

Form No.J(2)

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

Present :

THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPA 14143 of 2023

**Amit Metaliks Limited & Anr.
Versus
Central Government Industrial Tribunal-Cum-Labour Court,
Asansol & Anr.**

For the petitioners	:	Mr. Surojit Dasgupta Ms. Tanishka Khandelwal Ms. Sanchari Chakraborty
For the respondents	:	Ms. Aparna Banerjee
Heard on	:	27.09.2023
Judgment on	:	22nd December, 2023.

Raja Basu Chowdhury, J:

1. The instant writ petition has been filed, *inter alia*, challenging the order dated 30th March, 2023, passed by the Central Government Industrial Tribunal cum Labour Court, Asansol (hereinafter referred to as the "Tribunal") in EPFA no. 01 of 2023 dismissing the petitioners' appeal on the ground of limitation.
2. The petitioners are engaged in the business of manufacture and sale of steel TMT bars, steel blades, etc. The petitioner no. 1 is covered under the provisions of the Employees' Provident Funds and

Miscellaneous Provisions Act, 1952 (hereinafter referred to as the “said Act”) and has been allotted a code number being WB/51260.

3. Being aggrieved, *inter alia*, with the determination made under Sections 7A and 7Q of the said Act, for the period June, 2008 to March, 2012, a writ petition was filed before this Hon’ble Court which was registered as WPA 5089 of 2022. The Coordinate Bench of this Court upon hearing the parties, by an order dated 29th March, 2022, while granting liberty to the petitioners to prefer an appeal before the appropriate forum, within a fortnight, conditionally stayed the demand for seven days subject to the petitioners depositing Rs. 17,04,560/- with the Learned Registrar General of this Court within the aforesaid period, without prejudice to the rights and contentions of the parties, which is to be retained to the credit of the proposed appeal. It was further made clear that the parties shall be at liberty to place their respective contentions before the appropriate forum, who shall dispose of the matter on merits, after giving reasonable opportunity of hearing to the parties.
4. Records would reveal that at the instance of the petitioners, the Coordinate Bench of this Court by an order dated 12th April, 2022, had recorded the factum of deposit of the said sum of Rs. 17,04,560/- by a chalan dated 7th April, 2022 and the compliance of order dated 29th March, 2022. The petitioner no. 1 had since preferred an appeal before the Central Government Industrial Tribunal, Kolkata which was registered as Appeal No. EPF-06 of

2022. Such appeal was filed on 13th April, 2022 in terms of the liberty provided in the order passed by the Coordinate Bench of this Court. Unfortunately, since, the Tribunal did not have the territorial jurisdiction to entertain the said appeal, the same was returned to the petitioners, for filing the same before appropriate forum. Such fact would corroborate from the order dated 8th September, 2022.

5. It is the petitioners' case that on 20th September, 2022, the petitioners had been able to get back copy of the memorandum of appeal. The petitioners say that 20th September, 2022, also coincided with the start of Puja Vacation of the Court, as such no steps could be taken by the petitioners. After the reopening of the Court, in the month of November 2022, appropriate instruction was given for drafting the memorandum of appeal. Although, the draft was prepared, the same required to be settled, and in the process, the draft was also misplaced. Finally, the petitioner no. 1 could file the said appeal before the Central Government Industrial Tribunal-cum-Labour Court, Asansol, only on 9th February, 2023 and the same was registered as EPFA no. 01/2023. As noted above, by an order dated 30th March, 2023, the learned Presiding Officer of the Tribunal, *inter alia*, by holding that the Tribunal is not vested with the power to condone the delay beyond 120 days, had been pleased to dismiss the connected application along with the said appeal. Being aggrieved, the present writ petition has been filed.

