(2010) 08 GUJ CK 0212

In the Gujarat High Court

Case No : Special Civil Application No. 29735 of 2007

Pranit K. Nanavati APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2010) 08 GUJ CK 0212

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Nanavati Associates, for the Appellant; P.S. Champaneri, for Respondents 1-3 and M.K. Vakharia, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—By way of this petition under Article 226 of the Constitution of India the petitioner has prayed for an appropriate writ, order or direction to hold and declare that the impugned action of the respondents of withholding the amount of interest accrued till date on the principal amount deposited by the petitioner in the NSS Account No. 9141 through his power of attorney holder under the National Savings Scheme, 1987 as illegal, unreasonable and without authority of law.

2. It is further prayed for an appropriate writ, order or direction directing the respondents, its officers, servants and agents to release forthwith the principal amount as well as the amount of interest accrued till date on the principal amount deposited by the petitioner in NSS Account No. 9141 through his power of attorney holder alongwith further interest at the rate of 10% per annum till the date of payment.

3. It is the case on behalf of the petitioner that the petitioner made various deposits from 02/04/1988 to 31/03/1992 under the National Savings Scheme, 1987 to the tune of Rs. 90,000/- in NSS Account No. 9141 opened by the

petitioner through his power of attorney. It is the case on behalf of the petitioner that the total amount with interest accrued on the principal amount as on 01/04/2006 was Rs. 4,14,873/-, which is illegally withheld by the respondents allegedly on the ground that the amount deposited by the petitioner, through his father Shri K.S. Nanavati as his power of attorney holder, was itself contrary to the rules of National Savings Scheme and, therefore, the interest amount accrued cannot be disbursed. Being aggrieved and dissatisfied with the above, the petitioner has preferred the present Special Civil Application.

4. Shri Keyur Gandhi, learned advocate appearing on behalf of the petitioner has submitted that the controversy raised in the present Special Civil Application is squarely covered by the decision of the Division Bench of this Court in Letters Patent Appeal Nos. 813 and 847 of 1999 and, therefore, it is requested to allow the present Special Civil Application.

5. Shri Mehul Vakharia, learned Central Government Standing Counsel has appeared on behalf of the respondents. However, he is not in a position to show any contrary decision to the decision rendered by the Division Bench of this Court in Letters Patent Appeal Nos. 813 and 847 of 1999. However, he has submitted that as such the petitioner shall be entitled to the interest only till he was communicated to withdraw the principal amount i.e. up to 01/05/2007 only.

6. Having heard the leaned advocates appearing on behalf of the respective parties and considering the controversy raised in the present petition, it appears that the controversy raised in the present petition is now not res integra and is squarely covered by the decision of the Division Bench of this Court dated 21/09/2000 in Letters Patent Appeal Nos. 813 & 847 of 1999. It is not in dispute that as such the department accepted the amount and credited into the NSS Account of the petitioner and nothing is on record that there was any suppression or concealment on the part of the petitioner in opening the NSS account through his power of attorney. In paragraph 3, the Division Bench has observed and held as under;

3. We find that the factum that the accounts were opened through the Power of Attorney holder had not been suppressed or concealed and the Department knew it very well at the time when the account was opened that it was being opened through the Power of Attorney holder. After the account has remained operative for number of years and the deposits have been accepted therein, when it comes to the question of closure of the account, to deny the payment of the interest on the ground that the opening of the account itself was irregular and that it was contrary to the clarifications given by the Finance Department, cannot be said to be justified. The learned Single Judge has given reasons in detail in paragraph 7, 8 and 9 of the impugned order for allowing the petitions. The learned Single Judge has also mentioned in the body of the order that the matter was was covered by two earlier decisions of this Court, i.e. in Special Civil Application No. 6794 of 1987 decided on 2nd March, 1988 and in Special Civil Application No. 3088 of 1988 decided on 24th December, 1993. Even if it is assumed that

opening of the account was contrary to the clarifications issued by the finance department and that the account could not be opened through the power of attorney holder, it may entail an action against the officials who did not adhere to the clarifications of the finance department but the members of the public who come to open the account in a national savings scheme cannot be told after number of years when they want to close the account that they will not be entitled to any interest and the members of the public at large cannot be made to suffer any prejudice on account of such violations of no significant consequence. Even otherwise, if there is any irregularity in the opening of the account, it cannot entail in the forfeiture of the interest accrued on the deposits made therein for no fault on the part of the person who opened the account or on the part of the person through whom the account was opened, unless it is made out that any important or material fact was suppressed or concealed which is not the case against the original petitioners.

7. Considering the decision of the Division Bench of this Court, the petition deserves to be allowed. In view of the above and for the reasons stated hereinabove, the petition succeeds and the concerned respondents are directed to pay the principal amount deposited by the petitioner lying in NSS Account No. 9141 with interest considering the rate of interest prevailing and valid from time to time. Necessary calculation with respect to the accrued interest shall be made by the respondent authorities within a period of six weeks from today and actual payment to the petitioner shall be made within a period of four weeks thereafter. It is made clear that the petitioner shall be entitled to the interest on the principal amount only up to 01/05/2007. Rule is made absolute to the aforesaid extent. No cost.

Direct service is permitted.