(2001) 08 GUJ CK 0052

In the Gujarat High Court

Case No : Spl. Civil Application No. 3165 of 2001

Dr. Ashima J. Shah — APPELLANT

Vs

Union of India (UOI) and Another — RESPONDENT

Date of Decision : 09-08-2001

Acts Referred:

Government Savings Banks Act, 1873 — Section 15
National Savings Scheme Rules, 1987 — Rule 1

Citation : AIR 2002 Guj 88 : (2002) 111 CompCas 780 : (2002) 22 GLH 641 : (2001) 4 GLR 3112 : (2003) 42 SCL 141

Hon'ble Judges : K.M. Mehta, J

Bench : Single Bench

Advocate : Mihir H. Joshi, for the Appellant; P.J. Davawala and D.N. Patel, for the Respondent

Final Decision : Allowed

Judgement

K.M. Mehta, J.—Dr. Ashima J. Shah, petitioner has filed this petition praying for a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, holding and declaring the action of the respondent refusing to return the balance amount lying in National Savings Scheme Account No. 101071 of the petitioner to her and refusing to close the same as being arbitrary, unreasonable and illegal.

2. The facts giving rise to this petition are as under :--

2.1 That on 30-3-1988 the petitioner opened on account bearing No. 101071 with the Ellisbride Post Office, Ahmedabad under National Savings Scheme , 1987 through her father as the holder of a General Power of Attorney dated 25-7-86. It has been further submitted today the petitioner requested the respondents for closing the account and returning the balance amount to her and also addressed Innumerable letters and representations, the respondents are refusing to return the balance amount to the petitioner. Thereafter the petitioner filed this petition somewhere in April 2001.

3. When the matter was placed for hearing before this Court, on 1-5-2001 this Court issued notice returnable in the week commencing from 18-6-2001. Thereafter the matter was adjourned from time to time. Thereafter on 23-7-2001 this Court (Coram : K. M. Mehta. J.) has passed the following order :

"Having regard the judgment of this Court in Special Civil Application No. 3422/2000 decided on 3-5-2000 passed by this Court (Coram : M. R. Calla. J.). Hence, Rule returnable on 26th July, 2001, for final disposal."

4. In view of the same, the respondent has filed affidavit-in-reply dated 13th June, 2001, opposing the same,

5. I have heard Mr. Mihir Joshi, learned advocate for the petitioner and Ms. P. J. Davawala, learned Counsel for the respondent,

6. Mr. Mihir Joshi, learned advocate for the petitioner has relied upon the judgment of this Court decided on 3-5-2000 in Special Civil Appln. No. 3422 of 2000 : (reported in Prashant K. Patel Vs. Union of India (UOI), passed by this Court (Coram : M. R. Calla, J.) which arose of the similar circumstances where in para 4 the Court has held as under :

The respondent is, therefore, estopped by the principle of promissory and equitable estoppel u/s 115 of the Indian Evidence Act from now denying the fruits of the earned interest in Account to the petitioner so as to close the Account without interest. Such an approach on the part of the Government functionaries under the State cannot be encouraged and in such cases, no authority is supposed to take such a hyper techical view of the matter. The petitioner''s right in this respect deserves the protection of this Court and he cannot be deprived of his property rights by the respondents trough an attempt like that of catching mercury by fork. The fact of the matter is that the Account was opened under the NSS, the amount was deposited, and the petitioner was to earn interest on this amount which was deposited in the said Account the amount has remained with the respondent for all these years and the petitioner cannot be deprived of the earned interest from such account. In such circumstances, the Impugned action on the part of the respondent is found to be wholly arbitrary, uneasonable irrational within the meaning of Article 14 of the Constitution of India and cannot be sustained. The contents of the communications dated 3rd March, 2000 followed by yet another communication dated 21-3-2000 are declared to be illegal."

6.1 Learned advocate for the petitioner has relied upon on the principle of estoppel and contended that in any view of the matter when petitioner has already deposited the amount in National Savings Scheme by which the respondent denied the request of the petitioner for closing the account of the returning the balance to her are bad in law.