6. Mr. Dasgupta, ably assisted by Ms. Khandewal, submits that the provisions of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 (hereinafter referred to as the “said Rules”) do not, in any way, denude the Tribunal of its power to admit an appeal beyond 120 days. By placing reliance on Rule 7(2) of the said Rules and proviso thereof, he submits that the Tribunal has been conferred with the power to condone the delay while entertaining an appeal. In this case, the Coordinate Bench of this Court, by an order dated 29th March, 2022, had specifically directed the Tribunal to hear out the appeal on merits. Admittedly, in this case the appeal was filed on 13th April 2022, the day following the order dated 12th April 2022, recording compliance of the order dated 29th March 2022. Unfortunately, since, the same was filed before a forum, which did not have the territorial jurisdiction, the same was returned by order dated 8th September 2022. Although, the Appeal was returned on 20th September 2022, the certified copy was made ready on 10th October 2022.
7. Circumstances leading to delay in re-filing of such application before the appropriate forum had been explained in the application praying for condonation of delay. Notwithstanding the aforesaid, the Learned Tribunal, by concluding that the Tribunal had no jurisdiction to extend the period of limitation beyond 120 days, has been pleased to reject both the application under Section 5 of the Limitation Act as also the appeal. Mr. Dasgupta has, however, by placing reliance on

an unreported judgment of a Coordinate Bench of this Court delivered in the case of ***M/s. C.D. Steel Pvt. Ltd. & Ors. v. The Assistant Provident Fund Commissioner, Regional Office & Ors.***, registered as **WPA 20721 of 2021**, submits that this Court has already concluded that the Tribunal is vested with the power to condone the delay beyond 120 days. The Learned Presiding Officer ought not to have placed reliance on the judgment delivered by the Orissa High Court in the case of ***M/s. Lotus Chemicals Pvt. Ltd.***, reported in **2018 SCC OnLine Ori 167**, to dismiss the Appeal. Reliance is also placed on a judgment delivered by the Hon'ble Supreme Court in the case of ***Union of India v. Popular Construction Co.***, reported in **(2001) 8 SCC 470**, to, *inter alia*, contend that unless, the special statute specifically excludes the provision of Section 5 of the Limitation Act, such exclusion is not to be inferred. In such circumstances, he prays that the aforesaid order dated 30th March, 2023 may be set aside and the learned Tribunal may be directed to hear out the appeal being EPFA 01/2023.

8. *Per contra*, Ms. Banerjee learned advocate appearing for the respondents, submits that there is no irregularity on the part of the learned Presiding Officer of the Tribunal, in dismissing the application under Section 5 of the Limitation Act. She submits that the Learned Tribunal had found that there is no proper explanation for condoning the delay. In any event, the Tribunal is also not vested

with the power to condone the delay beyond 120 days, as such there is no irregularity in the order passed by the learned Tribunal. In support of her contention, she relies on the following judgments.

(i) M/s. Nagarmal Modi Seva Sadan v. Employees' Provident Fund Organization, Ranchi and two other, (L.P.A. No. 893 of 2019) reported in 2021 SCC Online Jhar 1308.

(ii) Saint Soldier Modern Senior Secondary School v. Regional Provident Fund Commissioner, reported in 2014(142) LLR 730 (Del. H.C).

(iii) M/s. Lotus Chemicals Pvt. Ltd. v. Assistant Provident Fund Commissioner, (Compl.), reported in Rourkela (2018(157) LLR 440).

9. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case, the petitioners had invoked the jurisdiction of this Hon'ble Court at the first instance challenging the orders passed under section 7A as also under Section 7Q and 14B of the said Act. On contest by an order dated 29th March, 2022, a Coordinate Bench of this Court was, *inter alia*, pleased to conditionally dispose of the writ petition by granting liberty to the parties to place their respective cases before appropriate forum who was directed to dispose of the matter on merits after affording reasonable opportunity of hearing to the parties. The subsequent order dated 12th April, 2022 passed by the

Co-ordinate Bench of this Court records that the petitioners had complied with the conditions set forth in the order dated 29th March, 2022.

