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**(2015) 11 DEL CK 0086**

**In the Delhi High Court**

**Case No :** W.P. (C) No. 2160/2003, C.M. Nos. 3615/2003, 7493/2006, W.P. (C) No. 2872/2003, C.M. Nos. 4875/2003, 1694/2007, W.P. (C) Nos. 2374-86/2005, W.P. (C) Nos. 2472-2500/2005, W.P. (C) No. 901/2007 and C.M. No. 1563/2007

A.K. Saini and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 26-11-2015

**Acts Referred:**

Trusts Act, 1882 — Section 77(c), 78(a)

**Citation :** (2015) 11 DEL CK 0086

**Hon'ble Judges :** Sunil Gaur, J.

**Bench :** Single Bench

**Advocate :** C. Mukund, Avneesh Garg and S.M. Vivek Avadh, Advocates, for the Appellant

**Final Decision :** Dismissed

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**Judgement**

Sunil Gaur, J.—In the above captioned five petitions, petitioners are the superannuated/ volunteer retirement optees/ dependents of employees of respondent No. 2- Minerals & Metals Trading Corporation Limited (hereinafter referred to as "MMTC") who claim their right to pension, which according to petitioners has been illegally denied by amending Minerals & Metals Trading Corporation of India Employees' Contributory Superannuation-cum-Family Annuity Scheme" created vide Trust Deed of 29th March, 1989 [hence forth referred to as the "Trust"] and ultimately revoking it.

2. Minerals & Metals Trading Corporation of India Employees' Contributory Superannuation-cum-Family Annuity Scheme" is appended as a Schedule to the Trust Deed of 29th March, 1989. This "self Contributory Pension Scheme" was first amended in the year 1997 and again in the year 1998, it was amended for the second time and the third amendment to it was made in the year 2002. The MMTC contribution to this Scheme was of Rs. 100 per month only. On 21st

November, 2005, the Trust Deed of 29th March, 1989 was revoked with the signing of the Revocation Deed. Pertinently, the MMTC Employees' Union and MMTC Officers' Association were a party to the Memorandum of Settlement of 28th November, 2005. The Revocation Deed was preceded by a unanimous decision of 9th August, 2005 of Federation of MMTC Officer's Association and MMTC Employees' Union to wind up the Trust.

3. The challenge in the above captioned petitions is to the Deed of Revocation of 21st November, 2005 and the above referred amendments made to the afore-referred "self Contributory Pension Scheme". Since the challenge to the Revocation Deed and the amendments made to the aforesaid Scheme is on similar grounds, therefore, these petitions were heard together and are being disposed of by this common judgment.

4. The background facts are that on 20th July, 1988, a Memorandum of Understanding was entered into between respondent-MMTC and Employees Federation/ Union for forming a Pension Scheme under the Industrial Disputes Act, 1947. It is a matter of record that the officers of MMTC were the Trustees of this Trust Deed of 29th March, 1989 which was irrevocable. Clause 4.12 of the Trust Deed empowered the Trust to alter, vary or amend the Pension Scheme. As per this Trust Deed, the benefits under this Scheme were payable on the date of superannuation of the employee. It is relevant to note that as per Clause-22 of this Trust Deed, the Trust could be terminated in case the Trustees unanimously decided to do so. Clause 22.2 provides that upon termination of the Trust, the individual contributions were to be refunded with interest to the beneficiaries of the Pension Scheme. This Trust fund was approved by Commissioner of Income Tax (henceforth referred to as the "CIT") w.e.f. 1st April, 1988.

5. The salient features of the "self Contributory Pension Scheme" were that the Trust would include representatives of the MMTC Employees' Union and its Officers' Association as Trustees. M/s. A.K. Pandit, Actuarial, advised the Trust to take loan from MMTC to overcome the financial constraints and in this regard, an Agreement of 4th May, 1995 was entered between the Trust and MMTC for a staff loan of Rs. 10 crores, which carried interest @4% p.a. This soft loan was to be repaid by respondent No. 3-Trust to respondent No. 2-MMTC in fifteen installments of Rs. 1 crore each and the first installment was to commence from May, 2003. In short, by the first amendment of the year 1997 to the "self Contributory Pension Scheme", reckonable service for earning pension was increased from 33 years to 39.6 years and the pension amount was increased from Rs. 2,000/- per month to Rs. 2,100/- per month. Minimum period of contribution to this Scheme was increased from 05 years to 07 years and the minimum qualifying service was made 20 years with the rider that an employee, who is covered by this Scheme, has to make contribution to this Scheme for a minimum period of 05 years. In case, any employee, who does not fulfill the amended conditions, would be entitled to refund of the contribution with simple interest @5% p.a. An employee, who resigned without completing service of 20

years, would be entitled to refund of the contributions with interest @5% p.a. instead of 10% p.a. The afore-referred first amendment was duly approved by respondent-CIT w.e.f. 22nd September, 1997.

