(2011) 01 CAL CK 0108

In the Calcutta High Court

Case No : Writ Petition No. 63 of 2009

Amrita Bangur APPELLANT

Vs

The Chief Post Master General and Others RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Citation : (2011) 01 CAL CK 0108

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Sanjib Kumar Mal and Bimalendu Das, for the Appellant; F.M. Razzaque, A.S.G. and Aniruddha Mohanta for Respondents 1 to 3, C. Bandopadhyay and Anandamoyee Mondal for Respondent 5, A.K. Bannerjee and Debjani Ghosh for Respondent 6 and Santosh Chatterjee, for Respondent 7, for the Respondent

Judgement

Dipankar Datta, J.—This petition dated 28th January, 2009 has been presented by the petitioner immediately after attaining majority. She is the daughter of the added respondent, Mr.

Keshav Bangur.

2. The following relief has been claimed in the petition:

a) A writ in the nature of Mandamus directing the respondents and/or its servants and sub-ordinates to forthwith issue duplicate pass book relating to P.P.F. Account No. 1813 lying in the name of your petitioner alongwith upto date interest accrued therein; b) A writ in the nature of Certiorari directing the respondents to forthwith transmit to this Hon''ble Court all records pertaining to to P.P.F. Account No. 1813 of your petitioner so that necessary directions may be issued on the respondents to issue duplicate pass book relating to P.P.F account No. 1813 lying in the name of your petitioner alongwith upto date interest accrued therein".

3. For the purpose of appreciating the petitioner''s grievance, one has to take

note of events which occurred while she was a minor.

4. The added respondent, in March, 1991, had opened two accounts, one in the name of the petitioner and the other in the name of his son Master Anant Bangur, under the Public Provident Fund Scheme, 1968 (hereafter the Scheme) at Burrabazar Post Office (hereafter the said post office) with initial deposit of Rs. 5,000/- each. The account of the petitioner was numbered 1813 while that of her brother was numbered 1814.

5. From time to time, deposits were made in respect of both the accounts simultaneously. The quantum of such deposits, however, differed.

6. It has been pleaded in the petition that on or about 9th December, 2004, the petitioner''s mother Mrs. Archana Bangur came to learn that the passbook relating to the petitioner''s account has been lost/misplaced. This led to a general diary being lodged with the Officer-in-Charge, Alipore Police Station on 16th December, 2004, followed by an application dated 24th December, 2004 made on behalf of the petitioner before the Post Master of the said post office, the respondent No. 3, for issuance of a duplicate passbook. Duplicate passbook, however, was not issued by the respondent No. 3. Consequently, an enquiry was made which revealed that the account had been transferred to the UCO Bank, Calcutta Main Branch (hereafter the said bank).

7. In such circumstances, on behalf of the petitioner, a letter dated 18th May, 2005 was addressed to the Manager of the said bank, the respondent No. 5, by the added respondent, for issuance of duplicate pass book relating to her account. The concerned officials of the bank denied transfer of the petitioner''s account from the said post office. The added respondent addressed a letter to the respondent No. 3 on 30th November, 2005 intimating such fact, with a request to provide necessary particulars relating to transfer of the petitioner''s account to the said bank. It appears from copy of the letter dated 30th February, 2005 that a hand-written endorsement was made to the effect that the account of the petitioner (No. 1813) stood transferred on 1st March, 2000 with issuance of cheque No. 460489 of even date, for an amount of Rs. 2,40,827/-, being the credit balance in such account.

8. While the added respondent was intermittently making enquiries in respect of the account of the petitioner, the Deputy Chief Post Master of the said post office vide Memo dated 24th July, 2008 requested the respondent No. 4 to search his record regarding transfer of the petitioner''s account to his end on 1st March, 2000. It was mentioned therein that as per records maintained by the said post office, "one RBI Cheque No. 460989 dated 01.03.2000 for Rs. 240827/- in connection with closure of the account on transfer was issued on 01.03.2000 and sent to your office on the same date". An immediate reply was requested as the subscriber had lodged a complaint that the account had not yet been opened on transfer at his end.

9. Upon receipt of such memo, the respondent No. 4 by his letter dated 30th

July, 2008 informed the Deputy Chief Post Master of the said post office that the said bank had not "received any PPF transferred documents along with RBI cheque of Rs. 2,40,827/-..........". A request was made to send to the said bank copy of the letter forwarded in the matter along with copy of acknowledgement of the said documents for further search/verification.

