

(2008) 10 JH CK 0034
In the Jharkhand High Court

Bokaro Steel Employees Co-operative House Construction
Society Limited

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-10-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 300A
Criminal Procedure Code, 1973 (CrPC) — Section 102
Income Tax Act, 1961 — Section 226

Citation : AIR 2009 Jhar 39 : (2009) 1 JCR 141

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for the following reliefs:

A. For direction upon the respondents to forthwith release/pay the up to date maturity value as against the investments made in fixed deposit scheme at Bokaro Steel Centre Branch vide FDR Certificates No. 2871 dated 21.12.95, 2876 dated 30.12.95, 681G dated 12.5.98 and 6817 dated 8.6.98 with initial value of Rs. 3396591/-, Rs. 414375/-, Rs. 1803840/- and Rs. 966992/- respectively, which was refused to be renewed after 21.3.04 and accordingly to renew the same with retrospective effect till the date of liquidation and pay the entire amounts which comes about Rs. 2,21,29,374/-(Two Crores Twenty One Lakhs Twenty Nine Thousand Three Hundred Seventy Four only) as more fully described in table chart duly annexed at Annexure-6.

B. Further for direction upon the respondents to also activate the SB A/c No. 1 and S3 A/c No. 2 (appertaining to the Provident Fund of the employees) of the society and accordingly to allow its operation and withdrawal of amount with admissible interest there from; in which the standing balance was Rs. 200234.75/- and Rs. 462659.39/- as on 31.3.2001, since the operation of the

said accounts were stopped on non-est and frivolous ground of stay by the D.C.O., Dhanbad and Officer In-charge/investigating Officer in connection with B.S. City P.S. Case No. 329/96, in which after investigation, the final form has already been submitted on 09.01.1998 and therefore accordingly to direct the respondents concerned to pay the entire amount with up-to-date interest totaling to Rs. 8,43,382.43/- (Eight Lakhs Forty Three Thousand Three Hundred Eighty Two & Paisa Forty Three only), as more fully described in table chart duly annexed as Annexure-6.

C. Further for direction upon the respondents to show cause as to why suitable cost & compensation in addition to the relief(s) sought for be not awarded for causing undue prejudice & hardship to the society by not paying the complete up-to-date dues amount of Rs. 2,29,72,756.43/- (Two crores Twenty Nine Lakhs Seventy Two Thousand Seven Hundred Fifty Six & Paisa Forty Three only) as per Annexure-6.

2. The facts, in brief, is summarized as under:

The petitioner is a registered Cooperative Housing Society bearing registration No. 47/1968 and is engaged in providing housing accommodation and maintenance thereof to its members who are the employees of the Bokaro Steel Plant, Bokaro. It appears that in the year 1973 on the request of the petitioner the company in question agreed to allocate 210 acres more land in addition and adjoining to the previously allocated 19 acres of lands to accommodate rest of the 173 members. However, land was never leased out and transferred in favour of the society due to one reason or the other. The management of the petitioner society had collected the development charges from the 173 members for an amount of Rs. 31,550/- each totaling to about Rs. 65 lakhs approximately. However, due to non-allotment of land the aggrieved members filed a complaint before the Assistant Registrar, Cooperative Officer, Chas, Bokaro who in turn lodged an F.I.R. being B.S. City Case No. 329/96 corresponding to G.R. No. 1240/96 for the aforesaid irregularities against the Office bearers of the society. The petitioner submits that it had bonafidely in order to keep the money safe and secure invested the same in fixed deposit scheme with the respondent Central Cooperative Bank.

3. In the meanwhile the Enquiry/Investigation was completed and Final Form was submitted by the I.O. on 9.1.98 with the conclusion that it is a case of mistake of facts and no offence is made out. It was also recorded that the amount collected from the members was neither mis-utilised nor embezzled and thus the stay order passed by the police got vacated/expired automatically on the conclusion of the Investigation. According to the petitioner pursuant to the investment made in the fixed deposit with respect to a F.D.R. No. 2871 the same matured on 21.3.1998 and it was renewed initially till 21.3.2001 and then up to 21st March, 2004 but thereafter neither the request for renewal was accepted nor the payment was released with its matured value.

