

Court No. - 33

Case :- WRIT - C No. - 9281 of 2025

Petitioner :- M/S Metro Amusement Pvt. Ltd. Abu Plaza, Abulane,

Respondent :- Union Of India And Another

Counsel for Petitioner :- Abhijeet Mishra, Nipun Singh

Counsel for Respondent :- A.S.G.I., Jagdish Pathak

Hon'ble Prakash Padia, J.

1. Heard Sri Raman Agrawal, Advocate holding brief of Sri Abhijeet Mishra, learned counsel for the petitioner, Sri Surendra Nath, learned counsel appearing on behalf of respondent no. 1 and Sri Udit Chandra, learned counsel appearing on behalf of respondent no. 2.

2. Order dated 10.10.2024 passed by the respondent no. 2 by which the review application filed by the petitioner was rejected on the ground of delay, is under challenge in the present petition.

3. A preliminary objection has been raised by Sri Udit Chandra, learned counsel appearing on behalf of respondent no. 2 that since the main order against which the present review application has been filed is not under challenge, the present petition is not maintainable. In response to the same counsel for the petitioner placed reliance upon paragraph nos. 12 and 13 of the judgment and order passed by this Court on **August 19, 2019 in Writ C No. 1914 of 2019 (Chandra Shekhar Azad University of Agriculture and Technology Vs. Regional Provident Fund Commissioner-II and Another) reported in (2020) 164 FLR 281**. Paragraph 12 and 13 of the aforesaid judgment reads as follows:-

"12. What is in issue is whether the Order 7-B is appealable by virtue of Section 7-B(5) of the Act. Here, it would be gainful to refer the provisions of Section 7-B of the Act, that are quoted in extenso:

"7-B. Review of orders passed under Section 7-A.--(1) Any person aggrieved by an order made under sub-section (1) of Section 7-A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order:

Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.

(2) Every application for review under sub-section (1) shall be filed in such form and manner and within such time as may be specified in the Scheme.

(3) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.

(4) Where the officer is of opinion that the application for review should be granted, he shall grant the same:

Provided that,--

(a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.

(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under Section 7-A."

(Emphasis by Court)

13. A reading of the provisions of Section 7-B of the Act makes it clear that an Application for Review that is rejected, leads to an order from which no appeal lies. If an order rejecting an Application for Review were to be challenged, certainly a writ petition would be competent from that order alone. In that challenge, the Court would be required to see whether the Authority was right in rejecting the Application for Review. In a petition of that kind, the order passed under Section 7-A of the Act, that has not been reopened by granting the Review, would not be under scrutiny of this Court. This would be so because an application under Section 7-B of the Act rejecting an Application for Review would leave the order under Section 7-A not only intact, but there would be no merger with the order passed under Section 7-B, in such a case. It is only that awaiting decision of this Court as to legality of the order rejecting an application under Section 7-B, this Court may consider restraining consequences of the order under Section 7-A of the Act by way of recovery etc, with or without terms, in aid of the writ petition before it, to judge the validity of the Section 7-B order. Again, to emphasize, in that situation the order under Section 7-A would not be under challenge. In that situation alone, a writ petition would not be confronted with the bar of alternative remedy under Section 7-I of the Act. In the event, however, the Review were to be formally granted, and the order originally made under Section 7-A laid open with a fresh order to follow after hearing parties, there would be clearly a merger of the earlier order with that passed under Section 7-B. And, if this were the nature of the order passed under Section 7-B, it would be appealable under Section 7-I, going by the provisions of Section 7-B(5) of the Act. There is yet another class of cases, which Sri Kartikeya Saran and Sri Satyendra Chandra Tripathi, learned counsel for the respondents and the beneficiary employees, respectively urge would fall under Section 7-B(5) of the Act. This is those class of cases where without expressly granting the Review, the Authority seized of the Review Application, does not summarily turn it down, but at the stage of considering the Review Application, passes an order that deals with the merits of the assessee's case. In the submission of the learned counsel, this kind of an order would fall under Section 7-B(5) as the order passed is one under Review, from which an

appeal would lie, treating it to be an original order under Section 7-A of the Act. "

4. After going through the same, the Court is of the opinion that though the present petition has been filed only against the rejection order of the review application, the petition is fully maintainable.

5. Further objection has been raised by Sri Udit Chandra that the application was rightly rejected since the same was filed beyond 45 days. In response to the same counsel for the petitioner placed reliance upon paragraph no. 21 of the judgement and order passed by Calcutta High Court on **May 13, 2022 (C.D. Steel Pvt. Ltd. and others Vs. Assistant Provident Fund Commissioner and others) reported in (2022) 174 FLR 392**. Paragraph 21 of the aforesaid judgment reads as follows:-

"21. In other words, the provisions of the Limitation Act shall apply to any suit, appeal or application under any special or local law to the extent to which they are not expressly excluded by such law. This proposition of law has been endorsed by the Hon'ble Supreme Court in the authorities in Superintending Engineer/Dehar Power House (supra) and Mukri Gopalan (supra). In this case, there being no express exclusion of the Limitation Act in the Rules of 1997, the proceeding will attract section 29(2). of the Limitation Act and consequently Section 5 of the Limitation Act shall apply to the proceeding before the Tribunal. The Tribunal, therefore, has the authority to invoke section 5 of the Limitation Act to condone the delay, if at all, in preferring the appeal. "

5. Matter requires consideration.

6. Counsel for the respondents are granted four weeks' time to file counter affidavit. Petitioner will have two weeks' thereafter to file rejoinder affidavit.

7. List after the exchange of affidavits.

8. Until further order of this Court, the effect and operation of the order dated 10.10.2024 passed by the respondent no. 2, shall remain stayed, provided the petitioner to deposit a 25% of the award amount with the respondent no. 2, within a period of **six weeks'** from today.

Order Date :- 24.4.2025

Arti