

(2014) 09 DEL CK 0155

In the Delhi High Court

Case No : LPA 533/2014 and CM No. 13306/2014

Saint Soldier Modern Senior Secondary School

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(3)

Central Sales Tax Act, 1956 — Section 10

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7I

Limitation Act, 1963 — Section 10, 11, 12, 13, 14, 14

Citation : (2015) 144 FLR 109

Hon'ble Judges : S.P. Garg, J;Reva Khetrapal, J

Bench : Division Bench

Advocate : S.K. Gupta, Advocate for the Appellant

Final Decision : Dismissed

Judgement

S.P. Garg, J.—In this Intra - Court appeal, the Appellant - Saint Soldier Modern Senior Secondary School is aggrieved by an order dated 20.05.2014 of learned Single Judge in W.P.(C) 2839/2014, by which a writ petition preferred against the order dated 29.10.2013 passed by the Employees' Provident Fund Appellate Tribunal ("Tribunal" in short) in appeal No. A.T.A. 685(11)2010 was dismissed.

2. The facts giving rise to the writ petition before learned Single Judge were that order dated 20.04.2007 in proceedings u/s 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("Act" in short), was passed by the Assistant Provident Fund Commissioner against the Appellant. The Appellant's review petition filed on 27.05.2007 was rejected on 10.07.2007. The Appellant, thereafter, instituted a suit for declaration before the Court of Civil Judge (Senior Division), Gurdaspur on 14.08.2007. By an order dated 26.08.2010, the Civil Court returned the plaint for lack of jurisdiction under the Act to file before an appropriate forum. Contention of the Appellant's counsel is that the said proceedings were instituted on a wrong legal advice. Certified copy of the order

of the Civil Court applied on 04.09.2010 was made available on 23.09.2010. Immediately, thereafter, the appeal was filed before the Tribunal on 23.10.2010. Submissions of the Appellant's counsel is that if the period spent by the Appellant in pursuing the remedy before the Civil Court is excluded from computation, the appeal preferred before the Tribunal was within prescribed time.

3. After appreciating the submissions of the parties, the learned Single Judge dismissed the petition primarily on the ground that the Tribunal had no jurisdiction to condone the delay in filing the appeal beyond the period of 120 days. u/s 7I of the Act read with Rule 7(2) of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997 ("Rules" in short), any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any authority u/s 7A of the Act can prefer an appeal to a Tribunal. Rule 7(2) prescribes the period of 60 days from the date of issue of the notification / order to prefer an appeal to the Tribunal. Proviso to Rule 7(2) empowers the Tribunal to extend the period for a further period of 60 days if he is satisfied that the Appellant was prevented by sufficient cause from preferring the appeal within the prescribed period. In the instant case, admittedly the appeal was preferred beyond the expiry of 120 days before the Tribunal. The learned Single Judge for sound reasons refrained from going into the merits of the case as the Tribunal had declined to entertain the appeal being barred by limitation.

4. Learned counsel for the Appellant urged that the learned Single Judge erred in appreciating the ambit and scope of Section 29(2) of the Limitation Act which did not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference. Section 14 of the Limitation Act does not relate to condonation of delay, but provides for exclusion of the period spent in proceedings bonafide in a Court without jurisdiction. The Tribunal had powers to condone the delay after excluding the period spent by the Appellant in pursuing the remedy before the Civil Court. In view of Section 29(2) of the Limitation Act, 1963, for computing the period of limitation prescribed for preferring the appeal under 7(2) of the Rules, all the provisions of Sections 4 to 24 of the Limitation Act would apply. The procedural rules framed under the Act cannot override the express provisions of Section 29(2) of the Limitation Act.

5. Section 7I of the Act specifically prescribes the period of limitation for filing the appeal within 60 days. The Tribunal is empowered to condone delay of 60 days if he is satisfied that the Appellant was prevented from preferring the appeal for sufficient reasons. Apparently, the Tribunal had no jurisdiction to condone the delay beyond the extended period of 60 days. The learned Single Judge placed reliance on the judgment of the Division Bench of this Court in the case of "Assistant Regional Provident Fund Commissioner, Meerut vs. Employees' Provident Fund Appellate Tribunal and Ors.", 2005 (VII) AD (Delhi) 155 and specifically referred to para 29 of the said judgment wherein, the Supreme Court while dealing with an identical fact in the case of The Commissioner of Sales Tax,

U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, had held that when Section 5 of the Limitation Act itself was not applicable to condone the delay, the power to condone delay because of pursuing a remedy elsewhere on a principle akin to Section 14(2) of the Limitation Act, would also not be available. In "Assistant Regional Provident Fund Commissioner, Meerut" (supra), vires of Rule 7(2) was questioned. This Court upheld the vires of Rule 7(2) of the Rules in the said case.