4. In the aforesaid background the petitioner submits that when the land in question was not transferred to the society by the company, for onward allocation and handing over the same to the Members from whom the development charges were collected, they started pressing hard for the refund of the same, but the society being financially crippled due to the aforesaid arbitrary, and illegal withholding of the matured amount by the respondent Bank and thus the petitioner was unable to refund the same. Resultantly several cases were filed in the District Consumer Forum by those members against society, which would be evident from the letter No. 775/02 dated 27.6.2002 written by the then Hon'ble Secretary of the society to the Officer Incharge, B.S. City Police Station but again of no avail. The petitioner society approached the respondent bank and requested to release the amount so as to liquidate the same for onward repayment to its members but the respondent paid no heed to the same.

5. It is also stated that a cheque of Rs. 6000/- in favour of one Vijay Bahadur Singh was not even honoured by the bank. The petitioner thereafter also served a legal notice through its counsel on 28.5.2007 to release the admitted outstanding amount with interest but the bank is sitting tight over it. The petitioner further submits that a series of orders have been issued by the District Consumer Forum, Bokaro as well as State Consumer Forum, Ranchi in favour of the one or other members for payment of their amount deposited but due to the arbitrary attitude of the bank it could not be released. It has also been submitted that the amount invested in Allahabad Bank has been released in favour of the society without any obstacle and it is in this background that the present writ petition has been filed with the prayer as indicated in Paragraph-1.

6. The main grounds raised by the learned Senior counsel Sri Anil Kumar Sinha, appearing for the petitioner is that the bank has no legal or justifiable ground to withhold the admitted amount deposited by the society in the bank and the entire action of the bank is arbitrary, malafide and capricious and thus illegal. It has also been submitted that the action of the bank is dehors the agreement and the contract and the F.D. account matured has to be refunded based on the matured value with interest.

7. The counsel for the petitioner further argued that the action of the respondent bank constitutes offence of cheating and defalcation and it is violative of Article 14, 19 & 300-A of the Constitution of India. It has also been contended that the bank is only a licensee and is duty bound to refund the matured value of the amount to the beneficiary and it has no authority to withhold the amount so deposited/invested. It has further been contended that pursuant to orders being passed from time to time by the District Consumer Forum as well as the State Consumer Forum warrants were issued against society and it is the bank which is creating hurdle in refunding the payment made by the members who deposited their amount and are seeking refund of the same but due to the arbitrary and malafide attitude of the bank the money can't be refunded to the members of the society.

8. The counsel appearing for the respondent Bank has raised a preliminary submission with regard to the maintainability of the Writ Petition. It is submitted that the administrator of the society who has sworn the affidavit was appointed vide letter No. 150 dated 14.11.07 for a period of three months and that the period has expired in February, 2008 and thus he was not competent after 14.2.2008 to institute the instant writ petition in March, 2008. It has further been submitted on behalf of the respondent bank that a criminal case bearing B.S. City Case No. 329/96 was registered and during the pendency of criminal case the Investigating Officer vide its letter dated 11.10.1996 requested the answering respondent to suspend the operation of the bank account of the society. It has further been submitted that audit team found several discrepancies in the bank which has led to filing of a criminal case registered vide case No. 57/2001 and it is in these background that the Managing Company of the Bank in its meeting held on 16.4.2002 resolved to suspend the account of the petitioner society.

9. I have gone through the pleadings and heard the rival contentions raised by the counsel for the parties. The bank is only a licensee to keep the money deposited and further to refund the same on maturity without any obstacle. The first contention raised by the petitioner with regard to the pendency of a criminal case No. 329/96 and the order of the Investigating Officer dated 11.10.1996 to suspend the operation of the society is not only misleading but erroneous for the sole reason that pursuant to the completion of investigation and enquiry a Final Form was submitted by the I.O. himself on 9.1.98 concluding that it was a case of mistake of facts and no offence was made out as alleged since neither the amount was unauthorisedly collected from the members nor the same was mis-utilised or embezzled. It will thus be evident that the order of stay passed by the police automatically stood vacated/expired with the conclusion of investigation and submission of final form on 9.1.98.