10. This was followed by a lawyer''s notice issued on behalf of petitioner dated 26th August, 2008 whereby request was made to provide the following documents:

i) Copy of valid document for transfer of my clients account from your post office to UCO Bank.

ii) The date on which the cheque No. 406989 dated 01/03/2000 under reference was encashed from your post office A/c to UCO. Bank

iii) The present situation of the my clients PPPF A/c and the accumulated balance of the PPF A/c as on 31/03/2008.

11. In pursuance of a letter of the said post office dated 12th February, 2009, the Reserve Bank of India (hereafter the RBI) vide letter dated 13th February, 2009 informed the respondent No. 3 to the following effect:

In this regard we advise that we are unable to provide the required information as the information pertaining to the cheque paid during the year 2000 is not available with us.

12. Since nothing positive fructified thereafter, the writ court''s jurisdiction was invoked.

13. The writ petition came up for consideration before this Court on exchange of affidavits. In course of hearing, I directed the petitioner to implead her father as an added respondent and called for an affidavit from him to explain his stand. An affidavit was filed on behalf of the added respondent, sworn by his family accountant. The affidavit discloses the visits made by the deponent to the said post office during 2004 to 2008 for collecting evidence regarding transfer of the account of the petitioner. Transfer of the account of the son of the added respondent from the said post office to the said bank on 13th March, 2000 has been referred to in paragraph 6. In paragraph 7 it is stated that transfer of the account of the petitioner from the said post office to the said bank is a mutual arrangement between two Government institutions who are responsible for making payment to the petitioner. However, the affidavit is absolutely silent regarding events pre-2004.

14. Mr. Mal, learned advocate appearing for the petitioner, contended that the version of the respondent No. 3 (that the account had been transferred to the said bank and cheque for the amount standing to the credit of the petitioner was also forwarded for being credited in the transferred account) cannot be believed having regard to the response of the said bank that the account had not been

transferred and the cheque not received. He stressed on the inaction and/or negligence on the part of the respondent No. 3 to produce evidence of dispatch of the account transfer documents together with the cheque to the said bank. The said post office, according to him, also failed to produce any evidence to establish that a cheque in fact had been issued for onward facilitating transfer of the credit balance in the account, for credit in the new account to be opened in the said bank.

15. According to him, the respondents 1 to 3 have withheld documents from the Court to cover up their negligence. He referred to the document at pages 15 and 16 of the counter affidavit of the respondents 1 to 3, being the ledger card in respect of the petitioner''s account. According to him if the said post office had preserved the ledger card for so long, there is no plausible reason as to why the other relevant documents relating to transfer are unavailable. He submitted that in the circumstances adverse inference ought to be drawn.

16. He further contended that irrespective of anything else, the respondent No. 3 was holding a subscriber''s money in the capacity of a trustee. Now that the respondent No. 3 has failed to prove that the account had indeed been transferred and the cheque issued, it must make good the loss caused to the petitioner by paying the amount payable on maturity of the account including accrued interest together with further interest up to date from the date of maturity. A calculation sheet was produced disclosing the exact quantum of sum due and payable to the petitioner. He prayed for an order on the said post office or the said bank, whoever is responsible, to return the petitioner''s money to her.

17. Mr. Chapalesh Bandopadhyay, learned advocate appearing for the respondent No. 5, submitted that the said bank had not received the account transfer documents as well as the cheque dated 1st March, 2000 and, therefore, foisting the liability on the said bank does not and cannot arise.

18. Mr. Alok Kumar Banerjee, learned advocate appearing for the RBI, contended that the cheque for the amount of Rs. 2,40,827/- having been issued in 2000 and the writ petition having been presented nearly 9 (nine) years later, the necessary records are not traceable since they have not been preserved; consequently, it is impossible for the RBI to throw light on the point as to whether the cheque purported to have been issued by the said post office was encashed or not by the said bank.

19. Mr. Razzaque, learned Additional Solicitor General appearing on behalf of the respondents 1 to 3 opposed the writ petition by contending that by reason of the added respondent''s conduct in not taking effective steps at the appropriate time, the petitioner is not entitled to any relief. He invited my attention to the Scheme and in particular to paragraph 6 thereof. According to him, in terms of the Scheme it is only the subscriber who may apply for transfer of his or her account from one accounts office to another accounts office. An accounts office is not authorized by any other provision of the Scheme to transfer an account of a