6. The second amendment to the aforesaid "self Contributory Pension Scheme" was that the employees of MMTC, who took voluntary retirement under the Voluntary Retirement Scheme (henceforth referred to as the "VRS") would not be entitled to receive the benefits under the "self Contributory Pension Scheme" and the contributions would be refunded to such employee with interest @5% p.a. This second amendment was made effective from 1st April, 1998 and according to respondents, it was widely circulated. The approval to the second amendment was given by CIT w.e.f. 1st April, 1998. It is a matter of record that the Trust provided pensionary benefits to retired MMTC employees upto October, 2000 by purchasing annuities and from November, 2000, the Trust suspended the purchase of annuities due to financial stringency.

7. On 22nd June, 2001, M/s. India Life, gave second Actuarial Report highlighting that the deficit amount in this "self Contributory Pension Scheme" was of Rs. 11.17 crores and if this Scheme is continued, disparity between contributions made and the beneficiaries is bound to widen. In September, 2001, the Trust appointed a Sub-Committee of its Trustees to look into the revival of this "self Contributory Pension Scheme". It is also a matter of record that in April 2002, respondent-MMTC introduced Voluntary Retirement Scheme, 2002. As per third amendment to the "self Contributory Pension Scheme" made in July, 2002, the contribution to this pension Scheme was to be suspended from July, 2002 and thus, who had superannuated on or before 30th June, 2002 or have availed VRS on or before 31st March, 1998 in respect of whom annuities were not purchased, their contribution was to be refunded with interest @5% per annum.

8. According to respondents, the third amendment was brought about to bring all the employees at par, as there were several employees who had taken VRS prior to 31st March, 1998. There were others who had superannuated after October, 2000. The net effect of this third amendment was that all employees, who either took VRS or were superannuated after November, 2000, but for whom annuities were not purchased, all become entitled to refund of their contributions. The third amendment was sent to CIT for approval in August, 2002. Respondent No. 4- Commissioner of Income Tax (CIT) had withdrawn approval on 23rd July, 2004 to the third amendment w.e.f. 1st July, 2002, as from the said date, the Trust had stopped taking contributions to the Pension Fund. Respondent No. 4- CIT had further ordered that the Pension Fund would attract tax liability w.e.f. 1st July, 2002.

9. It is a matter of record that in November, 2005, the Trust Deed was revoked and thus, the "self Contributory Pension Scheme" ceased to exist and the contributions made to the Pension Fund was to be refunded back to the contributors with interest @ 5% p.a.

10. At the hearing, it was submitted on behalf of petitioners that respondent No. 3- Trust was irrevocable and any amendment thereto, was permissible only with the prior written approval of respondent No. 2- MMTC and respondent No. 4-CIT and in no case, amendment would dilute or modify the object of the Trust to the disadvantage of the beneficiaries. It was submitted that respondent No. 2-MMTC was under obligation to make deduction from employees' salary to such an extent that it enables respondent No. 3-Trust to purchase annuity from Life Insurance Corporation of India for paying pension to the retired employees.

11. During the course of hearing, reference was made to the various provisions of the Trust Deed to submit that retrospective effect to the amendments could not be given and that the impugned amendments to the "self Contributory Pension Scheme" were made to defeat the object of the Trust and to give undue benefit to certain employees. According to petitioners, respondent No.-3- Trust was mismanaging its affairs and the approval to first and second amendment was granted by respondent No. 4- CIT in a mechanical manner, and thus, amendments were designedly bound to help certain class of beneficiaries. It was vehemently asserted on behalf of petitioners that VRS optees were deliberately kept away from this "self Contributory Pension Scheme" in an arbitrary and illegal manner and respondent- Trust had arbitrarily stopped purchasing annuities, thereby defeating purpose of the Trust.