10. The second contention with regard to the competence of the administrator since he was appointed only for a period of three months which expired on 14.2.2008 whereas the writ petition was filed in March, 2008 is also unsustainable. The respondents have nowhere submitted as to whether the appointment of the administrator was renewed or cancelled or someone else was appointed but these are arguments which are solely based on technicalities which cannot prevail over justice. The fact remains that whosoever is the competent authority of the society at the relevant point of time will be authorized to issue the cheque in favour of the members of the society who in turn will have to collect the cheque amount directly from the bank on presentation. A Specific query in this regard was raised to the counsel for the petitioner that the money should be paid directly to the members of the society who will be entitled to collect the cheque from the society and present themselves before the bank and collect their respective amount directly from the bank on presentation of their respective cheques.

11. The third contention relates to an audit report against the employees of the bank which has nothing to do with the petitioner society or its members nor with the amount so deposited by them in the fixed deposit. The deposit in F.D.I. has nowhere been denied and rather specifically admitted and thus they have no right to withhold it or deny the benefits accrued to the members of the petitioner society whose money has been deposited/invested in the bank.

12. The fact remains that the money was deposited by the members for allocation/allotment of land which was duly deposited by the society in fixed deposit in the bank so that the interest accrued and no malafide can be attached to it and once the allocation/allotment of land was not made the members of the society were certainly entitled to refund of the amount with interest as accrued.

13. The counsel for the respondent has further in their counter affidavit submitted in Paragraph-13 specifically that no order has been annexed of the District Consumer Forum or State Consumer Forum to substantiate the contention raised on behalf of the members. The counsel for the petitioner has filed an I.A. No. 1226/08 for bringing the award of the District Consumer Forum, Bokaro on record and thus even this contention is incorrect. It has also filed a chart indicating the details of the names of the members and the principal amount to be refunded to non-plot holder members and the different orders passed by the learned Consumer Forum.

14. It is well settled that the legal position of the banker in connection with the fixed deposit is one of the debtor and the banker continues to be a debtor, even though the period fixed for the deposit has expired. The fixed deposit is a complete statutory contract between the bank and the depositor and contractual obligation cannot be altered or changed. What is required under law is that the banker should obtain a law of authority from the customer before paying back such deposits to a person other than the depositor. In the instant case once the petitioner who was the depositor issues the cheque to the members the same will amount to conferring the law of authority on the Bank to honour the cheque and pay the amount to the beneficiary.

15. In *The Delhi Cloth and General Mills Co. Ltd. Vs. Harnam Singh and Others*, the Hon''ble Supreme Court observed that in banking transactions the following rules are now well settled:

(a) The obligation of the bank to pay the cheque of the customer and that the same can be collected from the branch at which he keeps his account. The only condition on which the bank can refuse when police has seized the money in the bank u/s 102 Cr.P.C., 1973 and or under Sub-section 3 of Section 226 of the Income Tax Act, 1961 which is not the issue in the present case.

16. In case the Banks are permitted to dishonour their commitments by adopting such subterfuges, the entire commercial and business transactions will come to a grinding halt. This principle has been reiterated in large number of Bank Guarantee cases by the Hon''ble Supreme Court. The only exception is in case of

a fraud, which is of an egregious nature committed by the beneficiaries against the Bank.

17. Considering the aforesaid facts and circumstances of the case this writ petition is allowed with a direction to the respondent bank to forthwith determine the up-to-date maturity value with interest as against the investment made in fixed deposit scheme at Bokaro Steel City vide F.D.R. as per the details given in Paragraph 1 of this judgment/order honour the cheques to be presented by the members of the society and further activate the S.B. Account No. 1 and S.B. Account No. 2 appertaining to the provident fund of the employees of the society and allow the operation of withdrawal of amount with admissible interest in accordance with law.

18. This writ petition is accordingly allowed without any order as to costs.