

(2014) 12 DEL CK 0197

In the Delhi High Court

Case No : Writ Petition (Civil) 7324/2014 and CM No. 18650/2014

Mukesh Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Public Provident Fund Act, 1968 — Section 11, 11(1), 3, 3(1), 3(2)

Citation : (2015) 3 AD 134 : AIR 2015 Delhi 72 : (2015) 216 DLT 335 : (2015) 147 DRJ 684

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Suparna Srivastava, CGSC, Nishtha Sikroria, Rajiv Kapur and Shrey Chattly, Advocate for the Respondent

Judgement

Vibhu Bakhru, J.—The petitioner requires funds, urgently, to pay the initial costs for a dwelling unit as a member of a group housing society. And, although the petitioner has been saving for the past twenty two years, he has been denied access to his savings. This has led the petitioner to file the present petition. The petitioner impugns an order dated 15.10.2014 passed by Under Secretary, Ministry of Finance, rejecting his request to close his Public Provident Fund Account no.10819241976 maintained with State Bank of India (hereafter the "PPF A/c").

2. The controversy to be addressed is whether the petitioner is entitled to close his PPF A/c, which has been maintained by him for the past twenty two years.

3. The Public Provident Fund Act, 1968 (hereafter the "PPF Act") was enacted for institution of a provident fund for the general public. Thereafter, the Public Provident Fund Scheme, 1968 (hereafter the "PPF Scheme") was framed under Section 3(1) of the PPF Act. The petitioner opened the PPF A/c in 1992. The duration of the PPF A/c was initially for a period of 15 years which expired on 31.03.2003. The duration of the PPF A/c was, thereafter, extended successively in the block period of 5 years each upto 31.03.2008, 31.03.2013 and lastly upto

31.03.2018 as per sub- paragraph (3A) of paragraph 9 of the PPF Scheme. Submissions.

4. The petitioner submitted that he was entitled to close his PPF A/c in terms of Section 6(2) of the Act and paragraph 9(3) of the PPF Scheme.

5. Since the question involved interpretation of the PPF Act and the PPF Scheme, the learned counsel for respondent no.1 did not file a counter affidavit but filed written submissions and also handed over a copy of the PPF Scheme and a compendium of orders issued by the Government of India from time to time.

6. The learned counsel for respondent no.1 submitted that pre-mature withdrawal from the PPF A/c was not permissible under the PPF Act or the PPF Scheme. She submitted that paragraph 9 of the PPF Scheme contained exhaustive provisions as to the manner and extent of making withdrawals from the fund; in terms of sub-paragraph (3A) of paragraph 9 of the PPF scheme, a subscriber could exercise an option to continue to subscribe to the provident fund for a further block period of five years and in terms of sub-paragraph (3B) a subscriber is eligible to make a partial withdrawal not exceeding 60% of the balance as existing at the commencement of the relevant period. She submitted that Central Government has the power to relax the provisions of the PPF Scheme and in exercise of such power, the Central Government has permitted pre-mature closure of a PPF Account on compassionate grounds. She further pointed out that by a notification dated 25.05.1994, the Central Government had clarified that the request for pre-mature closure of a PPF Account could be considered only in cases of extreme compassionate grounds and not for purposes such as migration abroad, purchase of house/vehicle etc. She referred to paragraph 26 of order notified by Government of India, which reads as under:-

"26. Public Provident Fund Accounts- requests for premature closure:-

(1) Recently, there has been a considerable increase in the number of cases being forwarded by Circles to the Directorate for taking up with the Ministry of Finance, relating to premature closure of PPF accounts. The Ministry of Finance have noticed that very few of them qualify for pre-mature closure by relaxation of relevant rules and they have informed the Directorate that generally, cases on ground of migration to abroad, marriage, purchasing of house/vehicle, ceremonial occasions, repayment of loan, education, retiring/suspension from job, etc. do not merit relaxation of rules for premature closure of PPF account. Only those cases of extreme compassionate ground such as medical support in life-threatening diseases/ cases, death cases, etc. deserve consideration for granting permission for premature closure."

7. The learned counsel for respondent no.1 further contended that a statute has to be interpreted to further the object of the statute and relied on the decisions of the Supreme Court in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, and *Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and Others etc.*, and the decision of House of Lords (*United*

Kingdom) in R (on the application of Quintavella) v. Secretary of State for Health, (2003) 2 ALL ER 113. Analysis and conclusion.

8. The PPF Act was enacted for institution of a provident fund for the general public. Section 3 of the PPF Act contains the provision for establishment of a PPF Scheme. The said Section is quoted below:-

"3. (1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Public Provident Fund Scheme for the establishment of a provident fund for the general public and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.

