

(2016) 02 DEL CK 0105
In the Delhi High Court
Case No : W.P. (C) 8025/2014

Rajeshwar Rawat

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Public Provident Fund Act, 1968 — Section 3

Citation : (2016) 02 DEL CK 0105

Hon'ble Judges : V.P. Vaish, J.

Bench : Single Bench

Advocate : R.K. Saini and Avadh Kaushik, Advocates, for the Appellant; S.L. Gupta and Arjun Gupta, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Vaish, J.—1. The petitioner, by way of present petition has claimed the following reliefs:-

- (a) A writ of certiorari calling for the records of the case for perusal;
- (b) A writ of certiorari quashing impugned e-mail dated 08.01.2014 (Annexure P-7), letter dated 27.01.2014 (Annexure P-8), and e-mail dated 11.07.2014 (Annexure P-12), all issued by the respondent Bank, being illegal, arbitrary, malafide, unjust and in violation of the principles of estoppel, equity, justice and good conscience;
- (c) A writ of mandamus commanding the respondent bank to forthwith refund the entire amount standing to the credit of its PPF A/c No. 10819228558 including the deposit of Rs. 1 lakh for the 1st year, viz 2012-13, of the extended maturity upto 31.03.2017, together with interest till the date of actual payment.
- (d) A writ of mandamus commanding the respondent bank to pay suitable compensation to the petitioner for the mental torture and harassment suffered by the petitioner;

(e) A writ of mandamus commanding the respondent to pay the costs of this petition to the petitioner;"

2. The brief facts as culled out from the petition are that the petitioner being an NRI opened an account with the respondent bank under the Public Provident Fund Scheme, 1968 on 2nd May, 1991. At the time when the account was opened the petitioner was residing at Madrid, Spain and later he shifted to Annemasse, France and the new address was also intimated by the petitioner to the respondent bank. In the year 2007 the petitioner wrote to the respondent that he wished to continue his Public Provident Fund Account (PPF Account) for a further period of five years after the completion of fifteen years from 31st March, 2007. The respondent allowed the said request and extended continuance of the PPF Account and the petitioner made deposits in the said account during the extended period of its continuance and the respondent accepted and credited the said deposits to his PPF Account.

3. It is further stated that the petitioner also has a Non-Resident Ordinary Savings Account (NRO Savings Account) at the NRI Division of the respondent bank. He was making deposits into his PPF Account either by drawing cheques on his NRO Savings Account or by requesting the NRI Division of the respondent bank to make the deposit in his PPF Account by debiting from his said NRO Savings Account.

4. The petitioner also stated that without noticing that the extended continuance of his PPF Account had expired on 31st March, 2012 and that he had not written to the respondent bank for its further continuance, the petitioner requested the NRI Division of the respondent bank on 01st July, 2012 to deposit rupees one lakh in his PPF Account by debiting the same from his NRO Savings Account. However, the petitioner was informed by the respondent bank that it was not able to credit the amount into the PPF Account as the said account has already matured and that if the petitioner wants to continue it then he will have to send the PPF extension form duly filled in to the Personal Bank Branch of the respondent bank.

5. It is also stated that the petitioner on 27th July, 2012 submitted the prescribed form for continuance of his PPF Account for a further block period of five years. The respondent bank vide letter dated 03rd October, 2012 informed the petitioner that his PPF Account has been extended till 31st March, 2017. Thereafter, the petitioner requested the NRI Division of the bank on 02nd December, 2012 to deposit rupees one lakh to his PPF Account by debiting his NRO Savings Account. The said amount was credited by the respondent to the petitioner's PPF Account on 03rd December, 2012.

6. On 07th December, 2013 the petitioner requested the respondent bank to deposit rupees one lakh into his PPF Account for the year 2013-14 by debiting the same from his NRO Savings Account. As the deposit was not made, the petitioner sent a reminder to the respondent bank on 28th December, 2013 for

making the said deposit. The petitioner received an e-mail on 01st January, 2014 from the respondent bank stating that as per Government instruction NRI cannot continue his/ her PPF Account after maturity, and enquired from the petitioner as to the date when he achieved his NRI status to enable it to take necessary steps in his account. The petitioner sent a detailed reply by e-mail dated 08th January, 2014 explaining his position.

