(2012) 05 KL CK 0028

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 10837 of 2010

T.R. Mohana @ Latha S. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 24-05-2012

Acts Referred:

Contract Act, 1872 — Section 23
Government Savings Banks Act, 1873 — Section 15, 3(i)

Citation : (2012) 2 KLJ 858

Hon'ble Judges : P.N. Ravindran, J

Bench : Single Bench

Advocate : R. Ranjini, for the Appellant; P. Parameswaran Nair (ASG of India), for the Respondent

Final Decision : Allowed

Judgement

P.N. Ravindran, J.—The interpretation to be placed on rules 4 and 5 of the Post Office Monthly Income Account Rules, 1987 (hereinafter referred to as the MIA Rules for short) framed and issued by the Central Government u/s 15 of the Government Savings Banks Act, 1873 (hereinafter referred to as the Savings Banks Act for short), is the issue that arises for consideration in this writ petition. The brief facts of the case are as follows: The petitioner was formerly residing at Chennai with her husband Sri. Sadasiva Pai. While the petitioner and her husband were residing at Chennai, on 17.5.2004, the petitioner''s husband opened five single accounts under the MIA Rules by depositing Rs. 50,000/- each in his name in different Post Offices at Chennai. On 12.8.2004 he opened yet another single account under the MIA Rules in his name by depositing Rs. 50,000/- in another Post Office. The petitioner and her husband opened two joint accounts by depositing Rs. 1,50,000/- each and one joint account by depositing Rs. 3,00,000/- in their joint names under the MIA Rules on 13.7.2004 at three different Post Offices in Chennai. Later, on 14.3.2005, the petitioner opened a single account by depositing Rs. 60,000/- in her name under the MIA Rules. After the accounts were opened, the interest payable in respect of the different deposits was being credited in the savings bank accounts maintained by the petitioner and her husband in One of the Post Offices at Chennai. In July 2006, the petitioner and her husband shifted residence to Pune. On their request, all the accounts under the MIA Rules standing in "their individual and joint names were transferred to the Air Force Station Post Office at Lohegaon in Pune. It is stated that in order to facilitate payment of interest every month, they also opened (according to the petitioner, at the instance of the 4th respondent Post Master) Savings Bank Account No. 858971 in their joint names at the Air Force Station Post Office and the petitioners were drawing interest on the deposits every month till November 2009. Thereafter, they shifted residence to Aluva where they are presently residing.

2. After the petitioner and her husband shifted their residence to Aluva, they applied for transfer of the accounts to Head Post Office, Aluva and that was done after the Senior Superintendent of Post Offices, Aluva Division intervened, on 20.2.2010. The dispute in this writ petition relates to the closure of MIS Account No. 691274 opened by the petitioner on 14.3.2005 at Anna Nagar (MDG) Post Office in Chennai, by depositing Rs. 60,000/- in her name, which was numbered as MIS Account No. 30451 on being transferred to Air Force Station Post Office at Lohegaon, Pune and as MIS Account No. 243994 on being transferred to Head Post Office, Aluva. The dispute also relates to the closure of MIS Account No. 29069 opened by the petitioner and her husband jointly on 13.7.2004 at Shenoy Nagar Post Office in Chennai by depositing Rs. 3,00,000/-, which was numbered as MIS Account No. 30405 on being transferred to Pune and as MIS Account No. 243995 on being transferred to Head Post Office, Aluva. After the petitioner and her husband shifted their residence to Aluva, the petitioner applied for closure of the aforesaid two accounts by submitting Ext.P1 application dated 23.2.2010 for the purpose of raising funds for the treatment of her mother-in-law. She also surrendered the originals of the passbooks along with the application. The fifth respondent closed the said accounts and issued the original of Ext.P4 cheque dated 23.2.2010 for Rs. 2,09,600/- drawn on State Bank of Travancore, Aluva Branch. On enquiries made, the petitioner and her husband were informed that the sum of Rs. 1,28,000/- which was paid by way of interest in MIS Account No. 243995 and the sum of Rs. 22,400/- paid by way of interest in MIS Account No. 243994 were recovered from the principal amount deposited in the two accounts, for the reason that the accounts were opened in violation of the MIA Rules. The petitioner thereupon submitted Ext.P6 representation before the Post Master, Head Post Office, Aluva with copy to the Senior Superintendent, Head Post Office, Aluva, pointing out that she was entitled for payment of the sum of Rs. 3,60,000/- being the aggregate of the amounts deposited in the two accounts referred to above, with interest from November, 2009. When no reply was forthcoming, the instant writ petition was filed on 29.3.2010, seeking the following reliefs:-

i) Declare that the respondents have no right to withhold/deduct any amount, as overpaid interest from the two MIS Accounts: 1) No. 243995 of Rs. 3,00,000/-

