(2025) 02 GAU CK 0808

In the Gauhati High Court

Case No : WP(C) Of 3973 Of 2022

Kanaklata Kakati APPELLANT

Vs

The Union Of India And 3 Ors RESPONDENT

Date of Decision : 27-02-2025

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2025) 02 GAU CK 0808

Hon'ble Judges : Manish Choudhary, J

Bench : Single Bench

Advocate : R Chakravorty, S Rabha, R Devi

Final Decision : Allowed

Judgement

Manish Choudhary, J

1. The instant writ petition under Article 226 of the Constitution of India is preferred by the petitioner on being aggrieved by an Office Letter dated 29.03.2017 issued by the respondent no. 4, whereby, the respondent no. 4 had requested the petitioner to refund an amount of Rs. 1,75,685/- at an early date for settlement of the petitioner’s claim case.

2. The reason assigned for asking refund of the amount of Rs. 1,75,685/- is that the amount has been earned as interest in excess. The petitioner has been informed by the Office Letter dated 29.03.2017 that the refund of the said excess amount of interest is necessary for settlement of the claim made by the petitioner in respect of the MIS Accounts, opened and operated by the husband of the petitioner, as during the course of such investment in the MIS Accounts, the petitioner’s husband, Late Tankeswar Borkataki exceeded the prescribed upper permissible limit of Rs. 4,50,000/-. The petitioner has been informed that the petitioner’s husband, Late Tankeswar Borkataki had thereby, earned monthly interest thereon in excess.

3. The petitioner is the widow of one Late Tankeswar Borkakati. The petitioner

has stated that her husband, Late Tankeswar Borkakati was a school teacher and retired from service on superannuation as Assistant Headmaster from Lumding Assamese High School. Like her husband, the petitioner was also a school teacher and she retired from service on superannuation as Assistant Headmistress from Kanaklata Lower Primary School, Morigaon. It is stated that during his lifetime, Late Tankeswar Borkakati invested various amounts in a postal scheme, named, 'Monthly Income Scheme' ['MIS', for short] of the Postal Department.

4. The petitioner's husband, Late Tankeswar Borkakati expired on 15.03.2016. As the petitioner was made the nominee by her deceased husband in respect of a number of MIS Accounts, the petitioner made an enquiry as regards those MIS Accounts after the demise of her husband. On enquiry, the petitioner had learnt that during his lifetime, her husband opened atleast four numbers of MIS Accounts – [i] Account no. 251044; [ii] Account no. 251045; [iii] Account no. 251046; and [iv] Account no. 251047 – jointly along with their son, and one individual MIS Account – Account no. 231242 - in his name. When the petitioner found that the maturity amounts in respect of the said MIS Accounts were not credited in the savings account of her Late husband either during his lifetime or after his death, the petitioner made a request before the respondent authorities to credit the maturity amounts of those MIS Accounts along with applicable interest in her favour, she being the nominee in respect of those Joint/Single MIS Accounts. It is in response to the said request of the petitioner, the impugned Office Letter came to be issued by the respondent no. 4 on 29.03.2017 asking the petitioner inter-alia to refund the amount of Rs. 1,75,685/- towards excess amount of interest paid for early settlement of her claim regarding MIS Accounts, opened and operated by her husband, Late Tankeswar Borkakati.

5. I have heard Mr. R. Chakravorty, learned counsel for the petitioner; and Ms. R. Devi, learned Central Government Counsel [CGC] for all the respondents.

6. Mr. Chakravorty, learned counsel for the petitioner during the course of his submissions, apart from reiterating the above-mentioned facts, has submitted that the petitioner after receipt of the impugned Office Letter dated 29.03.2017, submitted an application under the Right to Information Act, 2005 in the year 2018 asking details of some more MIS Accounts, that is, Account nos. – 250700, 250701, 250702, 250703, 250713, 250714, 250850, 250851, 250852, 250853, 250854, 250855, 250899, 250900, 251208, 251210, 251211, 251212, 251215, 251216, 251222 - opened by her deceased husband during his lifetime; and the details of the deposits made in respect of each of those MIS Accounts. In response, the respondent no. 4 wrote an Office Letter to the respondent no. 3 informing that Late Tankeswar Borkakati opened a nos. of MIS Accounts and deposits made therein were beyond the prescribed upper limit. It was further informed by the said Office Letter that the MIS Accounts were already closed and the deposit particulars were not available in their records. Thereafter, the information sought for by the petitioner under the RTI Act was furnished partly

by stating that as per an Inspection Report, all the MIS Accounts, mentioned in the RTI application, were opened by Late Tankeswar Borkakati but the amounts of deposit in each of the MIS Accounts could not be ascertained as the said Accounts were already closed. Mr. Chakraborty has submitted that it was in such fact situation and due to non-receipt of any clear and specific response from the respondent authorities to a representation submitted by the petitioner on 21.12.2021, the petitioner had to approach this Court by the instant writ petition.