12. It was pointed out that it was nowhere mentioned in the VRS of the year 2002 that VRS optees will not be getting the pensionary benefits and infact, as per the relevant Clause of the VRS, the compensation payable under the VRS was in addition to the retiral benefits. It was next submitted that many petitioners had received back their contribution with a nominal simple interest of 5% under protest and due to financial difficulty.

13. It was further submitted on behalf of petitioners that the third amendment to the "self Contributory Pension Scheme" has been rightly disapproved by respondent No. 4-CIT and to overcome this disapproval, the Trust itself has been revoked without following due procedure as provided in the Trust Deed in question. Reliance was placed upon decisions in *The Mayor of Lyons Vs. The Advocate General of Bengal & ors.*, (1876) L.R.3 I.A. 32 ; *Sasadhar Chakravarty and Another Vs. Union of India and Others*, ; *Mr. Kuriakose V. Cherian*, retired employee of Air India Limited, *Mrs. Vidyut Vijay Kadam*, employee of Air India Limited, *Vasant B(sic)imrao Mahajan*, retired employee of Air India Limited, *Mr. Pramod Biharilal Kumar*, retired employee of Air India Limited, *Mrs. Saroj Alhawat*, retired employee of Air India Limited and *Air India Pensioners Welfare Association Vs. Air India Employees Self Contributory Superannuation Pension Scheme Finance Dept. and Others*, ; *Air India Employees Self Contributory Superannuation Pension Scheme Vs. Kuriakose V. Cherian and Others*, ; *Basanti Seal and Others Vs. Hiralal Seal and Others*, ; *Smt. Sikha Das and Another Vs. Sri Jitendra Kumar Boral and Others*, ; *Sunita Devi Vs. Life Insurance Corporation of India & anr.* 170 (2010) DLT 48 ; *Centre for Policy Research Vs.*

Brahma Chellaney and Others, ; N.M. Tai Vs. ONGC Ltd., and decision of 29th April, 2014 of Gujarat High Court in Spl. Civil Application No. 8297/1999 N.M. Tai Vs. ONGC to submit that revocation of the Trust is void ab initio, as the termination of irrevocable Trust Deed has to be with concurrence of the beneficiaries and in the instant case, beneficiaries were not party to the revocation of the Trust.

14. Reliance was also placed by petitioners' counsel upon decisions in Ganendra Mohan Tagore Vs. Upendra Mohan Tagore 1869 Lawsuit (cal) 11; D.S. Nakara and Others Vs. Union of India (UOI), ; Subrata Sen and Others Vs. Union of India and Others, and Manju Tomar and Others Vs. NCT and Others--> to submit that employees' contribution does not alter the right of employee to obtain pension, as it is the vested right of an employee to have pension for the post retirement period.

15. Petitioners' counsel also placed reliance upon decisions in Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, and State of Punjab Vs. Rafiq Masih (White Washer), to submit that amount paid/ received without authority of law can always be recovered.

16. Reliance was also placed upon decisions in Mrs. Nandini Nitin Patil Vs. State of Maharashtra and another, ; Bokaro Karamchari Panchayat Vs. Hindustan Steel Works Construction Ltd. 2001 LAB IC 2892 and decision of 31st August, 2015 of this Court in LPA No. 677/2011 in Govt. of Delhi & ors. Vs. North Delhi Power Ltd. to submit that employees who have opted for voluntary retirement are entitled to payment of terminal dues and so, they cannot be denied the benefit of pension Scheme.

17. Finally, it was submitted on behalf of petitioners that the impugned amendments in question and the revocation of the Trust Deed stands vitiated and it deserves to be quashed and the "self Contributory Pension Scheme" ought to be revived.

18. On behalf of respondents, it was submitted that due to financial constraints, the necessary amendments had to be made to the "self Contributory Pension Scheme" and in view of the Actuarial's Report regarding the viability to continue with the "self Contributory Pension Scheme", Trust Deed was rightly revoked and that too upon unanimous resolution of the MMTC Employees' Union and its Officers' Association. It was pointed by learned counsel for third respondent that most of petitioners had contributed less than Rs. 20,000/- and if the Trust was to purchase the annuities, the same would cost Rs. 3.5 lakhs for each employee. Attention of this Court was drawn to Clause 4.12 and Clause 25 of the Pension Scheme appended to the Trust Deed to submit that the Trustees had validly amended the "self Contributory Pension Scheme" and the amendments were prospective and not retrospective.

