

(2007) 02 DEL CK 0111

In the Delhi High Court

Case No : Writ Petition (C) No"s. 670, 671 and 672 of 2007

Prudential Spinners Ltd.

APPELLANT

Vs

The Employees P.F. Appellate Tribunal

RESPONDENT

Date of Decision : 09-02-2007

Acts Referred:

Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 — Rule 7(2)
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A
Limitation Act, 1963 — Section 5

Citation : (2007) 142 DLT 361 : (2007) 95 DRJ 198 : (2007) 115 FLR 29

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : A.K. Singla, Pankaj Gupta and Promila K. Dhar, for the Appellant;
R.C. Chawla, for RPFC, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—Rule.

2. With the consent of counsels for the parties, all the three writ petitions are taken up for final hearing and disposal by passing a common order, as

the issues involved are common.

3. In the present writ petitions, the petitioner has challenged the orders dated 13th November, 2006 passed by the Employees Provident Fund

Appellate Tribunal, New Delhi (hereinafter referred to as `the tribunal") in ATA Nos.260 (1)/2006, 258 (1)/2006 and 259 (1)/2006 by which the

tribunal has dismissed the appeals filed by petitioner assailing the orders dated 23rd January, 2004, 29th August, 2003 and 13th October, 2005

respectively passed by the Assistant Provident Fund Commissioner, Hyderabad, Andhra Pradesh in proceedings u/s 7A of the Employees"

Provident Fund & Miscellaneous Provisions Act, 1952 (for short 'the Act') determining the dues towards payment of provident fund for the period from January, 2002 in WP(C) No. 670/2007, for the period from April, 2001 to December, 2001 in WP(C) No. 671/2007, and for the periods from May, 2004 to April, 2005 in WP(C) No. 672/2007, by holding that there was considerable delay in filing the appeals for a period of 680 days, 938 days and 146 days respectively and for the reason that as the three appeals were not filed within the time schedule provided for in the Act, the same were barred by limitation as also not maintainable for the reason that no justifiable Explanation had been assigned by the petitioner to condone the delay.

4. The tribunal observed that it had no jurisdiction to exercise discretionary powers to consider the application for condensation of delay in view of the proviso to Sub-rule (2) of Rule 7 of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 (for short 'the Rules') which stipulates that any person aggrieved by an order passed by any authority under the Act may, within 60 days from the date of the said order, prefer an appeal to the tribunal and 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. While arriving at the said finding, the tribunal referred to the judgment rendered by a Division Bench of this Court in the case of Assistant Regional Provident Fund Commissioner Vs. Employees Provident Fund Appellate Tribunal and Others, . The tribunal further went on to ascertain as to whether the petitioner herein (appellant therein), had approached the tribunal bona fide and sincerely. After examining the submissions made by the petitioner, to the effect that delay in filing all the three appeals was on account of the fact that the legal advisor of the petitioner organisation had left the organisation without handing over charge and the law officer appointed subsequently had traced the impugned orders only recently and thereafter, steps were taken to file the appeals in question, the tribunal held that the justification offered by the petitioner was not considered sufficient for condoning the delay and dismissed the appeals.

5. Mr.A.K.Singla, learned senior counsel appearing for the petitioner submitted

that against the order dated 29th August, 2003 passed by the Assistant Provident Fund Commissioner, Hyderabad, Andhra Pradesh, the petitioner had preferred a writ petition bearing No. 23689/2003 before the Andhra Pradesh High Court which was decided vide order dated 11th November, 2003 directing the petitioner to deposit 50% of the demanded amount and to prefer a statutory appeal within two weeks there from. Pursuant to the said order, the petitioner deposited a sum of Rs. 3,17,00/- on 21st September, 2004. It is further submitted that against a cumulative demand of Rs. 12,33,495/- raised on the petitioner, it had deposited a sum of Rs. 6,15,233/-, including the 50% of the demand impugned by the petitioner in the writ petition filed before the Andhra Pradesh High Court. The learned senior counsel for the petitioner further submitted that the tribunal failed to take into consideration the submissions made on behalf of the petitioner to the effect that the judgment rendered by a Division Bench of this Court in Assistant Provident Fund Commissioner, Meerut (supra) had lost its binding force as precedent inasmuch as the said issue i.e. applicability of Section 5 of the Limitation Act to the proceedings before the tribunal is now sub judice before the Supreme Court in SLP (C) No. 719/2006 entitled `Shree Shyamkamal Inds.Pvt. Ltd. v. Union of India and Ors.", wherein notice has been issued to the other side. Reliance has been placed by the learned Counsel for the petitioner on the judgments of the Supreme Court in the cases of Kunhayammed and Others Vs. State of Kerala and Another, followed by Union of India (UOI) and Others Vs. West Coast Paper Mills Ltd. and Another, to state that a perusal of the aforementioned judgments and the discussion contained therein leads to the obvious conclusion that once leave to appeal has been granted by the Supreme Court, the order appealed against is ""jeopardized""and it loses value and is no longer binding. Learned Counsel for the petitioner has also relied on the judgments of the Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy, and in the case of Smt. Rani Kusum v. Smt. Kanchan Devi and Ors. reported as 2005 (6) Scale 545 to submit that length of the delay does not matter as long as the Explanation furnished is acceptable and that condensation of delay is a matter of discretion of the court. It was further submitted that the tribunal in fact did not reject the appeals on the ground