7. It is further stated that the petitioner's friend, Mr. L.R. Jain, who was based in Delhi also followed up the matter with the PPF Section of the respondent bank. He was informed by the respondent bank that the extension of PPF Account of the petitioner in 2007 and again in 2012 was a mistake being against the PPF Rules applicable in the case of NRI's after Government Order dated 25th July, 2003 and that the petitioner's PPF Account had to be closed as on its maturity on 31st March, 2012 and that the respondent would pay the proceeds of the PPF Account by issuing Pay Order against which a FD account would be opened in the petitioner's name for such period of maturity as he may desire. Vide letter dated 27.01.2014 the petitioner was asked to submit duly filled in Form-C for closure of the PPF Account on maturity i.e. 31st March, 2012, a letter of request for closure of account, his address proof and photocopy of PAN Card. Mr. L.R. Jain further talked to the Manager (PPF) of the respondent bank regarding the amount that would be paid to the petitioner. The Manager stated that the amount would include interest upto 31.03.2012 as the PPF Account matured on that date.

8. Thereafter, the petitioner sent an e-mail dated 06.03.2014 stating in detail his concerns, reservations and objections to the course of action suggested by the respondent bank. The petitioner also requested the respondent bank to refund the money to the credit of his PPF Account including deposit of rupees one lakh on 03rd December, 2012 and the interest accrued and due upto the date of refund, by deposit into his NRO Savings Account or by issue of a Pay Order in his name. The petitioner has stated that the respondent did not respond to the communication of the petitioner.

9. The petitioner, thereafter, submitted to the respondent through Mr. L.R. Jain, an application for withdrawing part of the funds from his PPF Account in prescribed Form-C. The said application was not accepted by the bank stating that partial withdrawal of funds from PPF Account was not permissible in the case, where PPF Account was to be closed. Mr. Jain was further informed that in view of Government Order of 2003 and Reserve Bank's directions interest can be paid only upto 31st March, 2012 on which date the petitioner's PPF Account had to be taken to be closed.

10. Further, by e-mail dated 11th July, 2014 the respondent bank reiterated that the petitioner's PPF Account could not be extended in terms of Gazette Notification dated 25.07.2003 and the RBI guidelines in respect of facilities for NRIs providing that NRIs are not permitted to invest in Small Savings or Public Provident Fund and asked the petitioner to submit a request letter for closure of his PPF Account to enable it to make payment of the proceeds.

11. The petitioner has also alleged that he was never informed about the Gazette Notification dated 25th July, 2003 or the RBI guidelines barring NRIs to open/continue on maturity PPF Accounts in the year 2007 or 2012. The request for extension of PPF Account was made by the petitioner on the advice of the respondent bank in the year 2012.

12. The petitioner on 24th July, 2014 wrote to the respondent bank to close his PPF Account and pay its proceeds by deposit in his NRO Savings Account followed by another reminder dated 28th August, 2014. The petitioner further stated that he has not received any information about the further action taken, if any, by the respondent. Hence, the petitioner has filed the present petition.

13. The respondent bank opposed the petition and filed counter affidavit.

14. It is also argued on behalf of the petitioner that the respondent bank itself extended the PPF Account of the petitioner beyond its maturity on 31st March, 2012 till 31st March, 2017 and thereafter accepted deposit of rupees one lakh from the petitioner. Thus, insistence by the respondent on the petitioner to close his PPF Account retrospectively is untenable in law and equity and against the principles of natural justice and principles of estoppel.

15. Learned counsel for the petitioner further contended that respondent bank was fully aware that the petitioner was an NRI when he opened his PPF Account on 19th May, 1991 and there has been no change in his status of an NRI ever since then, which is also borne out from the documents on record.

16. It is also urged on behalf of petitioner that the respondent bank never informed the petitioner about the Government's Order in its Gazette Notification dated 21st July, 2003 and the Reserve Bank of India's guidelines barring an NRI to open or continue on maturity an account under the Public Provident Fund Scheme even though the respondent bank was aware that the petitioner was an NRI when he opened the account. Learned counsel for the petitioner further contended that retrospective closure of the petitioner's PPF Account and the denial of payment of interest on the PPF deposits for the period after 31st March, 2012 is arbitrary, unjust and against public interest.