(2) Subject to the provisions of this Act, the Scheme may provide for all or any of the matters specified in the Schedule.

(3) The Scheme shall have effect notwithstanding anything contained in any law for the time being in force other than this Act or in any instrument having effect by virtue of any law other than this Act.

(4) The Central Government may, from time to time, by notification in the Official Gazette, add to, amend or vary the Scheme."

9. It is expressly clear, by virtue of Section 3(2) of the PPF Act, that provisions with respect to matters specified in the schedule of the PPF Act, may be made under a Scheme framed under Section 3(1) of the PPF Act. But, the same would be subject to the provisions of the PPF Act. The non obstante provision contained in Section 3(3) of the PPF Act gives the scheme an overriding effect over anything inconsistent in any law or any instrument having effect by virtue of any law. However, the non obstante clause expressly excludes the provisions of the PPF Act. It is also well established that delegated legislation cannot be inconsistent with the parent enactment. In the case of the PPF Act, this principle is statutorily recognized under Section 3(2) and 3(3) of the PPF Act.

10. At this stage, it is also relevant to refer to clause 4 of the schedule to PPF Act which reads as under:-

"(4) The extent to which and the terms and conditions under which withdrawals may be made by subscribers from the amount standing to their credit in the Fund."

11. Thus, plainly, a scheme under Section 3(1) of the PPF Act could provide for the terms and conditions under which withdrawals may be made by a subscriber. However, none of such terms and conditions could be inconsistent with the provisions of the PPF Act.

12. It is also necessary to refer to Section 6 of the PPF Act which reads as under:-

"6. (1) A subscriber shall be entitled to make withdrawals from the amount standing to his credit in the Fund (including any interest accrued thereon) to

such extent and subject to such terms and conditions as may be specified in the Scheme:

Provided that such withdrawals shall be allowed only after the expiry of a period of five years from the end of the year in which he makes the initial subscription to the Fund.

(2) Notwithstanding anything contained in sub-section (1) , a subscriber shall be entitled to withdraw the entire balance standing to his credit in the fund after the expiry of a period of fifteen years from the end of the year in which he makes the initial subscription to the Fund.

(3) Subject to the provisions of sub-sections (1) and (2) , an individual who has made subscriptions to the Fund on behalf of a minor, of whom he is the guardian, shall be entitled to withdraw any amount from the Fund only for the use of the minor."

13. It is apparent from the plain reading of Section 6(1) of the PPF Act that a subscriber is entitled to make withdrawals standing to his credit to such extent and subject to such conditions as may be specified in the scheme. However, by virtue of the non obstante provision contained therein, the provisions of Section 6(2) of the PPF Act would override provisions of Section 6(1) of the PPF Act. Section 6(2) of the PPF Act expressly provides that a subscriber would be entitled to withdraw the entire balance standing to his credit in the fund after the expiry of the period of 15 years from the end of the year in which he made the initial subscription. The scope of Section 6(2) of the PPF Act is not circumscribed by provisions of Section 6(1) of the PPF Act, as is apparent from the opening words of Section 6(2) of the PPF Act. Thus, a scheme under Section 3(1) of the PPF Act could provide for matters relating to withdrawal by a subscriber from his account and the subscriber is bound to follow the terms and conditions under the scheme by virtue of Section 6(1) of the PPF Act. However, that would not prevent or curtail the right of a subscriber to withdraw the entire balance after the period of 15 years from the end of the year in which he had made his initial subscription by virtue of non obstante clause under Section 6(2) of the PPF Act.

14. The PPF scheme has to be considered in the aforesaid back drop.

15. Paragraph 9 of the PPF Scheme provides for provisions with regard to withdrawal from the fund. Sub-paragraph (1) of paragraph 9 of the PPF Scheme provides for withdrawals from the fund and sub-paragraph (3) of paragraph 9 of the PPF Scheme provides for closure of account after maturity and read as under:-

"9. Withdrawals from the Fund :- (1) Any time after the expiry of five years from the end of the year in which the initial subscription was made, a subscriber may, if he so desires, apply in Form C or as near thereto as possible, together with his pass book to the Accounts Office withdrawing from the balance to his credit, an amount not exceeding fifty per cent of the amount that stood to his credit at the

end of the fourth year immediately preceding the year of withdrawal or at the end of the preceding year, whichever is lower, less the amount of loan, if any, drawn by him under paragraph 10 and which remains to be repaid :

Provided that not more than one withdrawal shall be permissible during any one year.

xxxx xxxx xxxx xxxx

(3) Closure of account or continuation of account without deposits after maturity :- Notwithstanding the provisions of sub-paragraph (1) , any time after the expiry of 15 years from the end of the year in which the initial subscription was made by him, a subscriber may, if he so desires, apply in Form C or as near thereto as possible together with his pass book to the Accounts Office for the withdrawal of the entire balance standing to his credit and the Accounts Office, on receipt of such an application from the subscriber, shall subject to the provisions of sub- paragraph (4) allow the withdrawal of the entire balance (together with interest upto the last day of the month preceding the month in which the application for withdrawal is made) after making adjustments, if any, in respect of any interest due from the subscriber on loans taken by him and close his account.