subscriber from such office to another office suo motu. According to him, the added respondent being the operator of the petitioner''s account for and on her behalf, who was a minor at the relevant point of time, must have applied for transfer of her account from the said post office to the said bank or else question of transfer would not have arisen. He further invited my attention to the fact that the account of the minor son of the added respondent, also opened by the added respondent simultaneously with the account opened in the name of the petitioner, was transferred with effect from 1st March, 2000 and the records produced by Mr. Mal, on being directed by the Court, reveal that the amount standing to the credit of the son of the added respondent as on date of transfer was also forwarded to the said bank by a cheque. Not only that, a sum of Rs. 500/- was deposited in the son''s account for the first time after transfer was effected, on 30th March, 2002. Unless the added respondent had knowledge regarding transfer of the son''s account, he could not have deposited any amount for being credited in the account, now maintained by the said bank. The added respondent, till such time his son became a major, continued to deposit amounts with the said bank for and on his behalf and, therefore, it is crystal clear that the added respondent had due knowledge of transfer of his son''s account to the said bank from the said post office. He expressed utter surprise as to how the fact of transfer of the petitioner''s account, at or about the same time and in similar circumstances, could be beyond the knowledge of the added respondent. He contended that in his several letters written to the said post office, the added respondent feigned ignorance of the factum of transfer which he himself had applied for, demonstrating malafide intention.

20. It is the further contention of Mr. Razaqque that had the issue been raised at the appropriate time with the seriousness it has been raised in the present petition, the respondents 1 to 3 would have been in better position to render effective assistance to the Court for securing justice to the parties. He, however, conceded that the cheque that was issued by the said post office could have been misplaced in transit.

21. Before concluding his argument, he submitted that the respondents 1 to 3 are ready and willing to release the amount that was standing to the credit of the petitioner as on date the transfer was effected.

22. In reply, Mr. Mal invited the Court''s attention to the Public Provident Fund Act, 1968 (hereafter the Act) as well as the Scheme. According to him, the amount standing to the credit of a subscriber is even protected from attachment and the subscription shall bear interest at such rate as may be notified by the Central Government. A subscriber is entitled to withdraw the entire balance standing to his credit in his account after the expiry of a period of 15 years from the end of the year in which the initial subscription to the fund is made. Till 15 years from date of opening of the account with the initial subscription, a subscriber is entitled to interest. Even if a subscriber defaults in depositing any amount in course of a year, the account does not become totally inoperative. The

default in deposit may be condoned upon payment of a fee of Rs. 10/- along with arrear subscription of Rs. 100/- for each year. Regard being had to the terms of the Scheme, it is clear that the petitioner is entitled not only to the amount standing to her credit on 4th March, 2000 when allegedly the account was transferred but also the interest that had accrued with every passing year and since the added respondent was not informed in respect of the particulars of the new account on transfer, question of there being a default in deposit to be made in terms of the Scheme, would not arise in the present case. Therefore, the petitioner is entitled to relief as claimed in the petition.

23. I have heard learned advocates for the parties and perused the materials on record.

24. The only question that falls for determination is whether the petitioner is entitled to Rs. 2,40,827/-, being the amount standing to her credit as on 4th March, 2000, together with interest thereon for the next few years upto 21st March, 2006 i.e. the date on which the account completed 15 years from the initial subscription, and further interest thereon till release of the entire sum.

25. It would appear from appreciation of the factual aspects that for nearly four years after alleged transfer of the account from the said post office to the bank was effected, the added respondent did not make any enquiry regarding the status of the account of the petitioner. An application for duplicate passbook was made as late as on 24th December, 2004 by the added respondent before the said post office on the allegation that the original was lost/misplaced. The request made for issuance of duplicate passbook in favour of the petitioner was renewed by sending a representation to the said bank on 18th May, 2005. One paragraph of the said letter is relevant and is quoted below:

Since the PPF account no is not available with us I would like to state that the last cash payment of Rs. 500/- was debited in her cash book on 27-3-2002 which might have been deposited with the bank any time in between 27-3-2002 to 31-3-2002.

26. If the added respondent had no knowledge of transfer of the account of the petitioner to the said bank, question of any amount being deposited with the bank any time between 27th March, 2002 and 31st March, 2002 would not have arisen. The next request that was made to the respondent No. 3 is dated 30th November, 2005. It was stated therein that the records of the said bank did not reveal transfer of any account and, therefore, a request was made to provide supporting evidence of such transfer for pursuing the matter. It was on such letter that endorsement was made in respect of the date of transfer as well as the particulars of the cheque by which the amount standing to the credit of the petitioner was sought to be forwarded to the said bank. This was followed by a letter to the said bank dated 8th February, 2006 and a representation dated 6th May, 2008 to the respondent No. 3, and again followed by the lawyer''s notice dated 26th August, 2008.