(Rupees Three Lakh), 2) No. 243994 of Rs. 60,000/- (Sixty Thousand) held by the petitioner with the 5th respondent and the deduction so made, is not supported by any provision of law and Rule 4 of Post Office (Monthly Income Accounts) Rules 1987 cannot be made applicable for withholding the interest already paid to the petitioner.

ii) Issue a writ of mandamus or any other appropriate order or direction to the respondents to refund an amount of Rs. 1,50,400/- (Rupees One Lakh Fifty Thousand Four Hundred), withheld/deducted by the 5th respondent as overpaid interest, from two MIS Accounts; 1) No. 243995 of Rs. 3,00,000/- (Rupees Three Lakh); 2) No. 243994 of Rs. 60,000/- (Sixty Thousand), held by the petitioner with the 5th respondent, with interest from November 2009 till realization, at the rate as fixed by this Hon''ble Court to be just:

iii) Declare Rule 4 of the Post Office (Monthly Income Accounts) Rules 1987 as arbitrary and discriminative.

It is contended that under rules 4 and 5 of the MIA Rules, which were in force at the relevant time when the accounts were first opened at Chennai, the petitioner was entitled to deposit a maximum amount of Rs. 3,00,000/- in a single account and upto Rs. 6,00,000/- in a joint account, that the petitioner had deposited the sum of Rs. 60,000/- only in the single account and her share in the three joint accounts was only Rs. 3,00,000/- and therefore, the stand taken by the respondents is not tenable. Various other contentions are also raised in the writ petition.

3. The fifth respondent has on his own behalf and on behalf of the first respondent filed a counter-affidavit dated 28.5.2010. The fifth respondent has in the counter affidavit admitted the fact that all the ten accounts were opened in various Post Offices at Chennai, that they were later transferred to Air Force Station Post Office; Pune and still later, to Aluva Head Post Office. The details of the accounts as set out in paragraph 4 of the counter affidavit are extracted below:-

The counter affidavit proceeds to state that in view of rule 4 of the Post Office Monthly Income Account Rules, 1987, which was in force at the relevant time, namely in the year 2004, the deposits held by a single individual in all the accounts taken together, together with his/her share in the joint account, cannot exceed the prescribed limit of Rs. 3,00,000/-, that the petitioner''s share in the joint accounts was Rs. 3,00,000/-, that she had thereafter deposited Rs. 60,000/- in a single account in her name thereby violating rule 4 of the MIA Rules and therefore, the interest paid on the two deposits, which were closed pursuant to Ext.P1 request, was deducted when the accounts were closed and the proceeds paid to the petitioner. Various other contentions are also raised in the counter affidavit. The petitioner has filed an affidavit dated 11.10.2010 in support of I.A. No. 14329 of 2010, wherein she has raised various contentions by way of reply to the averments in the counter affidavit filed by the fifth respondent and has also contended in paragraph 12 thereof that she and her husband have not violated any rule and therefore, the decision to withhold the interest already drawn, is illegal.

