(2014) 12 KL CK 0173

In the High Court Of Kerala

Case No : W.A. Nos. 1488 and 1674 of 2014

Poulose APPELLANT

Vs

Senior Superintendent of Post Office RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Consumer Protection Act, 1986 — Section 2(1)(g)
Government Savings Certificate Act, 1959 — Section 12

Citation : (2015) 1 ILR 604 : (2015) 1 KLJ 359 : (2015) 1 KLT 276

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : P.V. Baby, Advocates for the Appellant; N. Nagaresh, Asst. Solicitor General of India, Advocates for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. These two appeals have been filed against the same judgment dated 31st July, 2014 passed in W.P.(C) No. 20131/2009. The Writ Petition was filed by the respondent in W.A. No. 1674/2014. The respondent, (the petitioner in the Writ Petition), Secretary of the Mulanthuruthy Service Co-operative Bank, has purchased 10 National Savings Certificates for Rs. 10,000/- each on 25th March, 2003. The maturity date of the certificates was 25th March, 2009. When the petitioner presented the certificates after maturity date, the Department declined to release the maturity amount. The petitioner, in the circumstances, had filed the Writ Petition for the following reliefs:

"i) Issue a writ of certiorari or other appropriate writ, order or direction, call for the records leading to Ext. P4 issued by the 2nd respondent and quash the same;

ii) Issue a writ of mandamus or other appropriate writ, order or direction directing the 1st respondent to permit the petitioner to encash Exts. P1 to P1(i) certificates dated 25.3.2003 bearing Nos. 6NS/39EE 829834 to 829843 (10 numbers for Rs. 10,000/-) each and to pay the maturity value as mentioned in the certificates along with interest from 25.3.2009 till the amount is being paid at the rate of interest mentioned in the certificate within a stipulated period."

2. Counter affidavit was filed in the Writ Petition, wherein the Department has referred to the National Saving Certificates (VIII) Issue Rules, 1989, which has been produced as Ext. R1(A). The Department''s case was that the benefit of the scheme Cannot be availed by a Co-operative Society, which has been expressly excluded under the Scheme. Hence, no interest can be earned on the National Savings Certificates produced by the petitioner. It is stated that the petitioner has purchased the certificates in his official capacity and not in his personal capacity and the money invested was that of the Bank.

3. The learned Single Judge, after hearing the parties, allowed the Writ Petition and directed payment of maturity amount of Rs. 16,010/-. The learned Single Judge took the view that when there is an endorsement signed by the Sub Post Master in each certificate to the effect that the Government of India promises to pay to the depositor an amount of Rs. 16,010/- on or after 25.3.2009, the respondents'' contention cannot be accepted. The Writ Petition was allowed directing payment. However, further interest was declined. The Department have filed an appeal against the judgment, whereas the writ petitioner has filed appeal against denial of future interest.

4. We have perused the records the considered the submissions of the parties.

5. Statutory Rules, namely, National Savings Certificates (VIII Issue) Rules, 1989, was issued by the Central Government in exercise of powers under S. 12 of the Government Savings Certificates Act, 1959 (46 of 1959). R.4 deals with types of certificates and issue thereof. R.4(2), which is relevant for the purpose is as quoted below:

"(2)(a) A Single Holder Type certificate may be issued to-

(i) an adult for himself or on behalf of a minor or to a minor;

(ii) a banking company excluding a Co-operative bank;

(iii) a company;

(iv) a corporation;

(v) an association, institution or a body registered as a society under any law for the time being in force excluding co-operative society;

(vi) a firm;

(vii) a local authority;

(viii) a trust

(b) A Joint "A" Type certificate may be issued jointly to two adults payable to both the holders jointly or to the survivor.

(c) A Joint ''B'' Type certificate may be issued jointly to two adults payable to either of the holders or to the survivor."