17. Learned counsel for the petitioner vehemently argued that the impugned decision taken by the respondent is contrary to the law and is wholly illegal and based on non-appreciation of facts and circumstances of the case. According to learned counsel for the petitioner the respondent bank has already retained and utilized the money of the petitioner, therefore, the interest thereon ought to be paid by the respondent bank.

18. Per contra, learned counsel for the respondent urged that PPF Account was not meant for respondent bank. PPF Scheme is the scheme of Government of India and all the deposits are transferred to the Government of India. The respondent bank is the nodal bank and any amount received under the said scheme is credited into the account and the interest paid by the Government of

India is credited to the account holder.

19. It was also contended on behalf of respondent that the petitioner being well educated NRI is well versed with the Reserve Bank of India's guidelines and he cannot claim ignorance about the rules. The deposits in the Government scheme are made by the depositors on its own risk and responsibility and after understanding the scheme. If the amount was wrongly deposited, the respondent bank cannot be blamed. It is further stated that the amendment to the Public Provident Fund Scheme, 1968 were published by the Government of India on 25th July, 2003, in the Gazette of India, Extraordinary Part-II and the presumption is that the petitioner had the notice of the same.

20. Learned counsel for the respondent also contended that the petitioner opened the PPF Account under the PPF Scheme, 1968. He was fully aware about the scheme. The petitioner was dealing with the respondent bank through his representative, Mr. L.R. Jain resident of 136, Dayanand Vihar, Vikas Marg Extension, New Delhi, whose address was also recorded as the address of the petitioner in the records of the respondent bank. When the PPF Account got matured in 2007, the respondent bank at the request of the petitioner in ordinary course extended the validity period by five years. The petitioner again in the year 2012 approached the respondent bank for extension of the scheme for further five years. In the meantime, the Reserve Bank of India issued the instructions to the bank to have the KYC (Know Your Customer) documents on the record and the respondent bank advised the petitioner to submit the papers of his residential proof, PAN, etc. It is further stated that on the demand by the respondent bank about the PAN Card, etc. it has come to the notice of the respondent bank that the case of the petitioner falls under the RBI's notification of 2003 and the petitioner neither can open the PPF Account nor can get it extended after the said notification of 2003.

21. Learned counsel for the respondent bank vehemently contended that the Rules do not permit any payment and the interest after the account was matured on 31st March, 2012.

22. Learned counsel appearing for respondent bank also submitted that since the PPF Account of the petitioner was extended in contravention of the Rules, interest cannot be paid by the respondent bank.

23. During the pendency of the writ petition, Union of India, Ministry of Finance was impleaded as respondent No. 2. A short affidavit was also filed on its behalf, wherein it is stated that initially Non-Resident Indians (NRI) were allowed to open the PPF Account. However, vide Gazette Notification dated 25th July, 2003 an amendment was made to the PPF Scheme, 1968 and NRIs were made not eligible to open the account under the PPF Scheme. It is further stated that the respondent bank allowed the extension and continuance of the PPF Account for further five years in contravention of the rules, whereas the account of the petitioner was to be closed on 31st March, 2007 i.e. after completion of fifteen

years. It is further stated that not only the respondent bank committed a mistake by extending the account which was in contravention of the PPF Scheme as amended in 2003, but the petitioner was equally responsible for asking the extension of the PPF Account in contravention of the scheme/ rules in 2007 and in 2012.

24. I have heard learned counsel for both the parties and carefully gone through the material on record.

25. The petitioner herein had moved an application being C.M. No. 8506/2015, in the present writ petition seeking directions to release the amount including interest upto 31st March, 2012. Learned counsel for the respondent bank, on instructions, submitted that he had no objection if the amount lying in the PPF Account of the petitioner along with interest upto 31st March, 2012 was released to the petitioner without prejudice to the rights of the parties.

26. Accordingly, vide order dated 25.08.2015, the said application was disposed of with the direction to the respondent bank to release the amount lying in the PPF Account of the petitioner along with interest upto 31st March, 2012.