4. I heard Smt. R. Ranjini, learned counsel appearing for the petitioner and Sri. P. Parameswaran Nair, learned Assistant Solicitor General of India appearing for the respondents. Smt. R. Ranjini, learned counsel appearing for the petitioner contended that on the terms of rules 4 and 5 of the MIA Rules, the stand taken by the respondents is not tenable. The learned counsel for the petitioner contended that under rules 4 and 5 of the MIA Rules a depositor can open more than one account in his/her name, subject to the condition that the deposits in all the accounts taken together shall not exceed Rs. 3,00,000/- in a single account and Rs. 6,00,000/- in a joint account, that the petitioner has not violated rules 4 and 5 of the MIA Rules, that she had deposited the sum of Rs. 60,000/- only in a single account and her share in the joint accounts opened by her and her husband was only Rs. 3,00,000/- and therefore, the decision to withhold the interest paid on the two deposits on the ground that the accounts were improperly opened or were opened in violation of the MIA Rules cannot be sustained. Smt. R. Ranjini, learned counsel for the petitioner also contended that in rule 8 of the MIA Rules, as it stood in force at the time when the accounts were opened, it was stipulated that if at all in any deposit made under rule 4, the prescribed limit is exceeded, the Post Office was bound to request the subscriber to withdraw the excess deposit immediately, that even in such cases, it was stipulated that, the excess amount will also carry interest at the rate applicable from time to time to Post Office Savings Account from the date of deposit of the excess amount till the end of the month preceding the month in which the subscriber was requested to withdraw such excess amount in the account, that in the instant case, at least when all the accounts in the name of the petitioner and her husband were transferred to the Air Force Station Post Office at Lohegaon, Pune, the Post Office should have, if at all the deposits were in excess of the prescribed limits, requested the petitioner and her husband to withdraw the excess deposit, if any, that such a course of action was not adopted and therefore, for that reason also, the impugned action cannot be sustained. Per contra, the learned Assistant Solicitor General of India appearing for the respondents contended relying on paragraph 4 of the counter affidavit and the documents produced along with it, that the deposit held by an adult individual in a single account together with his/her share in the joint accounts cannot exceed the prescribed limit of Rs. 3,00,000/-, that the deposit held by the petitioner in a single account together with her share in the joint accounts exceeded the prescribed limit of Rs. 3,00,000/- and therefore, the respondents were entitled under rules 17 and 18 of the Post Office Savings Bank General Rules, 1981 to recover the interest erroneously paid to the petitioner in the two accounts till November, 2009 and were bound to refund only the balance amount, after effecting such recovery.

5. I have considered the submissions made at the Bar by the learned counsel

appearing on either side. I have also gone through the pleadings and the materials on record. The MIA Rules came into force on 15.8.1987. Rule 4 of the MIA Rules, as it originally stood, is extracted below:-

4. Opening of account.--A depositor may open more than one account under these rules subject to the condition that deposits in all accounts taken together shall not exceed rupees one lakh in single account and rupees two lakhs in joint account.

In rule 4 of the MIA Rules, as it originally stood, it was stipulated that a depositor may open more than one account under the MIA Rules subject to the condition that deposits in all the accounts taken together, shall not exceed rupees one lakh in single account and rupees two lakhs in joint account.

6. In rule 5 of the MIA Rules, as it originally stood, it was stipulated as follows:-

5. Deposits and withdrawals.--(1) There shall be only one deposit in the account of five thousand rupees or multiples thereof not exceeding rupees one lakh in case of single account and rupees two lakhs in case of joint account.

(2) Except as provided in Rule 10, no withdrawal shall be permitted under these rules before the expiry of a period of six years from the date of opening of an account.

7. In rule 3 of the MIA Rules it is stipulated as follows:-

3. Application of the Post Office Savings Bank General Rules, 1981 and the Post Office Savings Account Rules, 1987.--The provisions of the Post Office Savings Bank General Rules, 1981 and the Post Office Savings Account Rules, 1987, as may be, apply in relation to matters for which no provision has been made in these rules.

It is relying on rule 3 of the MIA Rules that the learned Assistant Solicitor General of India contended that rules 17 and 18 of the Post Office Savings Bank General Rules, 1981, which empower and entitle the Post Office to recover the interest paid in accounts opened in contravention of the rules, apply to deposits made under the MIA Rules.

8. Rule 4 of the MIA Rules was amended with effect from 20.1.1989, by Notification No. GSR 46 (E) dated 20.1.1989 published in the Gazette of India (Extraordinary), Part II, Section 3(i), dated 20.1.1989. Rule 4 as amended with effect from 20.1.1989, is extracted below :--

4. Opening of account.--A depositor may open more than one account under these rules subject to the condition that deposits in all accounts taken together shall not exceed rupees two lakhs in single account and rupees four lakhs in joint account.