of limitation, but on the ground that there was no sufficient, satisfactory justification and Explanation furnished by the petitioner for condoning the delay in filing the appeals. Learned Counsel also submitted that Rule 7(2) of the Rules is only procedural in nature and is not binding.

6. It was also submitted that the petitioner deserved sympathetic consideration on the ground that it was facing heavy financial losses due to which it had become sick and a reference had already been registered and the same is pending before the Board of Industrial and Financial

Reconstruction under Sick Industrial Companies (Special Provisions) Act, 1985. Pursuant to the continued financial crisis faced by it, the petitioner

decided to lease out its manufacturing unit to respondent No. 2 herein for a period of two years with effect from 1st December, 2000 to 19th

November, 2002 and only after the unit was handed back to the petitioner did the petitioner discover that there was outstanding liability for

payment of provident fund, bonus etc. to the workers, which was in fact that of the respondent No. 2 company to whom the manufacturing unit

was leased out for a period of about two years.

7. Per contra, Mr.R.C.Chawla, learned Counsel for the RPFC submitted that the judgment rendered by a Division Bench of this Court in Assistant

Provident Fund Commissioner, Meerut (supra) which held that limitation under the Rules could not be extended beyond a period of 60 days, is

binding as the same is squarely applicable to the facts of the present case. In the course of arguments, he also handed over copies of two

judgments delivered by two Single Benches of this Court by following the Division Bench, namely, Manu Valley Tea Company Ltd. v. Employees

P.F. Appellate Tribunal WP(C) No. 23038/2005, decided on 14th December, 2005 and in the case of Megacity Cement Pvt. Ltd. v. Union of

India and Ors. WP(C)8858/2006 decided on 30th May, 2006.

8. Learned Counsel for the RPFC further submitted that there was gross negligence and delay on the part of the petitioner in seeking its remedies

in law and that no Explanation, much less plausible Explanation was furnished by the petitioner for not approaching the Andhra Pradesh High

Court, before whom the petitioner had preferred a writ petition challenging the order of the Assistant Provident Fund Commissioner, Hyderabad,

Andhra Pradesh, and seeking condensation of delay in filing the appeals so

belatedly before the tribunal. While the order of the Andhra Pradesh

High Court dated 11th November, 2003 directed deposit of 50% of the demanded amount and granted two weeks' time to the petitioner to

prefer a statutory appeal before the Appellate Authority, the petitioner, for reasons best known to it, chose to remain silent, inactive and indolent

right up to May, 2006 when it filed the appeals in question before the tribunal.

9. Learned Counsel for the RPFC also stated that the story sought to be set up by the petitioner to the effect that the legal advisor of the petitioner

had left the organisation without handing over charge and without intimation to the management and, Therefore, no steps could be taken for filing

the appeals in question within the stipulated time, is unsustainable and untenable in view of the fact that in the order dated 23rd January, 2004 [Part

of WP(C) 670/2007] passed by the Assistant Provident Fund Commissioner, Hyderabad, Andhra Pradesh for the periods from January to April,

2002 and August, 2002 to September and November, 2003 it was recorded that the legal officer of the petitioner appeared on the date of hearing

on behalf of the petitioner and requested for an adjournment on the ground that the legal advisor was out of station. Thus it was stated that the

petitioner's claim that there was no legal advisor available at all at the relevant time is manifestly incorrect and contrary to the records. It was also

pointed out that in any case, the time granted to the petitioner by the Andhra Pradesh High Court vide order dated 11th November, 2003, for filing

the statutory appeal had already expired by 23rd January, 2004.

10. It was further contended by the learned Counsel for the RPFC that a perusal of the order dated 13th October, 2005 [part of WP(C) No.