19. According to learned counsel for third respondent, to bring about the parity amongst the employees, the third amendment was brought in and since it was

not approved by respondent No. 4- CIT, therefore, on the basis of Actuarial's Reports, it was unanimously resolved to terminate the Trust Deed. It was pointed out that as per Section 77(c) of the Indian Trust Act, 1882, irrevocable Trust can be revoked if fulfillment of its purpose becomes impossible.

20. It was submitted by learned counsel for respondents that the Trust in question was revoked by invoking Section 78(a) of the Indian Trust Act and that too with the consent of beneficiaries. It was pointed out that it is not possible to obtain consent of individual beneficiaries and therefore, consent of MMTC Employees' Union and its Officers' Association was duly obtained and infact, at the time of revocation of the Trust Deed, most of the petitioners had already retired. So, it was submitted that the Trust Deed was validly revoked by following due procedure and due to financial constraints.

21. Reliance was placed upon decisions in N.K. Aggarwal Vs. UOI & ors. 194 (2012) DLT 650 ; Masammat Bibi Sayeeda and Others etc. Vs. State of Bihar and Others, ; Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, ; Princess Usha Trust Vs. Commissioner of Income Tax, ; W.O. Holdsworth and Others Vs. The State of Uttar Pradesh, ; Air India Employees Self Contributory Superannuation Pension Scheme Vs. Kuriakose V. Cherian and Others, ; Industrial Finance Corporation of India Ltd. Vs. The Cannanore Spinning and Weaving Mills Ltd. and Others, and decision of 29th April, 2014 of Gujarat High Court in Spl. Civil Application No. 8297/1999 N.M. Tai Vs. ONGC Ltd. to submit that in the matters like the instant one, the Courts have to only see that if the change in the policy is irrational or perverse or not and since the "self Contributory Pension Scheme" was not found to be financially viable, therefore, it was rightly revoked and the amendments were made to this Scheme only with a view to make it viable and when it could not be made viable, it had to be ultimately revoked. Thus, it is submitted that there is no illegality or irrationality in the impugned revocation of the Trust and amendments brought about in the "self Contributory Pension Scheme".

22. On the maintainability aspect, it was submitted by respondents' counsel that since the contribution of MMTC to the "self Contributory Pension Scheme" was negligible, therefore, these writ petitions are not maintainable, as action of respondent-Trust is essentially impugned in this petition. Thus, dismissal of these petitions is sought.

23. After having heard learned counsel for the parties at length and on perusal of the "self Contributory Pension Scheme", the amendments made thereto, Revocation Deed, the material on record and decisions cited, I find that the question of locus standi would not be an impediment to entertain these petitions because respondent-MMTC, which is a Public Sector Undertaking had a crucial role in creation of the Trust Deed as well as in formulation of the Pension Scheme. For creation as well as operation of the Pension Scheme, the consent/approval of respondent- MMTC was must and the amendments to the Pension Scheme were also required to be approved by respondent-MMTC as well as

respondent No. 4-CIT. So, in the considered opinion of this Court, these writ petitions are maintainable.

24. Instead of dealing with the impugned amendments, it is deemed appropriate to first deal with revocation of Trust Deed because if it is found that the Trust Deed has been validly revoked then the question of the impugned amendments being illegal would pale into insignificance. The Trust Deed of 29th March, 1989 (Annexure P-1) has the pension scheme as a Schedule to it and Clause- 22 thereof provides for abrogation of the Trust in question. This Clause reads as under:-

22. Termination of Trust:

22.1 The Trust hereof shall be terminated at

(a) On the dissolution of MMTC, subject to the provisions of Rule 34. Or

(b) Upon the scheme being terminated by the Trustees unanimously deciding to the effect.

22.2 Upon such termination of the Trust the assets then held by the Trustees shall be transferred to the individual members to the extent or contribution and interest in respect of each member. All other moneys and the investments held by the Trustees upon trust hereof shall be realized and/or otherwise be employed for the benefit of the beneficiaries of the scheme.

