
(1991) 08 MP CK 0023
In the Madhya Pradesh High Court
Case No : M.P. No. 537 of 1988

Brij Lal Singh

APPELLANT

Vs

The Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 19-08-1991

Acts Referred:

Succession Act, 1925 — Section 372

Citation : (1995) 3 LLJ 111

Hon'ble Judges : S.D. Shah, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : P.V. Bhagwat, for the Appellant; Khan, for the Respondent

Final Decision : Dismissed

Judgement

A.G. Qureshi, J.—This petition under Article 226 of the Constitution of India has been filed by one Brijlal Singh seeking the issuance of writ of mandamus against the respondents, directing the Respondents No. 1 and 3 to pay the amount of provident fund of deceased Nakchhed Singh to the petitioner.

2. The facts leading to this petition, in short are that one Nakchhed Singh was serving as a labourer in the Indore Malwas United Mills Ltd. (Respondent No. 3) in the weaving department. Nakchhed Singh was a Member of the Provident Fund and Miscellaneous Provisions Act, 1952 and his account number was 4216 code No. M.P.2. The said Nakchhed Singh died on 19.8.75 in Indore. According to the petitioner the said Nakchhed Singh was unmarried and had no issue. Therefore, the petitioner being the brother of the deceased is the only heir of Nakchhed Singh. After the death of Nakchhed Singh the petitioner wanted to get the amount of the provident fund amounting to about Rs. 4000/- and, therefore, he applied for a succession certificate u/s 372 of the Indian Succession Act. The application filed by the petitioner was allowed and he was issued a succession certificate on 4th August 1986. On the strength of the aforesaid succession certificate the Petitioner approached the Respondent No. 3 and Respondent No. 1 with a request to pay the amount of provident fund amount in the account of the

deceased Nakchhed Singh to the petitioner. But despite repeated requests the respondents No. 1 and 3 have not paid the amount of the provident fund on the strength of the succession certificate to the petitioner. Instead the Respondent No. 3 informed the petitioner by a letter that as Nakchhed Singh has nominated Respondent No. 5 as his nominee therefore, the claim papers should be forwarded by the nominee. Therefore, aggrieved by the aforesaid refusal to pay the provident fund amount to the petitioner on the strength of the succession certificate the petitioner has filed this petition.

3. The Respondents No. 1 and 2 have resisted the claim of the petitioner mainly on the ground that as per the records of the office of Respondent No. 1 the office could not make payment of the provident fund amount under the succession certificate to the petitioner because the deceased while submitting the nomination form as per para No. 61 of the Employees' Provident Fund Scheme framed under the Employees' Provident Funds and Misc. Provisions Act, 1952 firstly nominated the petitioner as the nominee for getting the provident fund dues in the event of his death. The said nomination form was submitted on 11.1.56. Subsequently the said nomination was changed by the deceased himself on 16.12.1974 and the Respondent No. 5 Vijay Kumar, who is the Nati of the deceased was nominated in place of the petitioner. The copies of the earlier nomination and the changed nomination have also been filed. The contention of Respondent No. 1 is that under para 70 of the Employees' Provident Fund Scheme framed under the Act the nominee is entitled to get the amount of the provident fund of the deceased member and since the deceased had nominated Respondent No. 5 as his nominee entitled to get the amount of provident fund. The Respondent No. 1 being bound by the mandate of the Scheme cannot pay the amount of provident fund to the petitioner.

4. The learned counsel for the petitioner Shri P.V. Bhagwat strenuously argues that a nomination made by the deceased would not affect the entitlement of a heir of the deceased to claim the provident fund amount and, therefore, the petitioner being the heir of the deceased is entitled to get the amount of provident fund deposited with Respondents No. 1 and 3. Shri Bhagwat, in support of his argument, has placed reliance on the judgment of the Supreme Court in the case of Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, and a Single Bench Judgment of the Delhi High Court in the case of Smt. Om Wati v. Delhi Transport Corporation, New Delhi 1988 1 CLR 595.

5. On the other hand Shri Khan, learned counsel for Respondent No. 1, states that the ratio of the aforesaid decisions is not applicable to the instant case because according to para 70 of the Scheme framed under the Provident Fund Act, it is the duty of Respondents No. 1 and 3 to pay the amount of the provident fund to the nominee only.

