(2000) 05 GUJ CK 0079

In the Gujarat High Court

Case No : Special Civil Application No. 3422 of 2000

Prashant K. Patel APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 03-05-2000

Acts Referred:

Constitution of India, 1950 — Article 14
Evidence Act, 1872 — Section 115
Government Savings Certificate Act, 1959 — Section 12
National Savings Scheme Rules, 1987 — Rule 2

Citation : AIR 2001 Guj 58 : (2000) 3 GLR 2725 : (2001) 1 RCR(Civil) 672

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : Amar N. Bhatt, for the Appellant; P.J. Davawala, for the Respondent

Final Decision : Allowed

Judgement

M.R. Calla, J.—The petitioner has come with the case that the respondent had come out with a Savings Scheme in the year 1987 known as "National Savings Scheme", which will be hereinafter referred to as "the NSS". Under the said scheme, the petitioner''s Account was opened on or about 29th October 1987 with the Navrangpura Post Office, Ahmedabad. The said Account was later on transferred to the Ellis Bridge Post Office in June 1988 and the petitioner''s NSS Account No. 18 with the Navrangpura Post Office was given NSS Account No. 101129 by the Ellis Bridge Post Office, Ahmedabad. It is stated that the said Account was opened by the father of the petitioner Shri Kalyanji Dharamshi Kunjadia as a holder of the General Power of Attorney dt. 4-2-1987.

2. It is stated by the petitioner that on or about 6th March 2000, the petitioner was shocked to receive a letter dated 4th March 2000 from the respondent in which it was stated that the said Account opened by the holder of Power of Attorney of the petitioner was irregular and therefore, the petitioner was requested to close the Account without interest. It is further stated that the said

Account of the petitioner was opened by the father of the petitioner by using the General Power of Attorney and therefore, there was no irregularity. The petitioner then sent a letter dated 20th March 2000 to the respondent pointing out the relevant facts and requesting the respondent to continue the Account with interest as per the NSS 1987. Despite this, the respondent has sent another letter dated 21st March 2000 reiterating that the Account of the petitioner should be closed without interest. The petitioner has also stated that till the financial year 1998-99, the said NSS Account was credited with the amount of applicable interest and the balance in the said NSS Account as on 31st March 1999 was Rs. 3,63,992/-. It is also submitted that various amounts have been deposited in the said NSS Account of the petitioner from 1987 to 1992 and the amounts were deposited in the NSS Account on the basis of the representations made by the respondent in the NSS that the amount deposited in the said Scheme were deductible for the purpose of Income tax and accordingly such deposits were made. After having credited the interest in the NSS Account of the petitioner from 1987-88 till 1998-99, the respondent now cannot close the Account of the petitioner without interest. In these circumstances, the petitioner has filed the present petition with the prayers as under :

"(A) Issue a writ of mandamus or any other appropriate writ commanding the respondent to continue the NSS Account No. 101129 of the petitioner opened on 29-10-87 with interest as per the National Savings Scheme.

(B) Declare that the letter dated 4-3-2000 (copy at Annexure "C" hereto) and letter dated 21 -3-2000 (copy at Annexure "E" hereto) of the respondent are null and void and further direct the respondent to withdraw the said letters at Annexure "C" and "E" hereto."

2A. No reply has been filed in response to the Rule issued by this Court, but Ms. P.J. Davawala appearing on behalf of the respondent argued the matter on the basis of the instructions received from the respondent. On the basis of these instructions, Ms. Davawala has argued that the Account which was opened in the name of the petitioner by the petitioner''s father on the basis of the Power of Attorney has been treated as irregular and therefore, the petitioner was asked to close the Account inasmuch as in the General Power of Attorney, there was no such specific power given to the petitioner''s father for opening the NSS Account. Her contention is that there should have been a Special Power of Attorney for the purpose of opening the NSS Account or a special clause to this effect in the General Power of Attorney.

3. I have gone through the pleadings and considered the submissions made on behalf of both the sides. I have also gone through the xerox copy of the Passbook which also contains the National Savings Scheme Rules, 1987 at page 23 of the paper book (part of Annexure B) in the name of the petitioner. Rule 2 (c) is reproduced as under :

"2(c) depositor means :

(i) an individual, or

(ii) a Hindu undivided family, or

(iii) an association of persons or a body of individuals consisting, in either case, only of husband and wife governed by the system of community of property in force in the Union Territories of Dadra and Nagar Haveli and Goa, Daman and Diu

by whom, or on whose behalf, money is deposited in an account, and deposit means money so deposited".