6. The learned Single Judge elaborated the findings of the Supreme Court in "Commissioner of Sales Tax, U.P., Lucknow vs. Parson Tools and Plants, Kanpur" (supra) which need reproduction :

"23. Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time- limit and no further, than the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act.

24. We have said enough and we may say it again that where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law- giver; more so if the statute is a taxing statute. We will close the discussion by recalling what Lord Hailsham (1) has said recently, in regard to importation of the principles of natural justice into a statute which is a clear and complete Code, by itself :

"It is true of course that the courts will lean heavily, against any construction of a statute which would be manifestly fair. But they have no power to amend or supplement the language of a statute merely because in one view of the matter a subject feels himself entitled to a larger degree of say in the making of a decision than a statute accords him. Still less is it the functioning of the courts to form first a judgment on the fairness of an Act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgment."

25. For all the reasons aforesaid, we are of the opinion that the object, the scheme and language of Section 10 of the Sales-tax Act do not permit the invocation of Section 14(2) of the Limitation Act, either, in terms, or, in principle, for excluding the time spent in prosecuting proceedings for setting aside the dismissal of appeals in default, from computation of the period of limitation prescribed for filing a revision under the Sales-tax. Accordingly, we answer the question referred, in the negative."

7. Reliance on Union of India Vs. M/s Popular Construction Co., by the Appellant's counsel does not help him. The issue therein was whether Sections 4

to 24 of the Limitation Act would be applicable to Section 34 of the Arbitration Act, 1996. The Supreme Court observed :

"8. Had the proviso to Section 34 merely provided for a period within which the Court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5." While holding that Section 5 is not applicable to Section 34(3), it was held that the presence of the words "but not thereafter" operate as an express exclusion to Section 5 of the Limitation Act.

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to Sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result."

8. Further, in the case of *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, , a three judge Bench of Supreme Court, while examining whether the Limitation Act would be applicable to the provisions of Representation of People Act, observed as under :

"17....but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject- matter and scheme of the special law exclude their operation."

9. According to "*Hukumdev Narain Yadav vs. Lalit Narain Mishra*" (*supra*), even if there exists no express exclusion in the special law, the court reserves the right to examine the provisions of the special law, and arrive at a conclusion as to whether the legislative intent was to exclude the operation of the Limitation Act.

10. Undisputedly, the Act is a special law within the meaning of Section 29(2) of the Limitation Act. Under the normal circumstances, the provisions of Section 29(2) and consequentially Sections 4 to 24 of the Limitation Act would be applicable to the appellate proceedings under the said Act. However, in view of the provisions of the law comprised u/s 29(2) itself, such applicability is subject to three conditions; one of which is that the provisions of law contained in that

regard in the special Act should not expressly or by necessary implication exclude the applicability of all or any of the provisions of the Sections referred to in Section 29 of the Limitation Act to the proceedings under the Special Act. Proviso to Rule 7(2) prescribes restriction on the power of the appellate authority thereunder to extend the period beyond the period of 60 days after the expiry of the initial period of limitation of 60 days prescribed for filing the appeal under the Act. It specifically states that if the appellant satisfies the appellate authority that he was prevented by sufficient cause from preferring the appeal within the prescribed period of 60 days, the period can be extended by further period of 60 days. This clearly indicates an intention of the Legislature to restrict the period of extension upto the limit of 60 days beyond the prescribed period of 60 days for filing an appeal under the Act. In other words, the total period including the extended period to prefer an appeal would be upto 120 days and not more than that. Apparently, it prohibited the Tribunal to entertain the appeal beyond the total period of 120 days from the date of receipt of the order.

11. For the reasons stated above, we find no infirmity in the impugned order. The appeal is unmerited and is dismissed. Pending application also stands disposed of.