeal has turned out to be false. The present writ petition seems to be a mere delaying tactics. I find no infirmity or illegality in the impugned order.

14. Hence, the writ petition sans merit is dismissed.