6.2 The learned advocate for the petitioner has relied upon the "Book of Administrative Law Professor Wade 8th Edition", particularly passage on page

242 reads as under :

"Estoppel and public authorities :-- The basic principle of estoppel is that a person who by some statement or representation of fact causes another to act to his deteriment in reliance on the truth of it is not allowed to deny it later, even thogh it is wrong. Justice here prevails over truth. Estoppel is often described as a rule of evidence, but mare correctly it is a principle of law. As a principle of common law it applies only to representations about past or present facts But there is also an equitable principle of ''promissory estoppel'' which can apply to public authorities,"

6.3 The learned advocate for the petitioner has also relied upon the following passage of "Book of Law of Writs y C. K. Thakker 5th Edition" in page 490 where the learned Author was quoted the principle of estoppel relying upon the passage from Professor "Wade 3ook and Garner" which reads as under:

"The doctrine of promissory or equitable estoppel is well established in administrative law and in constitutional law. It represents a principle evolved by equity to avoid injustice. Explaining the Principle, Wade states : The basic principle of estoppel is that a person who by some statement representation of fact causes another to act to his deteriment in reliance on the truth of it is not allowed to deny it later, even though it is wrong. Justice here prevails over truth." Garner also states : "A person may be precluded (''estopped'') in legal proceedings from denying the existence of some state of fact the existence of which he has previously asserted (by words or conduct) , intending the other party to the proceedings to rely on the assertion, and in reasonable reliance on which that other person has. In fact, acted to his detriment. Though the facts asserted ma be untrue, the principle of estoppel may make them unchallengeable."

6.4 He is also relied upon on page 485 "Administrative Law by Sathe, 6th Edition" which reads as under :

"Where there is no formal contract, but a person acts on the assurance of a competent government authority, is it possible for him to bind the government to its assurance? in equity, a person, who has misrepresented the facts, relying upon which the other has acted, cannot deny those facts afterwords. This doctrine of equity is broader than the doctrine embodied in the Law of Evidence in Section 11 of the Indian Evidence Act. Whereas Section 115 in only a rule of procedure, the doctrine of estoppel in equity raises a substantive defence." Estoppel means that a person is stopped from deny- ing what he has promised and relying, upon which another person has acted and would be put to loss if the promise is not acted upon. Three essentials of the doctrine of estoppel in equity are (1) there must be a promise or representation or an assurance; (2) another person person to whom such a promise or an assurance or a representation is made should act relying upon such a promise, or an assurance or a representation; (3) it should cause severe loss to the other person to whom such a promise or an assurance or a representation was made if it was not carried out."

6.5 He has also relied upon the judgment of the Hon''ble Supreme Court in the case of Indira Bai Vs. Nand Kishore, relying on page, 1057 where the Hon''ble Supreme Court has ob served as under:

"Estoppel is a rule of equity flowing out of fairness striking on behaviour deficient in good faith. It operates as a check on supurious condcting the preventing the inducer from taking advantage and assailing forfeiture already accomplished. It is invoked and applied to aid the law in administration of justice. But for it great many injustices may have been perpetrated."

7. In view of the aforesaid discussions which I have discussed namely question of law as well as fact, the action of the respondent authority denying the request of the petitioner to close down the account and to pay the amount is clearly illegal and contrary to the provisions of the judgment of the Hon''ble Apex Court and also earlier judgment of this Court of Justice M. R. Calla which I have referred earlier. In view of the same, the Special Civil Application is allowed. The communications dated 4th May. 2000, at Annexure ''C'', dated 18th August, 2000, at Annexure ''G'' and dated 28th March, 2001, at Annexure ''K'' by which the respondents has refused the prayer of the petitioner are hereby quashed and set aside. The respondent is directed to close the petitioner''s National Savings Account No. 101071 with due interest on all deposits therein as per the National Scheme and it is declared that the petitioner shall be entitled to all the benefits of this account and further directed to pay the said amount within one month from the date of receipt of judgment of this Court. This Special Civil Application stands disposed of accordingly, Rule is made absolute. In the facts and circumstances of this case, no order as to costs.