672/2007] passed by the Assistant Provident Fund Commissioner, Hyderabad, Andhra Pradesh shows that no such plea as taken in the appeal to

the effect that the legal advisor was not available, was taken by the petitioner before the Andhra Pradesh High Court. On the contrary, the

petitioner claimed that it continued to deposit with the Department, amounts from time to time, to the tune of almost 50% of the cumulative demand

which could not have been so deposited by the petitioner if the orders and the proceedings in question were not traceable, as claimed by the

petitioner before the tribunal. Counsel for the RPFC also submitted that plea of the petitioner to the effect that the demand raised against it by the

Assistant Provident Fund Commissioner, Hyderabad, Andhra Pradesh related to the lease period when the petitioner was not even running the manufacturing unit, does not cut much ice for the reason that the orders impugned by the petitioner before the Tribunal did not relate to the lease period alone but pertained to three orders passed by the Assistant Provident Fund Commissioner, Hyderabad, Andhra Pradesh, in respect of periods running right up to April, 2005.

11. I have heard the arguments of learned Counsels for the parties and have also perused the records as also the relevant judgments cited by either party.

12. Having gone through the records and given my thoughtful consideration to the submissions made by the learned Counsel for the parties, this

Court cannot but arrive at the conclusion that there is no error, infirmity or perversity in the impugned order dated 13th November, 2006 passed

by the tribunal. The tribunal has rightly adopted and applied the law as laid down by a Division Bench of this Court in the case of Assistant

Provident Fund Commissioner, Meerut (supra), which holds the field as on date. In view of a specific provision contained in Rule 7(2) of the

Rules, the tribunal could not have condoned the delay beyond a maximum period of 120 days as sought to be contended by the petitioner. There is

no force in the plea of the petitioner that the aforesaid judgment rendered by the Division Bench is in "jeopardy" and has lost its binding force as a

precedent merely because leave to appeal has been granted by the Supreme Court in a SLP pending before it, as admittedly, there is no stay

operating against the order impugned in the aforesaid Special Leave Petition. In this view of the matter, this Court is bound to follow the judgment

rendered by a Division Bench of this Court referred to hereinabove, and also followed by two single Judges in the cases of Manu Tea Valley

Company and Megacity Cement Pvt. Ltd, referred to hereinabove. Reliance placed by the learned Counsel for the petitioner on the judgments of

the Supreme Court in the cases of N. Balakrishnan (supra) and Smt. Rani Kusum (supra) is also misconceived for the reason that the general

observations with regard to extension/enlargement of time in condoning the delay, cannot be imported into statutes which not only prescribe a

specific period of limitation but also further goes on to prescribe a period for

condoning the delay, if any, in preferring the appeal. It may also be noted that in the the case of N.Balakrishnan (supra), the observations of the court were in the context of condensation of delay u/s 5 of the Limitation Act which provision has been held by the Division Bench in the case of Assistant Provident Fund Commissioner, Meerut (supra) to be expressly excluded in considering an application made under the provisions of the Act and Rules, in view of existence of a specific provision of Rule 7(2) made in the Rules, for limitation.

13. In view of the fact that limitation is prescribed by a specific Rule, and condensation has also to be considered within the purview of that Rule alone and the provisions of the Limitation Act cannot be imported into Act and Rules, the inevitable conclusion is that the tribunal did not have the powers to condone the delay beyond a maximum period of 120 days as stipulated in Rule 7(2) of the Rules.

14. It is also misconceived on the part of the petitioner to claim that the appeals were not rejected on the ground that the same were barred by limitation but were in fact rejected on the ground that the petitioner had failed to furnish any just or sufficient cause for condoning the delay. No doubt, the tribunal referred to the grounds offered by the petitioner for not filing the appeals in question within the period of limitation and also expressed its disinclination to accept the said Explanation as offered by the petitioner, a bare perusal of the impugned order makes it manifest that at the end of the day, the tribunal rejected the appeals preferred by the petitioner on the ground that the same were barred by limitation and also on the ground that no justifiable Explanation had been assigned to condone the delay. Thus the appeals were not rejected on one count alone but on both the counts.

15. This Court shall, however, refrain from examining the relative merits/demerits of the sufficiency of cause offered by the petitioner for seeking condensation of delay, as discussed in the impugned order, and sought to be supported by the learned Counsel for the respondent for the reason that once it has been held that the appeals were ex facie barred by limitation and could not have been entertained by the tribunal and were rightly rejected on the ground of limitation, there arises no occasion to delve further in the matter by examining the Explanation furnished by the petitioner

juxtaposed against the arguments offered by the RPFC to puncture holes in the said Explanation. It is suffice to hold that no power vested with the tribunal to condone the delay in filing the appeals preferred by the petitioner, after expiry of a total of 120 days from the date of the order passed by the Assistant Provident Fund, Commissioner, Hyderabad, Andhra Pradesh.

16. In view of the aforesaid facts and circumstances and the settled position of law, it is held that the tribunal rightly arrived at a conclusion that the appeals filed by the petitioner were time barred. Thus there is no justification for considering the case of the petitioner on merits. No interference is called for in the impugned order dated 13th November, 2006.

17. The writ petitions are accordingly dismissed being devoid of merits. The applications also stand dismissed.

18. No order as to costs.