According to the above Rule, Single Holder Type Certificate cannot be issued to a Co-operative Bank. The reason is obvious that National Savings Certificate is a scheme introduced for the benefit of those mentioned in the Rules except a Co-operative Bank. Co-operative Banks were not supposed to invest in National Savings Certificate or to earn any interest. It is true that there was endorsement to the certificate to the effect that maturity amount of Rs. 16,010/- shall be issued after 25th March, 2009. Refusal to pay the said amount cannot give any right to the petitioner to claim payment of interest on the certificates, i.e. the amount of Rs. 16,010/-. It is well established that this Court, in exercise of its writ jurisdiction, shall not issue a direction contrary to the statutory provisions, when the statute specifically provides that single holder certificate cannot be issued to a Co-operative Bank. A Co-operative Bank cannot claim any benefit on the maturity amount.

6. The learned counsel for the Department has placed reliance on the decision of the Apex Court in Civil Appeal No. 4995/2006 (Arulmighu Dhandayudhapaniswamy through its Arulmighu Dhandayudhapaniswamy Thirukoil, Palani, Tamil Nadu, thr. its Joint Commissioner Vs. The Director General of Post Offices, Department of Posts and Others, . In the said case also, under the deposit scheme, certain investment was made. The Postal Authorities had declined to make payment communicating that the scheme having been discontinued, the amount should be closed without interest. The amount deposited was refunded only on 3.1.1996 without interest. Complaining deficiency in service, claim was filed before the Consumer Disputes Redressal Forum. The matter reached to the Apex Court. The Apex Court examined the scheme and laid down the following in paragraph 9:

"9. It is true that when the appellant deposited a huge amount with the 3rd respondent from 05.05.1995 to 16.08.1995 under the Scheme for a period of five years, it was but proper on the part of the Post Master to have taken a note of the correct Scheme applicable to the deposit. It was also possible for the Post Master to have ascertained from the records could have applied the correct Scheme and if the appellant being an institution, was not eligible to avail the Scheme and advised them properly. Though Mr. S. Aravindh, learned counsel for the appellant requested this Court to direct the 3rd respondent to pay some reasonable amount for his lapse, inasmuch as such direction would go contrary to the Rules and payment of interest is prohibited for such Scheme in terms of R. 17, we are not inclined to accept the same. We are conscious of the fact that a substantial amount had been kept with the 3rd respondent till 03.01.1996 when the said amount was refunded without interest. In the light of the letter dated 01.12.1995 and in view of R. 17 of the Rules, failure to pay interest cannot be construed as a case of deficiency in service in terms of S. 2(1)(g) of the Consumer Protection Act, 1986. Both the State and the National Commission have concluded that the 3rd respondent was ignorant of any Notification and because of this ignorance the appellant did not get any interest for the substantial amount. We agree with the factual finding arrived at by the State and the National Commission and in view of the circumstances discussed above, the respondents cannot be fastened for deficiency in service in terms of law or contract and the present appeal is liable to be dismissed."

The Apex Court, in the said case, justified non-payment of interest as per the Rule.

7. Another judgment relied on by the learned counsel is the judgment of a learned Single Judge of this Court decided on 27th September, 2011 in W.P.(C) No. 21220/2011. In the said petition, a Co-operative Bank has come up with the Writ Petition seeking payment of maturity amount on the Kissan Vikas Patra for Rs. 1,00,000/-. Relying on the Apex Court judgment, the Writ Petition was dismissed by the learned Single Judge.

8. The mere fact that endorsement was made on the National Savings Certificate cannot bind the Department to make the payment. Endorsement made was contrary to the Rules. The principle of estoppel cannot be held to be applicable. No estoppel can be pressed against the statutory rules.

9. In the light of the above, we are of the view that the learned Single Judge has committed error in allowing the Writ Petition and directing payment of maturity amount The Government of India by Ext. P4, has already offered the writ petitioner to encash original amount of N.S.C. It shall be open for the writ petitioner to encash the N.S.C. without any interest, if the same has not already been encashed. In the result, W.A. No. 1674/2014 is allowed and W.A. No. 1488/2014 is dismissed.