(2012) 08 PAT CK 0091

In the Patna High Court

Case No : CWJC No. 1994 of 2008

Bihar State Co-operative Land Development Bank Limited and Another — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:
Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 34

Citation : (2013) 2 PLJR 939

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Rajesh Pd. Choudhary, for the Appellant; Satyendra Kumar Jha, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Bihar State Co-operative Land Development Bank Limited has filed the present writ application through the Managing Director assailing the action of the respondent Union of India, Department of Post, New Delhi whereby they have refused to pay interest on the fixed deposits made by the petitioner Bank with the General Post Office at Patna as also charged 3% on the final payment made to them on closure of the accounts. The act of the respondents have been termed to be arbitrary and unreasonable, not sanctioned by law. The basic facts are not in dispute that the Bank in question had opened several accounts and parked a substantial amount of money running into couple of crores as term deposit with Patna G.P.O. The terms of such deposits were between 2 and 5 years and rate of interests as in existence at the relevant time was agreed to be paid by the respondents. All the accounts, however, were ordered to be closed by the notices issued from the level of the Chief Postmaster, Patna G.P.O. which have been annexed as Annexure-2 series. Notices directed the petitioners that they must close all the accounts and withdraw the amount by 15.12.2005 or else no interest would be payable by the respondents after

31.12.2005.

2. As per the respondents notices had to be issued in terms of the direction of the Department of Post, New Delhi on the basis of certain amendments brought about by the Ministry of Finance. By virtue of the directive of the Ministry of Finance, juristic persons were barred from maintaining accounts with the post office and that was the background under which petitioners were directed or mandated to close the accounts and withdraw the amount.

3. Petitioners were left with no option but to close the accounts but problem arose when final payments were made to them as they felt cheated on two counts: (i) that less amount of interest was calculated on the amount deposited to the extent of 2%. In addition to that 3% recovery was also made from the final amount or payment which according to the respondents was justified on the basis of Rule 8 of the Post Office Time Deposit Rules, 1981 (hereinafter referred to as the Rule).

4. Submission of the learned counsel representing the Bank is that they were lured by the rate of interest promised and offered by the respondent Post Office authorities and the accounts were permitted to be opened by them. The deposits were of varied periods and rate of interest was promised as agreed between the parties. It is the stand of the petitioners that if there was a change of law by which a juristic person like the petitioners would no longer maintain accounts with the post office savings bank, then such amendment will have prospective effect and the rights and obligations created in terms of the contract between the parties earlier cannot be allowed to be frustrated because of a subsequent amendment or changes.

5. In addition to that, they also seriously contests the act of the respondent Postal Department to deduct 3% from the final amount for the so-called breach arising due to ''premature withdrawal'' made by the petitioners which entailed consequences as per respondents due to reading of Rule 8 of the Deposit Rules. According to the petitioners, the rule has to be read in a manner where a reasonable interpretation can be given. Premature withdrawal envisages a voluntary act on the part of the account holder and there is bound to be penalty if a depositor resile from his commitment with regard to the time frame for which deposit was required to be maintained. But in the present case it was not a voluntary act of the Bank by which they decided to withdraw the money prior to the date of maturity. It was at the threat and categorical notices issued by the postal authorities that the petitioners were compelled to close the accounts, withdraw the amount. They cannot be penalised for the action of the respondents on both counts, one by payment of reduced rate of interest and secondly by deduction of 3% from the total amount paid to them.

6. The stand of the Postal Department is that they are protected by law. No action can be taken by way of suit or prosecution by bringing a legal proceeding for an act of good faith taken by them. The other stand is that Rule 8 of the

Rules envisages levying deduction of 3% from the amount so paid in case of premature withdrawal and they were bound to enforce the provisions of the rule while working out liability and settlement of accounts at the time of payment. It is also their stand that they have gone by the directives of the superiors of the department and they cannot be held responsible for the same.

7. So far as institution of a suit or a criminal proceeding is concerned, the bar envisaged under the Act has no applicability to the maintainability of a writ application under Article 226 of the Constitution of India as the constitutional mandate and provision will always prevail over and above such provisions under any statute which is a settled position in law.

8. The second aspect with regard to Rule 8 of the Deposit Rules, the Court has no hesitation in opining that the clause for penalty or liability which has been provided for under the said rule will apply to a situation of voluntary act committed on the part of the depositor or account holder. If the postal authorities compelled the account holder to close the account and withdraw the amount, then it cannot be a case of voluntary act and rule has to be read in such a manner where the intent and object fairly emerges or else it might be required to be struck down as arbitrary or irrational.

9. In the opinion of this Court, Rule 8, therefore, will apply to a situation where it is a case of voluntary withdrawal or premature withdrawal by the account holder and not a situation in which petitioners were compelled to withdraw the amount and close the accounts. The deduction of 3% made from the final settlement of the accounts of the petitioners would be required to be made over to them by the respondents as such an act was an arbitrary act per se on behalf of the respondents and no rule protects them from such an arbitrary action or decision.

10. Coming down to payment of interest upon the deposits, since it was a case where the Postal Department decided to cut short the tenure of the deposit made by the petitioners, the petitioners cannot be penalised by non-payment of interest agreed upon between the parties till the closure of the accounts. The account was forced to be closed, may be due to certain amendment brought about in some rule or some Finance Act at the instance of the Finance Ministry, but then that will have prospective effect and the account holder who had already opened and maintained the accounts all this while cannot be made to suffer retrospectively. The interest of the depositor cannot be marred till the date of any amendment brought about by them.

11. The tenure of the deposit was cut short by the postal authorities by forcing the petitioners to close their accounts by 15.12.2005; may be on the basis of certain directives of the Finance Ministry, but then the petitioners would not be liable in any manner for such amendment brought about unilaterally against the interest of the petitioners and that too retrospectively.

12. This aspect of the matter, therefore, also goes in favour of the petitioners.

13. The Postal Department, therefore, is directed to work out the rate of interest to which they were entitled to at the time of deposit till the date of withdrawal of the amount/closure of the accounts at the instance of the respondents.

14. Both the amounts will be calculated and paid to the petitioners within a period of eight weeks from the date of communication/production of a copy of this order. This writ application stands allowed.