7. Mr. Chakravorty, learned counsel for the petitioner has further contended that in the counter affidavit, the respondent authorities have taken a stand that the petitioner’s husband during his lifetime, invested amounts in a number of MIS Accounts which were found to be beyond the limit prescribed in the Post Office Savings Bank General Rules, 1981 and the Post Office Savings Account Rules, 1981. He has further submitted that from the projections made by the respondent authorities, it transpires that the alleged prescribed upper limit in respect of deposits made by the petitioner’s deceased husband exceeded as far back as in the year 2008. But, at no point of time during the period from 2008 till his death on 15.03.2016, the respondent authorities bothered to intimate that the deposits made in the MIS Accounts had exceeded beyond the prescribed upper limit. If the respondent authorities are allowed to carry out the impugned action it would be the petitioner who would suffer immense loss and there would be unjust enrichment of the respondent authorities in the process. He has further submitted that it is not the case of the respondents that because of exceeding the prescribed upper limit, the respondent authorities had suffered any kind of loss, not to speak of wrongful loss.

8. Ms. Devi, learned CGC representing the respondent authorities has submitted that in respect of the MIS Accounts, the provisions of the Post Office Savings Bank General Rules, 1981 and the Post Office Savings Account Rules, 1981 are applicable. As per the said Rules, there is no bar for an individual to open more than one MIS Account, subject to the condition that the deposits in all accounts taken together shall not exceed Rs. 4,50,000/- in an account holding singly; and Rs. 9,00,000/- in an account holding jointly; on or after 01.08.2007. By referring to the list cited in the counter affidavit, Ms. Devi has submitted that up-to the year 2008, Late Tankeswar Borkakati deposited a total amount of Rs. 4,98,000/-, meaning thereby, there was excess deposit of Rs. 48,000/- in the MIS Accounts by him in the year 2008. Similarly, up-to the year 2012, Late Tankeswar Borkakati deposited an amount of Rs. 13,93,500/- in the MIS Accounts, meaning thereby, he kept an amount of Rs. 9,43,500/- on deposit in the MIS Accounts, which was beyond the permissible upper limit of Rs. 4,50,000/-. As by keeping such excess amount Late Tankeswar Borkakati earned interest also on the excess amount to the tune of Rs. 1,75,685/-, the said excess interest amount already paid to him was directed to be deposited so as to consider closure of the MIS Accounts, which were otherwise required to be closed in case of death of the depositor before maturity.

9. The submissions made by the learned counsel for the petitioner have received due consideration of this Court. The materials brought on record by the parties through their pleadings have been perused.

10. From the materials brought on record, it is noticed that the provisions of the Post Office Savings Bank General Rules, 1981 and the Post Office Savings Account Rules, 1981 are made applicable to the Monthly Income Scheme [MIS] in respect of matters for which no provisions have been made. As per the Rules, an MIS Account can be opened by any individual. The depositor can open more than one MIS Account, subject to the condition that the deposits in all MIS Accounts taken together shall not exceed Rs. 4.50 lakhs in single account; and Rs. 9.00 lakhs in joint accounts; on or after 01.08.2007. For the propose of maximum balance, the depositor's share in the balance of joint account shall be taken as one-half or one-third of such balance, depending on the condition whether the account is held by two or three adults. No withdrawal is permitted from the MIS Account before expiry of a period of five years from the date of opening of an account. Premature closure of MIS Account is permitted, subject to deduction of one per cent of the deposit, which is dependent on the period within which the account is prematurely closed. The deposit bears interest at the rate fixed from time to time and the interest is payable monthly to the depositor on completion of a month from the date of deposit. If the interest payable every month is not drawn by the depositor, such interest will not earn any additional interest. The Rules further provide that the deposit made at the time of opening of account will be paid by the Post Office to the depositor on or after expiry of five years from the date of opening before 13.02.2006. Bonus is not payable on deposits made in the accounts opened on or after 13.02.2006 up to 07.12.2007. Bonus is, however, payable @ 5% in the accounts opened on or after 08.12.2007 up to 30.11.2011. No bonus is payable in the accounts opened on or after 01.12.2011.