10. Admittedly, the parties have accepted the aforesaid order. An appeal was also filed before the Central Government Industrial Tribunal Kolkata on 13th April 2022, the day following the recording compliance of order dated 29th March 2022 by a Coordinate Bench of this Court. The appeal was registered as Appeal No. EPF 06 of 2022. The Appellate Authority, however, by an order dated 8th September, 2022 had recorded that the appeal stands disposed for want of territorial jurisdiction. The appeal was actually returned on 20th September 2022 while the certified copy appears to be made ready on 10th October 2022. The appeal appears to have been refiled on 9th February, 2023 before the Central Government Industrial Tribunal, Asansol.

11. The learned Tribunal by placing reliance on the judgments delivered in the case of **M/s. Lotus Chemicals Pvt. Ltd** (supra), **M/s. Nagarmal Modi Seva Sadan** (supra), and **Saint Soldier Modern Senior Secondary School** (supra), has returned the finding that the Tribunal while entertaining an appeal under Section 7-I of the said Act, is not vested with the power to condone the delay beyond 120 days, as the provisions of Limitation Act do not apply to appeal filed under the provisions of the said Act.

12. Although, the parties have made extensive arguments as to whether an appeal can be entertained by the Tribunal beyond 120 days and has tried to focus on the question whether the Tribunal is denuded of its powers in condoning the delay for preferring an appeal beyond 120 days, I am of the view that the present matter does not require such in depth consideration on the aforesaid question, at all.
13. It is noticed here that the original appeal had been filed pursuant to leave granted by a Coordinate Bench of this Court thereby, in effect permitting the petitioners to withdraw the challenge from this Court, with liberty to refile such challenge before the Appellate Authority with a further direction upon the Appellate Authority to decide the same on merits. The appeal though filed promptly on 13th April 2022, the day following the recording compliance of order dated 9th March 2022 by a Coordinate Bench of this Court, same was, however, returned for want of jurisdiction, without any objection as regards maintainability thereof. The appeal was again refiled before the Tribunal having jurisdiction on 9th February 2023. As noticed earlier the learned Tribunal had by relying on the judgments noted above had concluded that the Tribunal is incompetent to condone the delay in filing the appeal beyond 120 days.
14. However, in none of the aforesaid judgement the circumstances leading to the Hon'ble High Court directing the appeal to be heard on merits was an issue. Admittedly, the parties had accepted the

direction issued by the Hon'ble High Court. Having regard to the aforesaid, the question which requires consideration is whether the Tribunal was competent to ignore such direction, notwithstanding the Tribunal not being aware of the special circumstances which may have led the Hon'ble High Court to pass such an order. Having regard to the aforesaid, it is necessary to consider whether the provisions of this Act or the rules framed thereunder can be invoked to negate a conditional order passed by a Constitutional Court, having jurisdiction, the conditions whereof has been complied with.

15. In this context, it may also be noticed that the provisions of Rule 21 of the said Rules invariably demonstrate that the Tribunal has been conferred with the authority to pass such orders as may be necessary for securing ends of justice, thus, lending a flexibility in the exercise of powers by the Tribunal. The powers given under Rule 21 though, in all circumstances may not authorise the Tribunal to enlarge the period of limitation as prescribed under the statute but the same can aid and assist the Tribunal while considering directions issued by Hon'ble High Court in its proper perspective.

16. Independent of the above there is another aspect of the matter. I find that the Hon'ble Supreme Court in the case of ***Consolidated Engineering v. Irrigation Department*** reported in **(2008) 7 SCC 169** had the occasion to consider the question concerning limitation period prescribed in Section 34(3) of the said Arbitration and Conciliation Act, 1996, for setting aside the arbitral award. In the

said judgment it has been held that Section 14 of the Limitation Act does not stand excluded. However, the applicability of Section 5 of the Limitation Act is excluded. The relevant portion of the aforesaid judgment is extracted herein below:

“53. Sub-section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the court’s discretion to extend the period of limitation by a further period not exceeding thirty days if the court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words “but not thereafter” in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond thirty days. The purpose of proviso to Section 34(3) of the AC Act is similar to that of Section 5 of the Limitation Act, which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. Section 5 of the Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-section (3) of Section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to Section 34(3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, in regard to period of extension,

and has the effect of excluding Section 5 alone of the Limitation Act.

