

(2003) 07 BOM CK 0106
In the Bombay High Court
Case No : Writ Petition No. 827 of 2003

Romeo Sam Arambhan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-07-2003

Acts Referred:

Government Savings Certificate Act, 1959 — Section 12
National Savings Certificate Rules, 1980 — Rule 27, 6

Citation : AIR 2003 Bom 452 : (2003) 5 BomCR 457 : (2004) 1 MhLj 56 :
(2003) 132 TAXMAN 131

Hon'ble Judges : R.M. Lodha, J;A.S. Aguiar, J

Bench : Division Bench

Advocate : Virendra Tulzapurkar, instructed by Wadia Ghandy and Co, for the Appellant; Ashok Bhathiia and D.A. Dubey, for the Respondent

Final Decision : Allowed

Judgement

R.M. Lodha, J.—Having considered the controversy, we are of the view that Rule deserves to be issued and disposed of at this stage. Hence Rule. Returnable forthwith. Dr. Bhathiia waives for respondents.

2. The petitioner approached and applied to respondent No. 3 for issue of two Six Years National Savings Certificates for the amount of Rs. 10,000/- and Rs. 5,000/-respectively. On the application and payment made by the petitioners, two Six Years National Savings Certificates, VIII issue came to be issued by respondent No. 3 on 18th July, 1995. The relevant portion of National Savings Certificate at Exh. B reads thus :--

"The Government of India promises to pay to Romeo Marine Management a sum not exceeding Rs. 20150.00 (RUPEES TWENTY THOUSAND ONE HUNDRED AND FIFTY) only on or after the 18-7-2001. This certificate is issued pursuant to Government of India, Ministry of Finance, Notification No. C.S.R. 196(E) dated the 1st May, 1989."

The relevant part of other National Savings Certificate at Exhibit "C" reads thus :--

The Government of India promises to pay to Romeo Marine Management a sum not exceeding Rs. 10075.00 (RUPEES TEN THOUSAND AND SEVENTY FIVE) only on or after the 18-7-2001. This certificate is issued pursuant to Government of India, Ministry of Finance. Notification No. C.S.R. 496(E) dated the 1st May, 1989.

3. The aforesaid certificates were due to mature on July 18, 2001 and on the maturity date, it is the case of the petitioner that he presented the aforesaid certificates after making discharge endorsement on the reverse. The respondent No. 3 refused to pay the petitioner the promised sums on the National Savings Certificate necessitating the filing of the present Writ Petition.

4. An affidavit in reply has been filed on behalf of the respondents. It is their defence that though the Six Year National Savings Certificates VII Issue were issued, the petitioner is not entitled to any sum more than the invested amount because the certificates were issued to him due to clerical oversight and mistake. It is their case that no such certificates could be issued in the name of Proprietary firm. It is submitted that vide Notification published in Gazette of India Extraordinary on 8th March, 1995, effective from 1st April, 1995, amendment in the National Savings Certificate (VIII Issue), Rules 1989 took place and thereby a Single Holder Type Certificate could only be issued to (i) an adult for himself or on behalf of a minor or to a minor (ii) a Trust. The respondents have, thus, set up the case that a propriety firm does not fall in any of the category to which a Single Hole Type Certificate could be issued and by clerical oversight/mistake the certificates were issued, the respondents cannot be directed to enforce a statutory prohibition as contained in the Gazette dated 8th March, 1995.

5. In exercise of the powers conferred by Section 12 of the Government Savings Certificate Act. 1959 the Central Government made the Rules called "National Savings Certificate (VIII Issue) Rules, 1989. The said Rules came into force on 8th May, 1989. Rule 4 provides for types of Certificates and issue thereof which reads thus :--

"4. Types of Certificates and issue thereof.-

(1) The certificates shall be of the following types, namely :--

(a) Single Holder Type Certificates;

(b) Joint "A" Type Certificates; and

(c) Joint "B" Type Certificates

(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 cooperative 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 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 both the holders Jointly or to the survivor.

6. The procedure for purchase of Certificate is provided in Rule 6. According to which anybody specified in Rule 4, desiring to purchase a certificate, may present at a Post Office an application in Form 1, either in person or through an authorised agent of the Small Savings Schemes, Payment for the purchase of the certificate may be made in the manner and the mode provided in Rule 7 On payment being made under Rule 7. Issuance of certificate is provided under Rule 8. Rule 15 provides for encashment on maturity. The said rule reads thus :--

15. Encashment on maturity.-- (i) The maturity period of a certificate of any denomination shall be six years commencing from the date of the certificate. The amount, inclusive of interest, payable on encashment of a certificate at any time after the expiry of its maturity period shall be Rs. 201.50 for denomination of Rs. 100/- and at proportionate rate for any other denomination. The interest as specified in the Table below shall, accrue to the holder or holders of the certificate at the end of each year and the interest so accrued at the end of each year up to the end of the fifth year, shall be deemed to have been reinvested on behalf of the holder and aggregated with the amount of face value of the certificate.

