

(2023) 09 CAL CK 0069
In the Calcutta High Court
Case No : WPA No. 4861 Of 2011

Polin Mukherjee

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 20-09-2023

Acts Referred:

Income Tax Act, 1961 — Section 269T

Citation : (2023) 09 CAL CK 0069

Hon'ble Judges : Shekhar B. Saraf, J

Bench : Single Bench

Advocate : Susanta Pal, Bhudeb Chatterjee

Final Decision : Allowed

Judgement

Shekhar B. Saraf, J

1. The instant writ petition has been filed by the petitioner to issue a Writ in the nature of Mandamus calling upon the respondent concerned to release the amount in the tune of Rs. 50,000/- (Fifty Thousand Only) including the bonus of Rs 5000/- (Five Thousand Only) of the Monthly Income Scheme along with interest from the date of maturity according to the prevailing Nationalized Bank Rate forthwith and to act in accordance with law.

2. The petitioner opened Monthly Income Scheme No. 704014347 at The Bhadrakali Post Officer (hereinafter referred to as "respondent no. 4") on April 18, 2002, which had matured on April 18, 2008. In order to withdraw Rs. 50,000/- (Fifty Thousand Only) including the bonus of Rs 5000/- (Five Thousand Only), she had signed a withdrawal slip April 19, 2008, and gave it to her authorized agent, Shri Indrajit Banerjee. However unfortunately Shri Indrajit Banerjee passed away on May 31, 2008.

3. The petitioner alleges that after the expiry of the agent, she would go to the office of respondent no. 4 to enquire about her Monthly Income Scheme but would get no proper response. After a year of enquiring, she was informed that

her Monthly Income Scheme had been withdrawn by cash. In a letter dated July 17, 2009, addressed to the Superintendent, South Hooghly Division, she brought the attention of the authorities to the fact that she had received no documents that such payment had been made in her favor and she wished for her matured amount with bonus to be paid by cheque. By a letter dated August 25, 2009, she wrote to the Chief Postmaster General (hereinafter referred to as "respondent no. 3") informing him that she had received no reply about what action had been taken. She once again wrote to respondent no. 3 vide a letter dated June 18, 2010, stating that she had received no reply. Furthermore, the Post Office was barred from making repayments of matured saving instruments in cash if the amount including principal and interest is Rs 20,000/-(Twenty Thousand Only) or more. Vide a letter dated June 28, 2010, the Vigilance Officer (hereinafter referred to as "respondent no. 5") acknowledged the receipt of the letter and informed the petitioner that the matter was being investigated. However, despite further requests, respondent no. 5 never responded to the petitioner. Finally, the petitioner wrote to the Deputy Director General (hereinafter referred to as "respondent no. 2") vide a letter dated November 3, 2010, illustrating the entire case to which the petitioner has still received no reply.

4. The petitioner states she is being deprived of her savings due to the arbitrary and negligent actions of the respondents. However, the respondents contend that the question of non-receipt of money is not tenable as it is evident from the copy of withdrawal slip dated April 19th, 2008, that the petitioner has withdrawn the maturity amount. They also contend there was a procedural lapse on behalf of the concerned Postal Assistant, and he was punished accordingly. Furthermore, the complaint was lodged one year and three months after the withdrawal slip was signed, and such a claim is not tenable.

5. It is clear from a perusal of Section 269-T of the Income Tax Act, 1961 that the withdrawal of money from Monthly Income Scheme No. 704014347 at The Bhadrakali Post Officer in the form of cash is not envisioned by the section. It is also apparent from the Disciplinary Order dated October 3, 2011, that the respondents were aware of the gravity of the offense. The punishment for the concerned Postal Assistant was initially to stop his increment for one year from the date of his next increment without cumulative effect. However, it was later revised and enhanced to reduce his salary by one stage for 14 months without any cumulative effect. It is further established that the respondents were aware of the gravity of such acts from a reading of SB Order No. 3/2008 dated February 19, 2008, which was relied upon by the respondents during the disciplinary proceedings. The relevant part of the order is given below:

"4.It is further clarified that re-payment of Rs.20,000/- or above in any of the Small Savings Schemes except Savings Account cannot be made by cash in any case. Any violation of these instructions will be treated as a CORRUPT PRACTICE and the disciplinary authority will take disciplinary action against the official responsible accordingly."

Thus, the respondent cannot argue that the action of the concerned Postal Assistant was a mere procedural lapse.

6. It appears that the respondents have absolved themselves of any liability as they have punished the concerned Postal Assistant. However, in the case of *Sulekha Chatterjee v. Union of India and Others*, reported in 2023 SCC OnLine Cal 2242, this Court went into great detail about the liability of the bank when there are lapses on the part of the agents working for them. Relying on law laid down by *Pradeep Kumar v. Postmaster General* reported in (2022) 6 SCC 351, this Court held that banks and post offices can be held accountable and liable for the conduct and actions of their agents and employees. It was further observed in *Pradeep Kumar v. Postmaster General* (supra) that proceeding against the concerned officer will not absolve post officers of their liability. The relevant portion of *Sulekha Chatterjee v. Union of India and Others*(supra) has been reproduced below.