9. Rule 4 and sub-rule (1) of rule 5 of the MIA Rules were amended with effect from 1.2.2000, by Notification No. GSR 80(E) dated 1.2.2000 published in the

Gazette of India (Extraordinary), Part II, Section 3(i) dated 1.2.2000. Rule 4 of the MIA Rules as amended with effect from 1.2.2000, is extracted below:-

4. Opening of account.--A depositor may open more than one account under these rules subject to the condition that deposits in all accounts taken together shall not exceed rupees three lakhs in case of single account and rupees six lakhs in case of joint account.

Rule 5 of the MIA Rules as amended with effect from 1.2.2000, is extracted below:--

5. Deposits and withdrawals.--(1) There shall be only one deposit in the account of six thousand rupees or multiple thereof not exceeding rupees three lakhs in case of single account and rupees six lakhs in case of joint account.

(2) Except as provided in Rule 10, no withdrawal shall be permitted under these rules before the expiry of a period of six years from the date of opening of an account.

10. Sub-rule (1) of rule 5 of the MIA Rules was again amended with effect from 18.7.2000, by Notification No. GSR.613 (E) dated 18.7.2000 published in the Gazette of India (Extraordinary), Part II Section 3(i) dated 18.7.2000. Rule 5 of the MIA Rules as amended with effect from 18.7.2000, is extracted below:--

5(1) There shall be only one deposit in the account in the multiple of one thousand rupees, not exceeding rupees three lakhs in case of single account and rupees six lakhs in case of joint account.

(2) Except as provided in Rule 10, no withdrawal shall be permitted under these rules before the expiry of a period of six years from the date of opening of an account.

11. Rule 4 of the MIA Rules was again amended by introducing a Note below it with effect from 5.9.2000 by Notification No. G.S.R. No. 706(E) dated 5.9.2000, published in Gazette of India (Extraordinary) Part II, Section 3(i) dated 5.9.2000. Rules 4 and 5 of the MIA Rules as it stood when the petitioner and her husband opened the accounts in their individual and joint names are extracted below:-

4. Opening of account.--A depositor may open more than one account under these rules subject to the condition that deposits in all accounts taken together shall not exceed rupees three lakhs in case of single account and rupees six lakhs in case of joint account.

Note.--For the purpose of maximum balance, the depositor''s share in the balance of a joint account shall be taken as one-half or one-third of such balance according to the account is held by two adults or three adults.

5. Deposits and withdrawals.--(1) There shall be only one deposit in the account in the multiple of one thousand rupees not exceeding rupees three lakhs in case of single account and rupees six lakhs in case of joint account.

(2) Except as provided in Rule 10, no withdrawal shall be permitted under these rules before the expiry of a period of six years from the date of opening of an account.

12. Still later, rule 4 of the MIA Rules was again amended with effect from 1.8.2007 by substituting the words "three lakh" and "six lakh" with the words "four lakh fifty thousand" and "nine lakh" respectively, by Notification No. 521(E) dated 1.8.2007, published in the Gazette of India (Extraordinary) Part II, Section 3 (i) dated 1.8.2007. By the very same notification, rule 5(1) of the MIA Rules was also amended with effect from 1.8.2007, by substituting the words "one thousand", "three lakh" and "six lakh" with the words "one thousand five hundred", "four lakh fifty thousand" and "nine lakh" respectively. Rules 4 and 5 of the MIA Rules as amended with effect from 1.8.2007, are extracted below:-

4. Opening of account.--A depositor may open more than one account under these rules subject to the condition that deposits in all accounts taken together shall not exceed rupees four lakh fifty thousand in case of single account and rupees nine lakh in case of joint account.

Note.--For the purpose of maximum balance, the depositor''s share in the balance of a joint account shall be taken as one-half or one-third of such balance according to the account is held by two adults or three adults.

5. Deposits and withdrawals.--(1) There shall be only one deposit in the account in the multiple of one thousand five hundred rupees not exceeding rupees four lakh fifty thousand in case of single account and rupees nine lakh in case of joint account. (2) Except as provided in Rule 10, no withdrawal shall be permitted under these rules before the expiry of a period of six years from the date of opening of an account.