TABLE

The year for which Interest accrues Amount of interest (Rs.) accruing on certificate of Rs. 100 denomination

First Year 12.40

Second Year 13.90

Third Year 17.50

Fifth. Year 19.70

Sixth Year 22.40

"Note : The amount of interest accruing on a certificate of any other denomination will be proportionate to the amount in Table above.

7. Rule 27 is a provision for rectification of mistakes and it empowers the Department of Posts or the Postmasters General of the Heads of Postal Divisions in their respective jurisdiction either suo motu or upon an application by any person interested in any certificate issued in pursuance of the Rules to rectify any clerical or arithmetical mistakes, with respect to that certificate, provided that it does not involve any financial loss to the Government or to any such person. Rule 28 empowers the Central Government, where it is satisfied that the operation of any of the provisions of these rules causes undue hardship to the holder or holders of a certificate, to pass appropriate order for reasons to be recorded in writing relaxing the requirements of the provision in a manner not inconsistent with the provisions of the Act.

8. The question before us is : is there any justification in the action of the respondents in not paying interest amount to the holder of the Six Year National Savings Certificate (VIII Issue) on the ground that the said Certificate could not have been issued in the name of proprietorship firm.

8A. Before us there is no dispute that at the time the petitioner applied for Six Year National Savings Certificates, VIII Issue the amendment in the Rules, 1989 has come into effect and accordingly single holder type certificate could not have been issued in the name of proprietorship firm. However, it is not the case of the respondents that the petitioner perpetrated any fraud. The only fault by the petitioner while applying for purchase of NSCs was that he applied for issuance of such Certificate in the name of sole proprietorship firm. Obviously it happened because he was not aware of the amendment in the Rules, 1989. It is true that by Notification dated 8th March, 1995 effective from 1st April, 1995 the National Savings Certificates, (VIII) Issue Rules, 1989 were amended and the types of Certificates and issuance thereof were modified; thereby providing issuance of Single Holder Type Certificate to (i) an adult for himself or on behalf of a minor to a minor or (ii) a trust. Issuance of Single Holder Type Certificate to a firm with effect from 1st April, 1995 thus was excluded. However, it was for the issuing authority to have verified whether the form No. 1 through which the application was made by the petitioner for purchase of Certificate was proper or not. If the petitioner was at fault in applying in Form No. 1 for purchase of certificates in the name of proprietary firm, the respondent No. 3 or its concerned staff was more or in any case to be equally blamed in not verifying such application properly and not bringing to the notice of the petitioner amended" Rules. If the respondent No. 3 had through to the notice of the petitioner amended Rules which did not provide for issuance of NSC (VIII) issue in the name of firm, the petitioner would have then and there made necessary correction in the form for issuance of Single Holder Type Certificate. Having issued the certificates to the petitioner in the name of sole proprietorship firm, withholding the amount invested by the petitioner for the entire period of six years and not rectifying the mistake in

exercise of the powers under Rule 27 of the Rules of 1989. It is too late in the day for the respondents to deprive the petitioner of the interest legitimately accrued on the investment after the maturity of the said certificate. At best applying for issuance of NSC in the name of Proprietorship firm was an irregularity which is not of such nature to deprive the petitioner of legitimate interest accrued thereon. If we accept the contention of the respondents, it would result in gross hardship to the petitioner. The learned Counsel appearing for the respondents heavily pressed into service the judgment of the Supreme Court in Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), and contended that the Central Government cannot be compelled to carry out representation or promise which was contrary to law or outside the authority or power of respondent No. 3. In this connection he sought to place reliance upon paragraph 25 of the report, which reads thus :--

"25. It is, however, quite fundamental that the doctrine of promissory estoppel cannot be used to compel the public bodies or the Government to carry out the representation or promise which is contrary to law or which is outside their authority or power. Secondly, the estoppel stems from equitable doctrine. It, therefore; requisites that he who seeks equity must do equity. The doctrine, therefore, cannot also be invoked if it is found to be inequitable or unjust in its enforcement.

10. What has been said by the Apex Court aforesaid does not weaken the petitioner's case. In the judgment of Delhi Cloth and General Mills Ltd. (supra) the Apex Court has emphasised that a public body or a Government cannot be compelled to carry out the representation or promise if it is found to be inequitable or unjust in its enforcement. By compelling the respondents to carry out the promise under the Certificates issued to the petitioner, no injustice would be caused to the respondents nor can such compliance be inequitable or unjust. Rather petitioner would suffer great hardship if he is deprived of the interest which has legitimately accrued to him on the investment made by him by purchase of National Savings Certificates and gross inequity would occasion. If at all, as is contended by the respondents, by clerical oversight/ mistake, the certificates were issued to the petitioner in the name of sole Proprietorship firm not in conformity with the Rules of 1989 as amended vide Notification dated 8th March, 1995, the Central Government or the concerned authority must have rectified the mistake immediately under Rule 27 of the Rules of 1989. Having sat over the matter for entire tenure of the certificates, upon its maturity when the certificates were tendered by the petitioner in our considered view it was not fair, reasonable and equitable on the part of the respondents in denying the petitioner the interest that has accrued on investment.

