
(2002) 04 GUJ CK 0054

In the Gujarat High Court

Case No : Special Civil Application No. 3838 of 2002

Amar Niranjana Bhatt

APPELLANT

Vs

Commissioner, Public Provident Fund Scheme and Another

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Public Provident Fund Act, 1968 — Section 3
Succession Act, 1925 — Section 372

Citation : AIR 2002 Guj 417 : (2002) 22 GLH 395 : (2002) 3 GLR 789

Hon'ble Judges : P.B. Majumdar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.B. Majumdar, J.—The petitioner No. 1 is the husband of the petitioner No. 2. By filing this petition, the petitioners have prayed for issuance of necessary writ under Article 226 of the Constitution of India to the respondents to pay to the petitioners the amount lying in P.P.F. Account No. 3740/ 29 which is in the name of late Agastya, the minor son of the petitioners who unfortunately died in an accidental death. It is not in dispute that the petitioners are the parents of deceased Agastya. The petitioner No. 1 as the father and natural guardian of his minor son Agastya had opened a PPF Account No. 3740/29 in the name of Agastya Amar Bhatt. A Saving Bank Account No. 12828 was also opened in the name of minor Agastya which was operated by the petitioner No. 1 as father and natural guardian of his son. A copy of the Passbook bearing Account No. 3740/29 issued by the respondent No. 2 for the aforesaid P.P.F. Account is annexed at Annexure B to the petition.

2. Unfortunately, the said child Agastya died on 19-10-2001 in an accident in the City Gold Complex which is situated on Ashram Road, Ahmedabad. At the time of his untimely death, he was only 13 months and 8 days old. His death certificate is also annexed as Annexure C to the petition. The petitioners thereafter gave an application on 6-12-2001 (which is annexed at Annexure D to the petition)

requesting the respondent No. 2 to close Saving Bank Account No. 11828 and also transfer the balance lying in the PPF Account of minor Agastya to Saving Bank Account No. 11844, which account is also in the same Bank. The petitioners however were informed by the respondent No. 2 that the amount lying in the PPF Account of minor Agastya is Rupees 100283/- and that since it is more than Rs. 1 lac, the amount cannot be given to the petitioners without the production of succession certificate, especially when there was no nomination made at the time of opening of the said Account. The petitioner No. 1 thereafter wrote a letter dated 4-2-2002 which was addressed to the Branch Manager of the respondent No. 2 bank. He pointed out that the PPF Account of his minor son was operated by the petitioner No. 1 as father and natural guardian. The petitioner No. 1 also pointed out that he wants to utilise the amount lying in PPF Account of his son for a charitable purpose. He requested that needful may be done at the earliest for the purpose of transferring the same. In the said letter, the petitioner clearly pointed out that he is willing to waive an amount of Rs. 283/- out of total amount of Rs. 100283/- which is lying in his son's PPF Account. It is required to be noted that the insistence of succession certificate was due to the fact that since the amount involved in the account is more than Rs. 1 lac, such succession certificate was necessary as per the rules. In that view of the matter, the petitioner pointed out that even he is willing to waive amount which is additional amount to Rs. 1 lac and accordingly requested that Rs. 1 lac may be transferred to his Saving Bank Account. The petitioner also further pointed out that the petitioner No. 1 being the father and natural guardian, the question of nomination did not arise. In spite of the aforesaid fact wherein the petitioner says that they are forgoing the amount of Rs. 283/- and only Rs. 1 lac be transferred to their Account, yet the respondent No. 2 insisted for production of succession certificate. However, since the bank did not accede to the request of the petitioners, the petitioners are ultimately compelled to approach this Court by way of this petition under Article 226 of the Constitution of India.

3. At the time of hearing of his petition, it was argued by Shri A.S. Vakil, Ld. Advocate appearing for the petitioners that it is not in dispute that the petitioners are the parents of deceased Agastya. Mr. Vakil also further pointed out that production of succession certificate in respect of his minor child who was hardly 13 months and 8 days old involves too much of harassment and complications. He also further argued that production of succession certificate in case of death of a minor cannot be insisted. He also further pointed out that nomination is not permitted in case of minors, especially when the account was all throughout operated by the father as a natural guardian.

4. On the other hand, it was argued by Mr. Desai, Ld. Advocate for the respondent No. 2 that because of the provision in the PPF Scheme, the bank insisted for succession certificate as the amount involved is more than Rs. 1 lac.

5. I have heard the Ld. Counsel for the respondents and in my view, it is a fit case where appropriate directions, as prayed for by the petitioner in this petition,

deserve to be granted. Under the provisions of the Public Provident Fund Scheme, 1968. the provision is prescribed regarding nomination and repayment after death of a subscriber. The relevant provision under the Scheme is as under :--

Nomination and repayment after death of subscriber.

12(1) A subscriber to the Fund may nominate in Form E, or as near thereto as possible, one or more persons, to receive the amount standing to his credit in the event to his death before the amount has become payable or, having become payable, has not been paid.

(2) No nomination shall be made in respect of an account opened on behalf of a minor.

(3) A nomination made by a subscriber may be cancelled or varied by a fresh nomination in Form F, or as near thereto as possible by giving notice in writing to the accounts office in which the account stands.

(4) Every nomination and every cancellation or variation thereof shall be registered in the accounts office and shall be effective from the date of such registration, the particulars of which shall be entered in the pass book.