Thus, according to the Rules, a depositor means an individual by whom or on whose behalf the money is deposited. In this view of the matter, if the money was deposited by the petitioner''s father on his behalf, the petitioner has to be taken as a depositor. Strictly speaking, there is no provision in the Scheme of the Rules that as and when money is deposited on behalf of somebody else, it must be accompanied by a Special Power of Attorney. Rules do not make any such provision. Even if is assumed that there should have been a Special Power of Attorney in this regard and the same was not there and the deposit was made in the name of the petitioner by his father on the basis of the General Power of Attorney, I do not find that there is any such irregularity which would vitiate the validity of the opening of the Account itself. Nothing of this sort has been provided in the Rules, yet, assuming in favour of the respondent that such requirement should have been followed and the Account should have been opened with the Special Power of Attorney, it could, at the most, be said to be a directory requirement of procedural nature and not a mandatory requirement as such. The opening of Account in the name of the petitioner by his father for the benefit of the petitioner and on behalf of the petitioner on the basis of the General Power of Attorney should be treated as the substantial compliance of such a procedural requirement which by no stretch of imagination is a statutory requirement under the rules of the scheme in this case. Petitioner''s rights can''t be defeated on the basis of a trifle of no significance and consequence. Secondly, if the respondent wanted to adhere to such a requirement, it should have examined the position at the time when the Account was actually opened. The respondent allowed the petitioner''s father to open this Account in the name of the petitioner on the basis of the General Power of Attorney with open eyes and did not object to the opening of this Account at that time. The amount deposited in this Account for and on behalf of the petitioner has remained with the respondent for all these years. The respondent now cannot take a somersault and wriggle out the requirement of paying out the amount of interest. The respondent accepted the opening of this Account and it is very clear that the petitioner or his father never made any misrepresentation or concealed any fact nor suppressed any fact from the respondent. In such a situation, the functionaries of the Government who have to deal with such National Schemes which are public oriented Schemes to give an incentive to the members of the public at large for depositing the amounts to make the savings for a rainy day and earn interest on the said money as per the Scheme cannot be allowed to act and take such an arbitrary and incomprehensible stand after they themselves have accepted the opening of such account and the same has been operated with addition of interest from time to time. As a matter of fact, if at all the Account was not treated to be regular on the basis of the General Power of Attorney, they should have taken the objection immediately. Instead of taking such an objection, they have acted upon this Scheme in favour of the petitioner and the Account has remained operative for a period of more than ten years and the amount of interest has also been credited as per the entries made in the Passbook up to the year 1998-99. It is a clear case in which the petitioner has thus been made to act to his own prejudice by parting with his amounts by making deposits on the positive acts and representation of the respondent express and implied.

4. The respondent is, therefore, estopped by the principle of promissory and equitable estoppel u/s 115 of the Indian Evidence Act from now denying the fruits of the earned interest in Account to the petitioner so as to close the amount without interest. Such an approach on the part of the Government functionaries under the State cannot be encouraged and in such cases, no authority is supposed to take such a hyper-technical view of the matter. The petitioner''s right in this respect deserves the protection of this Court and he can''t be deprived of his property rights by the respondents through an attempt like that of catching mercury by fork. The fact of the matter is that the Account was opened under the NSS, the amount was deposited, and the petitioner was to earn interest on this amount which was deposited in the said Account the amount has remained with the respondent for all these years and the petitioner cannot be deprived of the earned interest from such account. In such circumstances, the impugned action on the part of the respondent is found to be wholly arbitrary, unreasonable, irrational within the meaning of Article 14 of the Constitution of India and cannot be sustained. The contents of the communications dated 3rd March, 2000 followed by yet another communication dated 21-3-2000 are declared to be illegal.

5. Accordingly, the communications dated 3rd March, 2000 and 21-3-2000 are hereby set aside. The respondent is directed to continue the petitioner''s National Savings Account No. 101129 opened on 29th October, 1987 with due interest on all deposits therein as per the National, Savings Scheme and it is declared that the petitioner shall be entitled to all the benefits of this account. This Special Civil Application is accordingly allowed. Rule is made absolute. In the facts and circumstances of this case, no order as to costs.