11. The learned Senior counsel appearing for the petitioners relied upon the Division Bench judgment of the Allahabad High Court in Municipal Board Vs. Union of India (UOI) and Others, . The facts in the case before the Allahabad High Court were that the Municipal Board, Chandpur purchased 50 "7 Years"

National Saving Certificates of Vth Issue from the Post Office, Chandpur. On the date of maturity the said certificates were tendered for encashment to the concerned postal authorities. The request was not honoured as according to the Postal Authorities issuance of certificates to the Board was irregular. The matter was carried to the Allahabad High Court. The Division Bench in paragraphs 8, 9, 10 and 11 noted thus :--

8. A local authority can purchase these certificates. The President of the Board is and debarred to purchase the National Savings Certificates on behalf of the Board. The view of the respondents that it can be purchased only by an Executive Officer of the Board is untenable. Clause 6A of the Rules nowhere provides that the Executive Officer of the Board is the only authority who can purchase the National Savings Certificates.

9. Even assuming that there was some irregularity in depositing the amount through a proper person, the respondents cannot turn to say that as the deposit, originally was irregular, the amount as specified in the National Savings Certificates on maturity shall not be paid to the Board who has invested the amount in purchasing the Certificates. They have to pay the amount on the terms and conditions as mentioned in the National Savings Certificates.

10. It may further be noted that if there was any irregularity in depositing the amount through a proper person, the respondents should have immediately within a reasonable time, refunded the amount but they did not send any letter to the petitioner informing that as the deposit is not through the proper person, they are refunding the amount. It is after the date of maturity, the respondents took an objection.

11. In view of the above, the writ petition is allowed and the respondents are directed to make the payment of the amount of the aforesaid National Savings Certificates within a month from the date of production of a certified copy of this order after calculating the total amount as on the date of the maturity i.e. 26-7-1983 and further 8% interest on such amount from 26-7-1983 with yearly rest till the the elate of payment to the petitioner.

We find ourselves in respectful agreement with the view of the Allahabad High Court. Even if there was some irregularity in issuance of certificates was surely due to fault of respondent No. 3, it was not open to the postal authorities to not to pay to the holder the amount of certificates. The objection of the respondents hardly merits acceptance. A learned single Judge of the Gujarat High Court in Dr. Ashima J. Dr. Ashima J. Shah Vs. Union of India (UOI) and Another, was dealing with the petition wherein prayer was made for direction to Union of India and Postal Authorities to return balance amount lying in National Savings Scheme amount of the petitioner and declaration that refusal to close the said account was arbitrary. The learned single Judge referred to the doctrine of promissory estoppel and ultimately observed thus at page 90; of AIR :--

In view of the aforesaid discussions which I have discussed namely question of

law as well as fact, the action of the respondent authority denying the request of the petitioner to close down the account and to pay the amount is clearly illegal and contrary to the provisions of the judgment of the Hon''ble Apex Court and also earlier judgment of this Court of Justice M.R. Calla which I have referred to earlier. In view of the same, the special civil application is allowed. The communications dated May 1, 2000, at Annexure C, dated August 18, 2000, at Annexure G and dated March, 28, 2001, at Annexure K by which the respondents have refused the prayer of the petitioner are hereby quashed and set aside. The respondent is directed to close the petitioner's National Savings Account No. 101071 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 and further directed to pay the said amount within one month from the date of receipt of judgment of this Court. The special Civil application stands disposed of accordingly. Rule is made absolute. In the facts and circumstances of this case, no order as to costs.

12. It has been repeatedly held by the Supreme Court that estoppel is a rule of equity flowing out of a fairness striking on behaviour deficient in good faith. It is invoked and applied to aid the law in administration of justice, but for it great injustice may have been perpetrated. We hold and without hesitation in the facts of the present case that the action on the part of the respondents in denying the petitioner the promised amount of the NSCs is highly inequitable and smacks of unfairness and lacks good faith.

13. We are satisfied that the writ petition deserves to be made absolute by directing the respondents to pay the promised sum of Rs. 20,150/- against the Certificate at Exhibit "B" and Rs. 10,075/- against the Certificate at Exhibit "C" within one month from today, failing which we observe that the respondents shall be liable to pay interest at the rate of 6% per annum on the principal amount of investment under the Certificate from the date of maturity till payment is made.

14. We are informed that in compliance of the order dated 23rd June, 2000 the cost of Rs. 2,500/- has been paid by the respondents. Hence no further costs.

Certificate copy expedited.