13. Five single accounts of Rs. 50,000/- each in the name of the petitioner''s husband were opened on 17.5.2004 in different Post Offices at Chennai. He opened yet another single account in his name for Rs. 50,000/- on 12.8.2004 in another Post Office at Chennai. Going by rules 4 and 5 of the MIA Rules as they stood on the said dates, all the six accounts were properly opened, being deposits in multiples of Rs. 1,000/- and below Rs. 1,00,000/-. The single account for Rs. 60,000/- in the name of the petitioner opened on 14.3.2005 and the two joint accounts of Rs. 1,50,000/- each and the joint account of Rs. 3,00,000/- in the joint names of the petitioner and her husband, which were opened on 13.7.2004, were also in accordance with rules 4 and 5 of the MIA Rules as it then stood. However, relying on the Note to rule 4 of the MIA Rules which was introduced with effect from 5.9.2000 and rules 17 and 18 of the Post Office Savings Bank General Rules, 1981, the respondents recovered the interest paid to the petitioner in her single account and to her and her husband in the joint account, both of which were closed on 23.2.2010, from the dates on which the accounts were'' opened, till the date of closure. The stand taken by the respondents is that as the petitioner was a joint account holder along with her

husband in three joint accounts wherein the aggregate amount deposited was Rs. 6,00,000/-, she could not have opened a single account in her name on 14.3.2005 for the reason that the deposits held by an adult in a single account together with his/her share in the joint accounts cannot exceed the prescribed limit of Rs. 3,00,000/-, which was the limit with effect from 1.2.2000, till rules 4 and 5 of the MIA Rules were amended with effect from 1.8.2007, raising the limit to Rs. 4,50,000/-. The issue that arises for consideration is whether the decision taken by the respondents to recover the interest is sustainable in law.

14. In rule 4 of the MIA Rules as amended with effect from 1.2.2000, it was stipulated that a depositor may open more than one account subject to the condition that the deposits in all accounts taken together shall not exceed Rs. 3,00,000/- in case of single account and Rs. 6,00,000/- in case of joint account. The petitioner admittedly had opened only one single account by depositing Rs. 60,000/- under the MIA Rules. The aggregate of the amounts deposited by the petitioner and her husband in the three joint accounts is only Rs. 6,00,000/-. The respondents have no case that the joint account was opened in violation of the MIA Rules. However, relying on the Note to rule 4 which was introduced with effect from 1.9.2000, the respondents contend that the maximum balance which a depositor can have in his/her individual account and joint account is only Rs. 3,00,000/-. In my considered opinion the said contention is plainly untenable. Rule 4 of the MIA Rules as it originally stood permitted a depositor to open more than one account in his/her individual name. The only restriction on that right was that the deposits in all the accounts taken together should not exceed Rs. 1,00,000/- in case of single account and Rs. 2,00,000/- in case of joint account. This limit was raised to Rs. 2,00,000/- and Rs. 4,00,000/- respectively with effect from 20.1.1989, to Rs. 3,00,000/- and Rs. 6,00,000/-respectively with effect from 1.2.2000 and to Rs. 4,50,000/- and Rs. 9,00,000/-respectively, with effect from 1.8.2007. It is not in dispute that the amount deposited by the petitioner in the single account opened by her on 14.3.2005 under the MIA Rules was only Rs. 60,000/- and the amount deposited in the three joint accounts opened by her and her husband on 13.7.2004 was only Rs. 6,00,000/-. The petitioner''s share in the joint accounts was only Rs. 3,00,000/-. As per the rules in force at the relevant time, the deposits were within the prescribed limits. The deposits were also in multiples of one thousand rupees and within the limits as stipulated in rule 5 of the MIA Rules. It cannot therefore, be said that the accounts were opened in violation of rules 4 and 5 of the MIA Rules. The stipulation in the Note below rule 4 of the MIA Rules, introduced with effect from 1.9.2000, that for the purpose of maximum balance, the depositor''s share in the balance of a joint account shall be taken as one half or one third of such balance according as the account is held by two adults or three adults, cannot in my opinion restrict or dilute the effect of the main provision in rule 4 of the MIA Rules, the language of which is very clear and is not ambiguous. (Vide Punjab State Electricity Board Ltd. Vs. Zora Singh and Others, and V.B. Prasad Vs. Manager, P.M.D.U.P. School and Others,). The Note below rule 4 of the MIA Rules