11. The Rules have further prescribed that in case of death of a depositor before maturity, the account is to be closed and the deposit is to be refunded along with interest up to the month preceding the month in which refund is made. There is a prohibition to the effect that the nominee / heir cannot continue the account in the name of the deceased depositor. The Rules have further provided that if the one of the depositors of the MIS Account dies, the account is to be treated as a single account in the name of the surviving depositor from the date of death of the said depositor. The surviving depositor can be allowed to withdraw the excess amount in case of the limit prescribed for single depositor as the said amount would carry interest at the rate of post office savings account from the date of death of the joint depositor. The MIS interest already paid on those excess amounts is to be recovered or adjusted and the account would be converted into a single account.

12. As regards post-maturity interest, the Rules have provided as under :-

124. Post-Maturity Interest :-

Where repayment of the deposit inclusive of bonus if any has become due but not been made, interest shall be allowed on the amount [Principal plus bonus if any] from the date of maturity to the date of repayment of the amount subject to the following conditions, namely :-

[a] The interest shall be simple and shall be calculated at the rate applicable from time to time to savings accounts of the type of single or Joint Account.

[b] For the purpose of payment of interest, any part of the period which is less than one month shall be ignored.

[c] The interest shall be paid to the depositor in lump sum at the time of repayment of amount due.

Note :- The post maturity interest may be allowed on accounts that have matured on or after 16.10.2003 and also on accounts that matured prior to 16.10.2003 but were closed after 16.10.2003.

13. The respondent authorities in order to press home their points, have referred to an account opening application form submitted by the petitioner's deceased husband, Late Tankeswar Borkakati. It has been contended that the account opening application form contains an undertaking that the applicant would keep the balance in all his / their accounts within the limit specified in the relevant Rules. The respondent authorities have further stated that the deposits in the MIS Accounts, opened by Late Tankeswar Borkakati, were in excess of the prescribed limit of Rs. 4.50 lakhs since the year 2008.

14. The respondent authorities have, however, failed to bring any tangible material on record to highlight that, at any time during the lifetime of Late Tankeswar Borkakati or during the period 2008 to 15.03.2016, the fact that there was excess deposit in the MIS Accounts opened and operated by him, was brought to his notice. The respondent authorities continued to deposit the monthly interest earned from the MIS Accounts in the Savings Bank Account of Late Tankeswar Borkakati every month till his death, save and except taking a stand that by deposit of excess amount, the depositor, that is, Late Tankeswar Borkakati had violated the Rules as regards the permissible upper limit. It is not the case of the respondent authorities that because of the deposits in the MIS Accounts beyond the permissible limit of Rs. 4.50 lakhs, the respondent authorities had suffered in any manner prejudicially, not to speak of any kind of wrongful loss. Apart from an undertaking simpliciter in the account opening application form, the account opening application form is silent as regards the consequence likely to be suffered by the depositor in case of such excess deposit. The respondent authorities are also silent as regards the checks and balances observed by them to keep the deposits of the depositor at the prescribed permissible upper limit.

15. Since it is not the case of the respondent authorities that because of the excess deposit made by late husband of the petitioner in the MIS Accounts there

was any loss, much less wrongful loss, to them at any point of time, this Court is of the considered view that the demand for refunding any amount towards excess interest paid in respect of the MIS Accounts opened by Late Tankeswar Borkakati from the petitioner is not just and proper. The respondent authorities have kept the excess deposits in the MIS Accounts for a long period, without any discernible action from their ends to keep the MIS Accounts in conformity with the Rules. In the absence of the actual depositor, that is, the husband due to his demise, it is also not just and proper to impute anything against him at this distant point of time. Further, the actual depositor is no more to rebut any kind of allegation. In respect of the MIS Accounts, which were opened and operated solely by Late Tankeswar Borkakati, the petitioner had no role in the opening and operating those accounts, except as a nominee. The act of nomination was also an act, which was solely attributable to the actual depositor.

16. In view of the above discussion and for the reasons assigned, this Court is of the considered view that the demand for any amount as excess amount of interest from the petitioner being the wife / nominee of Late Tankeswar Borkakati, in respect of the MIS Accounts opened and operated by Late Tankeswar Borkakati during his lifetime, is not just and proper. In such view of the matter, the impugned Letter dated 29.03.2017 is not one which can stand the scrutiny of law and therefore, is liable to be set aside and quashed. It is accordingly ordered.

17. It is further observed that the respondent authorities shall release the maturity amounts in respect of the MIS Accounts, which have since been matured or closed in favour of the petitioner, as expeditiously as possible, after completing requisite documentation and formalities; and also disburse the amount of interest applicable from the date of maturity or closure till the date of repayment of the amount. If the petitioner completes the requisite documentations and formalities within a period of one month, as asked by the respondent authorities, then the respondent authorities shall disburse the amount within a period of one month thereafter.

18. The writ petition stands allowed to the extent indicated above. There shall, however, be no order as to cost.