27. I have no doubt in my mind that transfer of the account of the petitioner from the said post office to the said bank could not have been made without an application from the added respondent who, at the relevant time, was operating the account as guardian of the petitioner. No provision in the Act or the Scheme authorising one accounts office to transfer an account of a subscriber to another accounts office suo motu has been brought to my notice. The conclusion is thus irresistible that transfer of the petitioner''s account from the said post office to the said bank must have been effected in furtherance of an application made by the added respondent, or anyone else acting on behalf of the petitioner, duly authorised in this behalf. Since the added respondent had the authority to operate the account as guardian, the presumption is that he had applied for transfer. There is nothing on record to suggest that the added respondent raised objection after learning that his son''s account had been transferred from the said post office to the said bank. If indeed the added respondent had not applied for transfer of the accounts opened by him in the name of his daughter and son, his conduct in not objecting to transfer of the son''s account from the said post office to the said bank leads one to believe that nothing was done behind the back of the added respondent. It must be held in the circumstances that the added respondent was well and truly aware of the same. At the same time, since the son''s account had been transferred to the said bank and deposit made in such transferred account on 30th March, 2002, why no action was taken by the added respondent between March, 2000 and November, 2004 has not been explained at all. The explanation sought to be furnished in paragraph 7 of the affidavit filed on behalf of the added respondent is not worthy of any credence since under the Scheme two Government institutions cannot, on mutual arrangement, transfer an account from one accounts office to the other. That such transfer was effected in the manner as alleged in paragraph 7 has also not been established.

28. Mr. Mal urged the Court to draw adverse inference for non-production of the relevant documents by the said post office, the said bank as well as the RBI. I do not consider it proper to accept his plea. I would have drawn adverse inference for non-production of relevant documents had this action been initiated before the Writ Court within a reasonable period of transfer that was effected. As has been ruled above, the transfer was effected on the request of the added respondent. It is indeed strange that though the son''s account stood transferred and deposits were made with the Bank starting from 31st March, 2002, no enquiry at all was made in respect of the daughter''s account by the added respondent. Additionally, the letter dated 18th May, 2005 seems to suggest that some amount (Rs. 500/-) may have been deposited in the account, transferred to the said bank, between 27th March 27 and 31st March, 2002. If the entire bunch of documents could have been traced, possibility of beans being spilled pointing to culpable actions of Government officers as well as bank officials and, last but not the least, the added respondent cannot be ruled out.

29. Even if Mr. Mal''s submission that the said letter does not reflect the actual

state of affairs is accepted, it defies logic as to why the added respondent between March, 2000 and till the end of March, 2002 (when subscription was deposited in the son''s account on 30th March, 2002) took no effective step to have the account of the petitioner traced and made operative. It is normal to expect that if any subscription is being deposited in the fund in the name of a minor by his/her guardian and an application for transfer of the account from one accounts office to the other has been made, the guardian of the minor subscriber would diligently pursue the matter. The added respondent or for that matter his wife, in the present case, woke up from slumber towards the latter part of 2004 and approached the police with a plea that the passbook issued by the said post office had been misplaced. The subsequent facts speak for themselves. The account having been transferred in March, 2000 on the basis of an application made in this behalf, the action of the wife of the added respondent to apply before the said post office for issuance of duplicate pass book is nothing but a conscious attempt on her part to divert attention to another direction. The conduct of the added respondent (and his wife) is far from inspiring confidence. The Writ Court''s jurisdiction has been invoked nearly four years after the added respondent applied for issuance of duplicate passbook. Delay defeats equity and a Court of Writ, also being a Court of Equity, would not issue writs to compel the respondents to discharge a duty, non-performance whereof is equally attributable to the conduct of the added respondent. During the time the petitioner was a minor and the very fact that by reason of the delay in approaching the Court vital documents which could have clinched the issue are no longer available, I do not consider it proper to exercise writ powers in this case and to grant the relief as claimed herein in its entirety.

30. The writ petition accordingly stands disposed of with a direction upon the respondent No. 3 to immediately issue a cheque for an amount of Rs. 2,40,827/-, constituting the balance of subscription that was standing to the credit of the petitioner as on 1st March, 2000. This direction is issued having regard to the fact that ultimately no evidence could be adduced by the respondents to prove encashment of cheque No. 460989 that had been issued by the said post office, and the same had been offered by the respondents 1 to 3. However, no interest on such sum is directed to be paid because on and from 1st April, 2000 till the date of maturity of the account, no subscription had been paid to keep the account operational and, therefore, default had been committed which was not prayed to be condoned, and consequently was not condoned.

31. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, may be furnished expeditiously.