cannot be understood as a stipulation to the effect that if a depositor has a share in a joint account, whether it be one half or one third, that share will also be reckoned for the purpose of computing the maximum amount which he/she can deposit in his/her name in single accounts. In sub-rule (1) of rule 5 of the MIA Rules as it stood in force at the relevant time, it was stipulated that there shall be only one deposit in the account in the multiple of one thousand rupees, not exceeding rupees three lakh in case of single account and rupees six lakh in case of joint account. Rule 4 of the MIA Rules however, permits the depositor to open more than one account. Therefore, the Note below rule 4 has to be understood to mean that depending on the number of depositors in a joint account in whose names the account stands, the share of an individual in the joint account shall be taken as one third or one half as the case may be, for the purpose of arriving at the number of joint accounts which a depositor can open under the MIA Rules, whether it be in one Post Office or in different Post Offices. In the instant case, the total amount standing in the name of the petitioner in the single account in her name was only Rs. 60,000/- and her share in the joint accounts was only Rs. 3,00,000/-, which were well within the permissible limits. I am therefore of the considered opinion that the stand taken by the respondents cannot be sustained.

15. There is also yet another aspect of the matter, which as contended by the learned counsel for the petitioner, entitles her to relief. As stated above, though the accounts were in different Post Offices at Chennai, all of them were transferred to Air Force Station Post Office at Lohegaon, Pune in July 2006 and later on 20.2.2010, to Aluva Head Post Office. In sub-rule (6) of rule 8 of the MIA Rules, as it stood in force when the petitioner and her husband opened the accounts for the first time at Chennai and also in the year 2006 and 2010 when the accounts were transferred to Pune and Aluva respectively, it is stipulated that a Post Office shall, as soon as it comes to the notice that a deposit made under rule 4 by a subscriber exceeds the prescribed ceilings specified therein, such Post Office shall request the subscriber to withdraw the excess deposit immediately. In sub-rule (7) of rule 8 it is stipulated that the excess amount referred to in sub-rule (6) shall carry interest at the rate applicable from time to time to the Post Office Savings Account and shall be payable to such subscriber on such amount. In sub-rule (8) of rule 8 it is stipulated that the interest referred to in sub-rule (7) shall be admissible from the date of deposit of the excess amount till the end of the month preceding the month in which the subscriber has been requested to withdraw such excess amount in the account. Rule 8 of the MIA Rules, as it stood in force when the petitioner and her husband opened the different accounts under the MIA Rules reads as follows:--

8. Interest of deposit--(1) The deposit made under these rules shall bear interest at the rate of--

(a) 12 percent per annum in respect of deposits made on or after the 15th day of August, 1987 but before the 24th day of April, 1992;

(b) 14 percent per annum in respect of deposits made on or after the 24th day of

April, 1992 but before the 2nd day of September, 1993;

(c) 13 percent per annum in respect of deposits made on or after the 2nd day of September, 1993 but before the 1st day of January, 1999;

(d) 12 percent per annum in respect of deposits made on or after the 1st day of January, 1999 but before the 15th day of January, 2000;

(e) 11 percent per annum in respect of deposits made on or after the 15th day of January, 2000 but before the 1st day of March, 2001;

(f) 9.5 percent per annum in respect of deposits made on or after the 1st day of March, 2001 but before the 1st day of March, 2002.

(g) 9 percent per annum in respect of deposits made on or after the 1st day of March, 2002.

(2) The interest shall be payable monthly to the depositor on completion of a month from the date of deposit.

(3) If so authorised, interest payable monthly shall be deposited by the Post Office in the savings account of the depositor held at the Post Office where deposit is held subject to the condition that by so depositing the interest, maximum limit on balances in savings account is not exceeded.

(4) If the interest payable every month is not claimed by a depositor, such interest will not earn any additional interest.

(5) Interest shall be rounded off to nearest multiple of rupee one and for this purpose any amount of 50 paise or more shall be treated as rupee one and any amount less than 50 paise shall be ignored.

(6) A Post Office shall, as soon as it comes to the notice that a deposit made under rule 4 by a depositor exceeds the prescribed ceilings specified therein, shall request the depositor to withdraw the excess deposit immediately.

Explanation.--"Post Office" means and includes a Head or Sub-Post Office.

(7) The excess amount referred to in sub-rule (6) shall carry an interest at the rate applicable from time to time to the Post Office Savings Account and shall be payable to such depositor on such amount.

