

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE AVENUE,
DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No.D-1/07/2021

M/s Sundar Lal Jain Charitable Hospital

Appellant

VS.

RPFC, Delhi (North)

Respondent

ORDER DATED:- 07.04.2021

Present:- Shri M.K.Pandey, Ld. Counsel for the Appellant.
Shri Satpal Singh, Ld. Counsel for the Respondent.

This order deals with appellant's prayer for condonation of delay, admission of the appeal and stay on the execution of the order pending disposal of the appeal.

The appeal challenges order dated 30.01.2020 passed by the RPFC Delhi (North) u/s 14B of the EPF and MP Act wherein the appellant has been directed to deposit 68,36,718/- as damage for delayed remittance of EPF dues for the period 01.06.2014 to 30.04.2019. Notice being served on the respondent Shri Satpal Singh advocate appeared and participated in the hearing.

Perusal of the record and office note of the registry reveals that the impugned order was passed on 30.01.2020 and the appeal has been filed on 29.01.2021 i.e. beyond the period of limitation. No separate petition has been filed by the appellant praying condonation of delay. But prayer has been made for stay on execution of the impugned order. The appellant has filed several documents including the copy of the daily order sheet, written representation filed during the inquiry no document has been filed on behalf of the respondent.

Describing the impugned order as a non speaking order the appellant submitted that the same was passed on 30.01.2020 and before the expiry of the statutory period of limitation for filing the appeal the country came to a shut down on account of outbreak of covid-19. The appeal thus could not be filed in time and the same was presented on 29.01.2021. Citing the judgment of the Hon'ble Supreme Court in Suomoto WPC No. 3/2020 he prayed for condonation of delay and admission of the appeal. The Ld. Counsel for the

respondent fairly considered about the condonation of delay as directed by the Hon'ble Supreme Court on account of the outbreak of covid-19. Considering the circumstances it is held that the present appeal is a fit case for condonation of delay. There being no other defect pointed out by the registry the appeal is admitted.

The other application filed by the appellant is for an interim stay on the execution of the impugned order pending disposal of the appeal. The Ld. Counsel for the appellant submitted that the impugned order was passed without giving proper opportunity to the establishment for explaining the mitigating circumstances. The written submission made during the inquiry was never considered nor the basis for calculation of damage was made available to the appellant/establishment. Not only that impugned order does not reveal the basis on which the commissioner came to conclude about the liability of the establishment for imposition of maximum percentage of damage. Citing the judgments of the Hon'ble Supreme Court in the case of RSL Textiles he submitted that the commissioner while discharging a quasi judicial function though expected to give a finding on the mensrea of the establishment has not done so. In absence of a finding on the mensrea the imposition of damage is illegal as all delayed deposit cannot entail the establishment for payment of damage. He thereby submitted that the appellant has a strong arguable case and the impugned order be stayed without any condition till disposal of the appeal. To support his argument he relied upon the case of HK Corporation vs. APFC and old Village Industries vs. APFC and several other judgments decided by the Hon'ble High Court of Delhi to argue that this is a fit case for grant of unconditional interim stay on the impugned order pending disposal of the appeal.

The Ld. Counsel for the respondent raised serious objection to the prayer of the appellant for the interim stay and submitted that very purpose of the EPF and MP Act is to safeguard the interest of the employees against the mighty employer. Unconditional stay of the impugned order would defeat the very purpose of the legislation. He also submitted that the establishment is a habitual defaulter and other previous proceedings for damage are pending against it which is evident from the impugned order only.

Of course the appellant strenuously canvassed the grounds of appeal and pointed out the defect in the impugned order to make this tribunal believe at this stage about its fair chance of success. But the tribunal at this stage is not expected to make a roving inquiry on the merit of the appeal when the respondent is yet to file objection. But on a bare perusal of the impugned order gives an impression that the RPFC while passing the order has concluded to impose maximum amount of damage on the establishment basing upon his assumptions. It has been stated by the commissioner in the order that the

establishment in the past have defaulted in timely remittance and for that other proceedings are pending. He also observed that it is presumably clear that the employer by delaying the remittance retains the PF contribution of the employees which is invested in the business for a wrongful gain. He has not assigned any reason or given any finding whether any such act of wrongful gain was noticed during the inquiry making establishment liable for penal damage. Suspicion and assumption however strong cannot take the place of reasoning for guiding a judicial or quasi judicial authority for a decision.

Keeping in mind the principle of law decided by the Hon'ble Apex Court in the case of RSL Textile referred supra and considering the period of default and the amount of damage assessed, it is felt proper and desirable that pending disposal of the appeal the amount assessed be protected from being recovered from the appellant. Furthermore, in the case of **Mulchand Yadav and Another vs. Raja Buland Sugar Company and another reported in (1982) 3 SCC 484** the Hon'ble Supreme Court have held that the judicial approach required that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

In this case it is accordingly directed that there should be an interim stay on the execution of the impugned order levying damage, pending disposal of the appeal. But the said interim order cannot be unconditional as the period of default spans over a period of five years. The appellant is directed to deposit 10% of the assessed amount of damage through challan within 4 weeks from the date of communication of this order as a precondition for stay pending disposal of the appeal. List the matter on 05.05.2021 for reporting of compliance. Interim orders to continue till then. LCR be returned to the respondent.

Sd/-

Presiding Officer