(5) If any nominee is a minor, the subscriber may appoint any person to receive the amount due under the account in the event of the death of the subscriber during the minority of the nominee.

(6) Notwithstanding the provisions contained in paragraph 9,--

(i) if subscriber to an account in respect of which a nomination is in force dies, the nominee or nominees may make an application in Form G, or as near thereto as possible, to the accounts office together with proof of death of the subscriber and on receipt of such application all amounts standing to the credit of the subscriber after making adjustments, if any, in respect of interest on loans taken by the subscriber, shall be repaid by the accounts office itself to the nominee or nominees :

Provided that if any nominee is dead the surviving nominee or nominees shall, in addition to the proof of death of the subscriber, also furnish proof of death of the deceased nominee;

(ii) where there is no nomination in force at the time of death of the subscriber, the amount standing to the credit of the deceased after making adjustments, if any, in respect of interest on loans taken by the subscriber, shall be repaid by the accounts office only to the legal heirs of the deceased on receipt of an application in form G in this behalf from them;

Provided that the balance up to Rs. 1 lakh may be paid to the legal heirs on production of (i) a letter of indemnity; (ii) an affidavit; (iii) a letter of disclaimer on affidavit; and (iv) a certificate of death of subscriber, on stamped papers, in

the forms as in Annexure to Form G.

13. Power to relax :

Where the Central Government is satisfied that operation of any of the provisions of this Scheme causes undue hardship to a subscriber; it may, by order for reasons to be recorded in writing, relax the requirements of that provision in a manner not inconsistent with the provisions of the Act."

6. Considering the aforesaid scheme, it is clear that nomination is not required to be made in respect of an Account opened on behalf of a minor. Under the Scheme, "guardian" is also defined in relation to a minor. The definition provides that guardian in relation to a minor means father or mother and where neither parent is alive, or where the only living parent is incapable of acting, a person entitled under the law for the time being in force to have care of the property of the minor.

7. In the instant case, the petitioner was subscribing to the fund under the scheme on behalf of his minor son of whom he was the guardian. Even as per the Scheme, no nomination can be made in respect of any Account opened on behalf of a minor. Considering the fact therefore that the account was operated by the petitioner No. 1 as a guardian of his minor child and since there was no question of nomination in respect of the Account in question, the respondent No. 2 should transfer the aforesaid in the joint account of the petitioners but as stated earlier, the petitioners had even shown willingness to restrict their scheme up to Rs. 1 lakh for such transfer as according to the respondent No. 2, the succession certificate is required only if the amount involved is more than Rs. 1 lac. Apart from the aforesaid aspect, even in Rule 13, the Government is having power to relax considering the hardship to a subscriber. Considering the aforesaid aspect of the matter, I am of the opinion that since the account in question was opened on behalf of a minor by the natural guardian i.e. petitioner No. 1 and since he was subscriber to the fund and since nomination is not permitted under the Scheme when an account is opened on behalf of a minor, in such case, considering the scheme, it is not necessary that succession certificate was also required to be produced for the purpose of repaying the amount in question when under ordinary circumstances, if there is no nomination and if the amount in question is more than Rs. 1 lac, naturally such insistence for succession certificate as per the scheme is justified but in case of minor, nomination itself is not permissible under the scheme when the account is to be operated on behalf of minor, and naturally insistence of succession certificate is also uncalled for. The petitioner No. 1 therefore being the natural guardian is entitled to get the aforesaid amount transferred to his own Saving Bank Account. Considering the aforesaid facts and circumstances of the case, in my view, it is not obligatory on the part of the petitioner to produce succession certificate, especially when the Account was opened on behalf of the minor and the said Account was looked after by the petitioner No. 1 also as a natural guardian. As stated above, it is not in dispute that as per the scheme, the balance of Rs. 1 lac can be paid to the

legal heirs even on production of an affidavit. Even apart from the aforesaid aspect even operation of any of the provisions of the scheme can be relaxed by the Central Government, in case, it is found that it may cause hardship to a subscriber. In my view, if in this case in which the petitioners, who have lost their only child of a tender age, are asked to produce succession certificate, it would naturally result into hardship and would amount to adding insult to the injury as they will have to undergo the torture of obtaining succession certificate and waiting for long time for the same, especially when it is stated by the petitioners that the petitioners are desirous of creating a trust by utilising the amount, in question. In my view, the respondent No. 2 should have straightway accepted the request of the petitioner No. 1 when the petitioner No. 1 has clearly pointed out that the claim is confined to Rs. 1 lac and that amount may be transferred and admittedly up to Rs. 1 lac without insisting for succession certificate even on affidavit amount up to Rs. 1 lac can be paid. In the facts of the case, the respondent No. 2 should have accepted the aforesaid request which is absolutely genuine, in view of what is stated hereinabove, this petition deserves to be allowed and is accordingly allowed. It is submitted on behalf of the petitioners that the petitioners have got their own saving Bank Account No. 11844 which is also with the respondent No. 2 bank. It is submitted that the said amount can be transferred in the aforesaid Saving Bank Account of the same bank. The respondent No. 2 is directed to pay the amount lying in PPF A/c. No. 3740/29 which is in the name of minor Agastya Amar Bhatt forthwith and the said amount may be accordingly paid to the petitioners or the amount lying in PPF Account No. 3740/29 may be transferred in Saving Bank Account No. 11844. Rule is made absolute with no order as to costs.