Provided that a subscriber may, if he so desires, make withdrawal of the amount standing to his credit, from time to time, in instalments not exceeding one in a year."

16. The learned counsel for respondent no.1 had also referred to sub-paragraph(3A) and (3B) of paragraph 9 of the PPF Scheme which read as under:-

"(3A) Continuation of account with deposits after maturity :- Subject to the provisions of sub-paragraph (3) a subscriber may, on the expiry of 15 years from the end of the year in which the initial subscription was made but before the expiry of one year thereafter, may exercise an option with the Accounts Office in Form H, or as near thereto as possible, that he would continue to subscribe for a further block period of 5 years according to the limits of subscription specified in paragraph 3.

(3B) In the event of a subscriber opting to subscribe for the aforesaid block period he shall be eligible to make partial withdrawals not exceeding one every year by applying to the Accounts Office in Form C, or as near thereto as possible, subject to the condition that the total of the withdrawals, during the 5 year block period, shall not exceed 60 per cent of the balance at his credit at the commencement of the said period."

17. According to the learned counsel for respondent no.1, the provision as to closure of the account under sub-paragraph 9(3) of the PPF Scheme would not be applicable because once a subscriber has opted for extension for a further block period of five years, the subscriber would forfeit his right under sub-paragraph 9(3) of the PPF Scheme till the conclusion of the block period. She had

further submitted that this issue stood concluded by a clarification issued by the Central Government which reads as under:-

"(6) As per Rule 9(3B) , if the PPF account is continued after maturity for a further block period of 5 years, the subscriber is eligible to make partial withdrawals not exceeding one every year subject to the condition that the total of the withdrawals, during the 5 year block period, shall not exceed 60 per cent of the balance at his credit at the commencement of the said period. This amount can be withdrawn either in one installment (one year) and or in more than one installment in different years as per requirements of the subscriber. Similarly during the second block period of 5 years the subscriber can withdraw 60% of the whole amount at credit at the commencement of the second block period either in one year or in different years not exceeding one withdrawal in a year. This limit of withdrawal will apply on commencement of every extension of block period of 5 years."

18. She has also referred to further clarifications issued by the Central Government, by a letter dated 08/20.04.2011, for interpretation of paragraph 9 of the PPF Scheme. The relevant extract of the same are quoted:-

"(11) From rule 9 and clarifications given below this rule it will be seen that the subscriber, on maturity of the account, has the following three options before him. He has to choose one out of these:-

(i) To close the account; or

(ii) To continue the account for any period without further deposits and make one withdrawal in a year. The balance in the account will continue to earn interest at normal rate till the account is closed. There is no need to give in writing about this option to the Accounts Office. This is automatic; or

(iii) To continue the account with usual annual deposits for one or more block period of 5 years without any loss of benefit. For this purpose he should give his option in writing to the Accounts Office in Form H within one year from the date of maturity of the account. During each block period he can make one withdrawal not exceeding sixty per cent of the balance at his credit at the commencement of each block period. This amount can be withdrawn either in one installment (one year) or in more than one installment in different years as per his requirement not exceeding one withdrawal in a year. The account will continue to earn interest till it is closed.

(12) The subscriber who has given his option for the extension of the account for a period of 5 years cannot withdraw his request at a later stage."

19. Undoubtedly, these clarifications are statutory in character as the same have been issued in exercise of the powers vested with the Central Government under the PPF Act as well as the PPF Scheme. However, such clarifications cannot be inconsistent with the provisions of the PPF Act.

20. In my view the authorities referred to by the petitioner are not germane to the point in issue. The Supreme Court in *Workmen of Dimakuchi Tea Estate* (supra) held that when there is a doubt about the meaning of the words of a statute, the same must be understood in the sense in which they best harmonize the subject of the enactment and the object which the legislature has in view. There is no dispute with the proposition that in case of ambiguity in the language of a statute, the same must be resolved to further the object of the statute. The rule of purposive construction or the Heydons rule are now well established rules of statutory interpretation. However, the same are to be resorted to once there is an ambiguity in the language of a statute. Although, there may be some ambiguity between the provisions of the PPF Scheme and the clarifications issued by the Government of India, there is no ambiguity in the language of the PPF Act.