27. Admittedly the amount lying in the PPF Account along with interest upto 31.03.2012 has been paid to the petitioner.

28. The Public Provident Fund Scheme, 1968 came into force on 01st July, 1968. There is no quarrel to the position that when the petitioner opened the PPF Account, NRIs were allowed to open the PPF Account. The aforesaid Public Provident Fund Scheme, 1968 was amended pursuant to a Gazette Notification dated 25th July, 2003 by which the NRIs were made not eligible to open the account under the PPF Scheme. The said amended rule is reproduced below:-

"G.S.R. 585(E) - In exercise of the powers conferred by sub- section (4) of Section 3 of the Public Provident Fund Act, 1968 (23 of 1968), the Central Government hereby makes the following further amendment to the Public Provident Fund Scheme, 1968, namely:-

1.

2. In the Public Provident Fund Scheme, 1968, in paragraph 3, after sub-paragraph (2), the following sub- paragraph shall be inserted, namely:

"(3) Non-Resident Indians (NRIs) are not eligible to open an account under the Public Provident Fund Scheme:

Provided that if a resident who subsequently becomes NRI during the currency of maturity period prescribed under Public Provident Fund Scheme, may continue to subscribe to the Fund till its maturity on a non-repatriation basis."

29. The fact remains that PPF Account was opened by the petitioner in the year 1991 when NRIs were allowed to open their account under the PPF Scheme, 1968. It may be noted that it is always a matter of policy for the Union of India

to decide the beneficiaries of the scheme. There is no legal right vested in the petitioner to open the PPF Account and to earn interest thereon. When the beneficiaries are accurately prescribed by statutory rules framed by the Union of India, the scope and extent of the said policy cannot be expanded so as to cover the similarly situated persons like the petitioner. There may be many more persons like the petitioner who are not entitled to open and continue the PPF Account. The scheme is not meant for all the persons.

30. It is explicitly clear from the amended rules as quoted above, that the NRIs are not eligible to open an account under the PPF Scheme, 1968. However, as per the proviso if a resident who subsequently becomes Non- Resident Indian (NRI) during the pendency of the maturity period under the PPF Scheme may continue to subscribe to the fund till its maturity. The vires of the rule are not challenged by the petitioner in the present petition. Once the rules are not challenged, the simple interpretation of the rules, oust the petitioner from the scope and ambit of the amended rule of the PPF Scheme. The function of the Court is merely to interpret the rules as they are. Learned counsel for the petitioner consistently submitted that some leniency may be shown by this Court to take deviation from the rules and some interest may be allowed to be given by the respondent by issuing a writ under Article 226 of the Constitution of India, but the same is not permissible under the amended scheme of 2003.

31. When provisions of the Act or Rules are explicitly, unambiguously and unequivocally clear, what recourse is open to the Court, is adequately referred by the Hon"ble Supreme Court in the case of "Union of India & another vs. Deoki Nandan Aggrawal", , AIR 1992 SC 96. The relevant paragraph of the said judgment is reproduced as under:-

"14...It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities."

32. In the instant case, the PPF Account of the petitioner got matured in the year 2007, but at the request of the petitioner the respondent bank extended the validity of the said account for another period of five years, which according to the respondent was done mistakenly, but the same was contrary to the amended rules of the PPF Scheme. The respondent bank vide its letter dated 03.10.2012 informed the extension of the period of the PPF Account to the petitioner at the

New Delhi address and also asked him to send the KYC and the documents for address proof, PAN number, etc. It is only then the respondent bank came to know that the petitioner's case fall under the RBI's instructions/ notification dated 25th July, 2003. Therefore, the respondent bank requested the petitioner to complete the formalities for payment of the amount lying in the PPF Account.

33. In the present case, I am of the considered view that the petitioner cannot continue the PPF Account in terms of the amended rules of the PPF Scheme, when the same was matured. Therefore, he is not entitled to the benefit of interest as per the said rule. If the petitioner was held not entitled to continue the PPF Account then he shall also not be entitled to earn interest thereupon. However, interest upto 31st March, 2012 has been paid by the respondent bank. In my opinion, what is prohibited by rules cannot be permitted by this Court.

34. In view of the aforesaid facts and circumstances and provisions of the Public Provident Fund (Amendment) Scheme, 2003, the petitioner is not entitled to earn interest upon the amount after the account is matured.

35. In the net result, there is no substance in the petition, the same deserves to be dismissed and the same is hereby dismissed.

36. No order as to costs.