54. On the other hand, Section 14 contained in Part III of the Limitation Act does not relate to extension of the period of limitation, but relates to exclusion of certain period while computing the period of limitation. Neither sub-section (3) of Section 34 of the AC Act nor any other provision of the AC Act exclude the applicability of Section 14 of the Limitation Act to applications under Section 34(1) of the AC Act. Nor will the proviso to Section 34(3) exclude the application of Section 14, as Section 14 is not a provision for extension of period of limitation, but for exclusion of certain period while computing the period of limitation. Having regard to Section 29(2) of the Limitation Act, Section 14 of that Act will be applicable to an application under Section 34(1) of the AC Act. Even when there is cause to apply Section 14, the limitation period continues to be three months and not more, but in computing the limitation period of three months for the application under Section 34(1) of the AC Act, the time during which the applicant was prosecuting such application before the wrong court is excluded, provided the proceeding in the wrong court was prosecuted bona fide, with due diligence. Western Builders [State of Goa v. Western Builders, (2006) 6 SCC 239], therefore, lays down the correct legal position.”

17. In this case, it however, appears that the learned Tribunal had clearly posed unto itself a completely wrong question as regards applicability of Section 5 of the Limitation Act. The question that the

learned Tribunal at best could have considered was the applicability of Section 14 of the Limitation Act.

18. In any event, the Tribunal could not have ignored the direction issued by the Hon'ble Court especially when both the parties had accepted the same. Rule 21 of the said Rules ought to have been applied by the learned Tribunal for the purpose of ensuring compliance with the direction passed by the Hon'ble High Court which directed the Tribunal to dispose of the matter on merits. The direction contained in the order dated 29th March 2022 which had been accepted by the parties, appears to have been overlooked by the learned Tribunal.

19. Although, Ms. Banerjee has argued that the appeal may not be maintainable before the Tribunal as being time barred, I find that accepting such contention of Ms. Banerjee, at the stage would tantamount to setting aside the order passed by a competent Court having jurisdiction in a collateral proceedings, which is not permissible in law, especially when the aforesaid order was accepted and acted upon by the parties. None of the parties at any stage had questioned the orders dated 29th March, 2022 and 12th April 2022. Even today there is no challenge to the aforesaid orders. It has long been settled in the case of **Hridaynath Roy & Ors. v. Ramchandra Barua Sarma & Ors.**, reported in **AIR 1921 Cal 34**, that the leave once granted to maintain a further suit cannot be subsequently challenged in the subsequent suit. The then, Hon'ble Chief Justice,

Asutosh Mookerjee speaking for the Special Bench in paragraph 8 thereof, while answering the question, *Is the Court trying the subsequent suit competent to enter into the question whether the Court which granted the plaintiff permission to withdraw the first suit with liberty to bring a fresh suit, had jurisdiction to make such an order ?*, had been, *inter alia*, pleased to observe as follows:-

“(3) The Court trying the subsequent suit is not competent to enter into the question, whether the Court which granted the plaintiff permission to withdraw the first suit with liberty to bring a fresh suit had properly made such order.”

20. Having regard to the aforesaid and the respondents having not challenged the orders dated 29th March, 2022 and 12th April 2022, and having considered the explanation given by the petitioners, and considering the conduct of the petitioners which appear to be bonafide, I am of the view that the learned Tribunal should in compliance of the directions passed by the Coordinate Bench of this Hon'ble Court on 29th March, 2022, hear out the aforesaid appeal on merits. The order dated 30th March 2022 passed by the learned Tribunal dismissing the appeal and the connected application are accordingly, set aside. The Appeal being EPA no.1 of 2023 pending before The Central Government Administrative Tribunal shall be heard on merits.

21. With the above directions and observations, the writ petition is allowed.
22. There shall be no order as to costs.
23. All parties shall act on the basis of the server copies of the order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)