(8) The interest referred to in sub-rule (7) shall be admissible from the date of deposit of the excess amount till the end of the month preceding the month in which the depositor has been requested to withdraw such excess amount in the account.

On the terms of sub-rules (6), (7) and (8) of rule 8 of the MIA Rules, even if the deposits were in excess of the prescribed limits, a subscriber is entitled to interest at the rates applicable from time to time to the Post Office Savings Account, from the date of deposit of the excess amount till the end of the month preceding the month in which the subscriber was requested to withdraw the excess amount. In the instant case, no action as required under sub-rule (6) of rule 8 of the MIA Rules was taken by the fourth respondent. The petitioner cannot therefore, be penalised for the lapse, if any, on the part of the fourth respondent. That apart, even if the Note below rule 4 of the MIA Rules applies as contended by the respondents, as the petitioner''s share in the joint accounts was only Rs. 3,00,000/- on the relevant date, the respondents could not have deducted the interest paid on the deposit that stood in the joint names of the petitioner and her husband. Even if the stand of the respondents is accepted, they could have recovered the interest paid on the deposit of Rs. 60,000/- only. However, in the view that I have taken, the petitioners are entitled to succeed.

16. It is also relevant in this context to note that after the accounts were opened, rules 4 and 5 of the MIA Rules were amended with effect from 1.8.2007, raising the limit in the case of single account to Rs. 4,50,000/- and to Rs. 9,00,000/- in the case of joint account. As on 23.2.2010 when the two accounts were closed, the total amount in all the accounts standing to the petitioner''s credit was only Rs. 3,60,000/-, which is well below the limit of Rs. 4,50,000/- stipulated in rules 4 and 5 of the MIA Rules with effect from 1.8.2007. The accounts were transferred from various Post Offices at Chennai to Air Force Station Post Office, Lohegaon, Pune in July, 2006. They were transferred to Aluva Head Post Office in February, 2010. For all practical purposes they were treated as new accounts at Pune and Aluva and fresh account numbers were given. At least on the date of transfer to Aluva Head Post Office, the deposits were within limits, even going by the stand of the respondents. I therefore, find no reason why the petitioner should be denied interest in the two accounts, which were closed on 23.2.2010. A similar issue arose for consideration before a Division Bench of the Orissa High Court in Rajat Kumar Rath and Another Vs. Government of India and Others, . The petitioners therein opened nine joint accounts under the MIA Rules on different dates in the General Post Office, Bhubaneswar. The first joint account was opened on 3.6.1994 by depositing Rs. 1,20,000/-. On that day a savings bank account was also opened to facilitate payment of interest. Thereafter four more joint accounts were opened on different dates and still later, on 28.12.1994, four more joint accounts were opened in addition to another savings bank account for the purpose of crediting the interest payable in the deposits in that account. Three years later an objection was raised that the petitioners had deposited the sum of Rs. 4,08,000/- in excess and they were called upon to refund the sum of Rs. 90,415/- paid to them by way of interest. They challenged the demand by filing a writ petition in this High Court. A Division Bench of the Orissa High Court, after noticing that the pass books reflected the total amount deposited in the various accounts and the concerned authorities were aware of the total amount deposited by the petitioners in the various accounts, proceeded to consider whether the transaction is hit by section 23 of the Indian Contract Act, 1872. After a survey on the case law on the point and the relevant statutory provisions, Arijit Pasayat, J, (as His Lordship then was),

speaking for the Bench, held that the case on hand is not covered by section 23 of the Indian Contract Act, 1872 and therefore, the direction for recovery is not sustainable.

For the reasons stated above, I allow the writ petition and declare that recovery of the interest paid in the two accounts, which were closed on 23.2.2010, was not legal or proper. Consequently I direct respondents 1 and 5 to pay to the petitioner the sum of Rs. 1,50,400/-which was withheld from the two accounts which were closed on 23.2.2010, within two weeks from the date on which the petitioner produces a certified copy of the judgment before the fifth respondent, failing which the petitioner will be entitled to realise from respondents 1 and 5 the said amount together with interest at 9% per annum on the sum of Rs. 1,50,400/- from 23.2.2010, till payment. The parties shall bear their respective costs.