25. No doubt, the Trust is irrevocable but the Scheme appended thereto contains Clause 22, which permits abrogation/ termination of the Trust and the Pension Scheme floated by it. Instant case comes within the ambit of Clause 22.1(b) of the Trust Deed. The Deed of Revocation (Annexure-1) of the Trust of 29th March, 1989 placed on record by third respondent reveals that not only Directors of MMTC but the Trustees, which included the nominees of MMTC Employees' Unions as well as that of MMTC Officers' Association were party to the revocation of Trust. Clause 4 of the Revocation Deed (Annexure-1) clearly stipulates as under:-

"AND WHEREAS the Federation of the MMTC Officers' Associations and MMTC Employees' Unions have communicated to the Company desire of their members to revoke the Trust Deed and wind up the Trust."

26. It is the categorical case of respondents that the Federation of MMTC Officers' Association as well as MMTC Employees' Unions had passed a unanimous resolution of 9th August, 2005 to wind up the Trust. During the course of hearing, nothing worthwhile could be urged on behalf of petitioners to dislodge Clause- 4 of the Revocation Deed and the fact that these two Associations unanimously resolved to wind up the Trust. The reason put forth for winding up the Trust is not without any basis. The financial difficulties experienced in the operation of the "self Contributory Pension Scheme" are duly supported by the Actuarial Reports, which disclose a huge deficit, thereby rendering the operation

of the Pension Scheme to be not viable. "self Contributory Pension Scheme" cannot be equated with typical Pension Schemes. In *Cherian case* (supra), Apex Court had held that once annuity is purchased, connection between the corpus and the fund is severed and retirees cannot be made liable for any deficit in the fund. In the instant case, annuities could not be purchased for petitioners due to deficit fund. In *Chakravarty case* (supra), Apex Court had held that denial of benefits of improvements in superannuation fund to the employees, who had already retired, was not unconstitutional. The ratio of this decision has no application to the facts of the instant case. Similarly, *Ashok Kumar Kapur and Others Vs. Ashok Khanna and Others*, is of no help to the case of the petitioner's case as in the said case it was held by the Apex Court that extinguishing of the trust without exhaustion of the trust property was not justified. It cannot be so said in the instant case. Reliance placed upon *Subrata Sen* (supra) is clearly misplaced as the said decision related to non contributory pension scheme whereas the instant case is of "Self Contributory Pension Scheme". The question of recovery of the amount received without any authority of law is not the subject matter of consideration in the instant case and so reliance placed upon Apex Court decisions in *State of Punjab Vs. Rafiq Masih (White Washer)*, and *Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others*, is of no avail. Thus, the decisions relied upon by petitioners have no application to the facts of the instant case and do not advance the case of petitioners in any manner whatsoever as these decisions have been rendered in an altogether different context.

27. In the ultimate analysis, this Court is of the considered view that the revocation of the Trust vide Deed of Revocation of 21st November, 2005 does not suffer from any arbitrariness or irrationality. Rather this Court finds that revocation of irrevocable Trust is in consonance with its covenants.

28. Once the revocation of the Trust Deed is found to be valid then the challenge to the impugned amendments loses its significance. In any case, petitioners are not in any way affected by the first amendment. So far as second amendment of the year 1998 is concerned, I find that the same is duly approved by respondent No. 4-CIT and the second amendment is based upon the Actuarial Report furnished by M/s. India Life which discloses deficit of Rs. 11.17 crores and in view of wide disparity between the contribution made and the annuities payable, the operation of the Pension Scheme was rightly found to be not viable. The bona fides of the Trustees cannot be doubted because in September, 2001, a Sub-Committee was appointed to look into revival of the Pension Scheme and it was not feasible to revive it due to financial constraints. The third amendment was brought in to bring parity amongst the employees but this amendment has not been approved by respondent No. 4-CIT. This by itself would not render this amendment void for the reason that the approval of MMTC is there to this amendment and non- approval of respondent No. 4-CIT would only deprive the Trust of the tax benefits. This Court is of the considered opinion that third amendment impugned herein had a rational and thus, cannot be said to be

perverse.

29. In the considered view of this Court there is no basis for petitioners to assert that respondent-Trust was mismanaging its affairs or that the amendments were brought about to favour any particular class of employees or that the impugned amendments were arbitrarily made to operate retrospectively. Impugned amendments do not suffer from any irrationality or perversity. Exclusion of VRS employees from operation of the pension scheme is justifiable in the facts and circumstances of the case. In any case, since it is found that the Trust has been validly terminated, therefore, these petitions are liable to be dismissed.

30. Consequentially, finding no substance in these petitions, they are dismissed while leaving the parties to bear their own costs.