21. If the PPF Scheme and the clarifications issued are read on a stand alone basis without reference to the provisions of the PPF Act, it is possible to come to a conclusion that since extension of the PPF Account is permissible for "a block period of five years" at a time, premature closure during the block period is not permissible. The word "block" in the context may be read as to imply a lock-in-period and by implication a pre-mature termination may not be permissible. However, such interpretation is not permissible as it would militate against the express language of Section 6(2) of the PPF Act.

22. In my view, if sub-paragraph (3A) and (3B) of paragraph 9 of the PPF Scheme are read in the manner as canvassed by respondent no.1. The same would have to be struck down as ultra vires the PPF Act, as it would be clearly repugnant to Section 6(2) of the PPF Act.

23. Any clarification issued by the Central Government to the effect that a closure by a subscriber of its PPF Account after expiry of 15 years from the end of the year of his initial subscription is impermissible would have to be set aside.

24. Section 11(1) of the PPF Act empowers the Central Government to make provisions as necessary or expedient for removal of difficulties. However, it is expressly enacted that such provisions cannot be inconsistent with provisions of the PPF Act. Section 11 of the PPF Act reads as under:-

"11. (1) If any difficulty arises in giving effect to the provisions of this Act or the Scheme, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such order shall be made after the expiration of three years from the commencement of this Act.

(2) Every order made under sub-section (1) shall be laid as soon as may be after it is made before each House of Parliament."

25. It is well settled principle that a subordinate or delegated legislation cannot be inconsistent with the parent enactment. The Supreme Court in *Addl. District*

Magistrate (Rev.) Delhi Admn. Vs. Shri Siri Ram, held as under:-

"16. It is a well-recognised principle of interpretation of a statute that conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. From the above discussion, we have no hesitation to hold that by amending the Rules and Form P-5, the rule-making authority has exceeded the power conferred on it by the Land Reforms Act."

26. In the present case, the power to frame a scheme emanates from Section 3(1) of the PPF Act. Section 3(2) of the PPF Act expressly provides that the scheme shall be subject to the provisions of the PPF Act. It is trite law that a delegated legislation must conform strictly within the parameters as specified.

27. In J.K. Industries Ltd. and Another Vs. Union of India (UOI) and Others, the Supreme Court stated the principle in the following words:-

"..The judgments of this Court have laid down that the legislature may, after laying down the legislative policy, confer discretion on administrative or executive agency like the Central Government to work out details within the framework of the legislative policy laid down in the plenary enactment. Therefore, power to supplement the existing law is not abdication of essential legislative function. Therefore, power to make subordinate legislation is derived from the enabling Act and it is fundamental principle of law which is self-evident that the delegate on whom such power is conferred has to act within the limitations of the authority conferred by the Act. It is equally well settled that rules made on matters permitted by the Act in order to supplement the Act and not to supplant the Act, cannot be held to be in violation of the Act. A delegate cannot override the Act either by exceeding the authority or by making provisions inconsistent with the Act. (See *Britnell v. Secy. of State for Social Security* [(1991) 1 WLR 198 : (1991) 2 All ER 726 (HL)] , All ER at p. 730.)"

28. It is also well settled that insofar as possible, repugnancy in statutory provisions should be avoided. Thus, one must endeavour to read the provisions of the PPF Scheme as well as the Clarifications - which are also statutory in nature - harmoniously. The only manner in which this can be done, is to read the clarifications, in the context of a pre-mature closure prior to the expiry of 15 years period as contemplated under Section 6(2) of the PPF Act. Section 11 of the PPF Act empowers the Central Government to make such provisions as may be considered necessary or expedient. Paragraph 13 of the PPF Scheme also empowers the Central Government to relax requirements of provisions of a Scheme. Both Section 11 of the PPF Act and paragraph 13 of the PPF Scheme specify that any provision made in exercise of the power must not be inconsistent with the provisions of the PPF Act. Admittedly, the Central Government in exercise of its powers has permitted pre-mature closures of the PPF Account on compassionate grounds and further clarified in paragraph 26 of

the order notified that such pre-mature closures of the PPF Account would deserve consideration "only in those cases of extreme compassionate grounds such as medical support in life threatening disease/cases, death cases etc." This order must be read as granting the option for a subscriber to close his account prior to completion of 15 years from the end of the year in which the subscriber had paid the first subscription. This order would have no application in respect of closures beyond the period of 15 years including further extensions as contemplated under sub-paragraph (3A) of paragraph 9 of the PPF Scheme, as by virtue of Section 6(2) of the PPF Act, the subscriber would have the right to close the account and would not need to justify the same.

29. In view of the aforesaid, the petition is allowed and the respondents are directed to forthwith release the funds standing to the credit of the petitioner's PPF A/c along with interest till the date of payment. The pending application also stands disposed of. No order as to costs.