"15. The judgment of the Hon'ble Supreme Court in *Pradeep Kumar Agarwal v. Postmaster General* (supra), also helps the petitioners' case wherein the Hon'ble Supreme Court held that acts of post office/bank employees when done during their course of employment, are binding on bank/post office at the instance of the person who is damnified by the fraud. Relevant portions have been extracted below-

'57. We begin by noting that M.K. Singh is not a third person but an officer and an employee of the Post Office. Post Office, as an abstract entity, functions through its employees. Employees, as individuals, are capable of being dishonest and committing acts of fraud or wrongs themselves or in collusion with others. [See *Punjab National Bank v. Durga Devi*, 1977 SCC OnLine Del 93] Such acts of bank/post office employees, when done during their course of employment, are binding on the bank/post office at the instance of the person who is damnified by the fraud and wrongful acts of the officers of the bank/post office. Such acts of bank/post office employees being within their course of employment will give a right to the appellants to legally proceed for injury, as this is their only remedy against the post office. Thus, the post office, like a bank, can and is entitled to proceed against the officers for the loss caused due to the fraud, etc. but this would not absolve them from their liability if the employee involved was acting in the course of his employment and duties.

58. This Court in *SBI v. Shyama Devi* [*SBI v. Shyama Devi*, (1978) 3 SCC 399] held that for the employer to be liable, it is not enough that the employment afforded the servant or agent an opportunity of committing the crime, but what is relevant is whether the crime, in the form of fraud, etc. was perpetrated by the servant/employee during the course of his employment. Once this is established, the employer would be liable for the employee's wrongful act, even if they amount to a crime. Whether the fraud is committed during the course of employment would be a question of fact that needs to be determined in the facts and circumstances of the case."

(Emphasis added)

7. The respondents have also argued that the petitioner filed the complaint 1 year and 3 months after she signed the withdrawal slip and the claim for non-receipt of money is not tenable. Relying on law laid down in *Canara Bank v. Canara Sales Corporation* reported in (1987) 2 SCC 666, this Court in *Sulekha Chatterjee v. Union of India and Others* (supra) held that a person could file a claim against the bank (or as the case maybe, post office) for recovery of the amount lying in the bank/post office account if the said amount has been withdrawn fraudulently. The said claim cannot be dismissed by the bank/post office merely on the ground of negligence. The relevant paragraph of the judgment of this Court is extracted below:

"13. Furthermore, the judgment of the Hon'ble Supreme Court in *Canara Bank v. Canara Sales Corporation* (supra), reliance on which was placed by the petitioners also bears relevance to the question at hand. The Hon'ble Supreme Court had held in that case that an account holder's claim against the bank, where the amount has been fraudulently drawn by a third person, is valid. Relevant portions of the said judgment have been extracted below-

'30. A case of acquiescence also cannot be flourished against the plaintiff. In order to sustain a plea of acquiescence, it is necessary to prove that the party against whom the said plea is raised, had remained silent about the matter regarding which the plea of acquiescence is raised, even after knowing the truth of the matter. As indicated above, the plaintiff did not, during the relevant period, when these 42 cheques were encashed, know anything about the sinister design of the second defendant. If the bank had proved to the satisfaction of the court that the plaintiff had with full knowledge acknowledged the correctness of the accounts for the relevant period, a case of acquiescence against the plaintiff would be available to the bank. That is not the case here.'

'42. We adopt the reasoning indicated above with great respect. Unless the bank is able to satisfy the court of either an express condition in the contract with its customer or an unequivocal ratification it will not be possible to save the bank from its liability. The banks do business for their benefit. Customers also get some benefit. If banks are to insist upon extreme care by the customers in minutely looking into the pass book and the statements sent by them, no bank perhaps can do profitable business. It is common knowledge that the entries in the pass books and the statements of account sent by the bank are either not readable, decipherable or legible. There is always an element of trust between the bank and its customer. The bank's business depends upon this trust. Whenever a cheque purporting to be by a customer is presented before a bank it carries a mandate to the bank to pay. If a cheque is forged there is no such mandate. The bank can escape liability only if it can establish knowledge to the customer of the forgery in the cheques. Inaction for continuously long period

cannot by itself afford a satisfactory ground for the bank to escape the liability. The plaintiff in this case swung into action immediately on the discovery of the fraud committed by its accountant as in the case before the Privy Council.'

'44. This is how this Court understood how a plea of estoppel based on negligence can be successfully put forward. We have seen that there is no duty for a customer to inform the bank of fraud committed on him, of which he was unaware. Nor can inaction for a reasonably long time in not discovering fraud or irregularity be made a defence to defeat a customer in an action for loss. Thus, the contentions put forward by the bank cannot be accepted to defeat the plaintiff. The various submissions made by the counsel for the bank based on constructive notice in the general law and on other branches of law cannot be extended to relationship between a bank and its customer.'"

(Emphasis added)

The petitioner argued that she had enquired about her account for a year after which she was told that her Monthly Income Scheme had been withdrawn by cash. Once she was informed, she filed a complaint on July 17, 2009. The bank has failed to demonstrate that the petitioner was aware of the mismanagement of her account prior to filing her complaint. Thus the bank is liable to pay the money that is owed to her.

8. From the above appreciation of evidence, it is evident that the method by which money was withdrawn from Monthly Income Scheme No. 704014347 at The Bhadrakali Post Officer was in violation of Section 269-T of the Income Tax Act, 1961 and the respondents are liable to pay the petitioner. As observed in *Sulekha Chatterjee v. Union of India and Others* (supra), the Post Office serves as a guardian of savings and operates on the trust of the citizens of this country that has been built over decades. However, such acts tarnish this trust and utmost effort must be made to redress the wrong done.

Order and Directions

9. In view of the aforesaid discussion, let there be a Writ of Mandamus issued in terms of prayers (a) against the respondents. Accordingly, this Court directs respondent no. 3, Chief Postmaster General Rs. 50,000/- (Fifty Thousand Only) including the bonus of Rs 5000/- (Five Thousand Only) of the Monthly Income Scheme along with interest at the rate of 6% from the date of maturity.

10. Accordingly, this Writ Petition being WPA/4861/2011 is allowed. There shall be no order as to the costs.

11. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with requisite formalities.