6. After considering the respective arguments of the parties, we are of the view that this petition deserves to be dismissed. In Smt. Sarbati Devi's case (supra) the Supreme Court had considered the effect of the nomination by a policy

holder u/s 39 of the Insurance Act of 1938 wherein it has been provided that a holder of a policy of life insurance on his own life may when effecting the policy or at any time before the policy matures for payment nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death. In para 61 of the Employees' Provident Funds Scheme, 1952 a provision has been made for nomination which contemplates the making of declaration by each of the member of the Provident Fund scheme nominating a person or persons who have a right to receive the amount that may stand in the credit of the member" in the fund in the event of his death. However, sub-para (3) of para 61 of the Scheme puts an interdict on making nomination in favour of any person who is not a member of the family of the member of the scheme and if such a nomination is made in favour of a stranger then it shall be invalid. But if the member has no family at the time of making the nomination he may make a nomination in favour of another person.

7. As such, it will be seen, that under the Insurance Act a person may nominate anyone as his nominee, whereas in the event of the existence of a family, the member under the Employees' Provident Fund Scheme has to nominate only a member of the family and not an outsider. However, despite this difference, the two provisions pertaining to nomination by the policy holder and the member of the Employees' Provident Funds Scheme are the same, empowering the nominee to get the amount of policy or the provident fund in the event of the death of the policy holder or the member of the Employees' Provident Funds Scheme.

8. Now, the Supreme Court in Smt. Sarbati Devi's case has held that when a policy holder continues to hold interest in the policy during his life time and the nominee acquires no sort of interest in the policy during life time of the policy holder. Then on the death of the policy holder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. There is no warrant for the position that Section 39 of the Act operates as a third kind of succession. Therefore, it is difficult to hold that Section 39 of the Act was intended to act as a third mode of succession provided by the Statute. The provision contained in Sub-section (6) of Section 39 which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees. After discussing the various judgments of different High Courts, the Supreme Court was finally of the view that Section 39 of the Insurance Act a mere nomination does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the Life Insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them. The aforesaid decision has been passed in a civil appeal arising out of a civil suit for declaration filed before the Civil Court to the effect that the plaintiffs were entitled to 2/3 share of the amount due and payable under the

insurance policies. The suit was resisted by the nominee in the policy on the ground that she was absolutely entitled to the amounts due under the policies by virtue of Section 39 of the Act and, therefore, while deciding the suit of declaration the Supreme Court had an occasion to interpret the provisions of Section 39 of the Insurance Act.

9. From the aforesaid it is manifest that although a nominee u/s 39 of the Insurance Act is authorised to receive the amount from the insurer giving a valid discharge to the aforesaid insurer but that amount can be claimed by the heirs of the assured in accordance with law of succession governing them. We have already held above in paragraph 7 that the provisions in the Insurance Act and the Employees' Provident Fund Scheme are identical as regards the right of the nominee to receive the amount of Insurance Policy or Provident Fund amount of the member. Therefore, the ratio of Smt. Sarbati Devi's case (supra) is fully applicable for determining the extent of the right of the nominee over the provident fund amount. It, therefore, follows that the Regional Provident Fund Commissioner and the Employer cannot be held to be at fault in refusing to give the amount to the petitioner on the strength of a mere succession certificate. Actually according to para 70 of the Employees' Provident Funds Scheme, 1952 they are under a legal obligation to pay the provident fund amount to the nominee who has been nominated by the member in accordance with paragraph 61 of the aforesaid scheme. As such the nominee is the person authorised to receive the amount of the provident fund of a member and it is he only who can give a valid discharge to Respondents No. 1 and 3 of the payment of the provident fund. However, as held by the Supreme Court the nominee cannot claim the absolute right to that amount excluding the rights of the heirs which the heirs may have according to the law of succession governing them. As such if the petitioner has any right as a heir of the deceased he can always initiate legal proceedings against the nominee for claiming his share to the aforesaid amount in accordance with the law of succession. However, the petitioner cannot claim that the amount of provident fund of the deceased member be given to him ignoring the nomination made by the deceased in Paragraph 61 of the Employees' Provident Funds Scheme, 1952. The Delhi High Court Judgment in Mohini Devi's case (supra) also does not help the petitioner in view of the aforesaid discussion.

10. In the result we find no force in this petition. It is accordingly dismissed with the aforesaid observation. In the circumstances of the case there shall be no order as to costs.