
(2013) 10 DEL CK 0342

In the Delhi High Court

Case No : Writ Petition (C) 6421 of 2013

T.S. Sawhney and Others

APPELLANT

Vs

Indian Bank Mutual Fund

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 10 DEL CK 0342

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The petitioners before this Court invested in Ind Navratna Equity Growth Scheme of the respondent Indian Bank Mutual Fund by purchasing 80,000 units for Rs. 8.00 lakh under its Equity Growth Scheme, 1994. The case of the petitioners is that the respondent had assured them double of the investment in five (5) years and three times the investment in ten (10) years. According to them when the Scheme matured on 30.6.1999 they sought disbursement of the assured redemption amount, but, instead of being paid double amount invested by them they were informed that payment would be made to them at the market rates prevailing at that time, which, in fact, was much below the amount assured to the petitioners. Being aggrieved on account of the failure of the respondent to pay the aforesaid amount, the petitioners filed a complaint before the State Commission claiming that they had clearly stated in the offer document that the Navratna Scheme was subject to market risk and they had not assured any pre-specified rate of return to the petitioners. The complaint was, therefore, rejected by the State Commission. Being aggrieved, the petitioners filed an appeal before the National Consumer Disputes Redressal Commission (for short "the National Commission") being First Appeal Nos. 240-244/2007. The said appeal were dismissed vide order dated 12.12.2012. The petitioner filed a review petition seeking review of the aforesaid order. The

review petition was also dismissed by the National Commission vide order dated 19.1.2013. Being aggrieved the petitioners are before this Court seeking the following reliefs:

a. Issue writ in the nature of certiorari quashing and setting aside the impugned orders F.A. No. 240/2007, 241/07, 242/07, 243/07 & 244/07 dt. 12.12.2012 & Review Order dt. 29.1.2013 passed by Ld. National Consumer Disputes Redressal Commission, New Delhi in 1st Appeal No. 240 to 244/2007 in one common order.

b. Issue writ in the nature of mandamus directing the respondent bank to refund amount of Rs. 42 lakhs with interest @ 18 % p.a. with quarterly rest from the date of investment till the date of reimbursement against 4,20,000 units issued in IND NAVRATNA 1994.

c. Issue writ in the nature of mandamus directing the respondent bank to refund amount to the petitioners;

d. pendente lite and future interest at the same rate may also be granted from the date of filing of writ petition till the disbursement of claim.

2. While rejecting the appeal filed by the petitioners, the National Commission inter alia observed and held as under:

We have heard learned Counsel for both parties and have carefully considered the evidence on record. From a perusal of the IND Nav Ratna Scheme which was filed in evidence, we agree with Respondent that it does not indicate anywhere that the invested amount would be doubled in 5 years as contended by the Appellants in their complaints. On the other hand, it is clearly stated in the Offer Document under the heading "Risk Factors" that mutual funds and securities investments are subject to market risks and hence there can be no assurance that the objective of the scheme can be achieved. It further states "that past performance of the Indian bank Mutual Fund in the previous schemes is not necessarily indicative of future results and as with any investment in stocks and shares, the Net Asset Value (NAV) issued under the scheme can go down or up depending on the factors and forces affecting the capital markets". It was also clearly specified in the Scheme that investors were requested to carefully study terms of offer before making any investment in the fund. It appears from a perusal of Appellants' complaint and annexures filed before the State Commission that the Appellants' contention that the Scheme offered double the returns, did not pertain to the IND Nav Ratna Scheme of the Respondent but to the "Candouble" Scheme offered by Canara Bank where such returns were assured but which is not covered under the present First Appeals. In view of these facts, we are in agreement with the order of the State Commission dismissing the complaints of the Appellants in terms of the IND Nav Ratna Scheme where clearly there was no obligation on the part of Respondent to pay the maximum amount irrespective of the market risks and therefore, they were not entitled to the benefits of assured returns as claimed by them. It is also relevant to mention here that the issue pertaining as assured returns in several

other mutual fund schemes was agitated in a Writ Petition by aggrieved persons before the Hon''ble High Court of Delhi which were dismissed by that Court by ruling that all mutual funds are subject to market risks and no assured returns can, therefore, be guaranteed.

3. It would, thus, be seen that not only the State Commission but also the National Commission decided against the petitioners on merits and return a finding that the respondent-Mutual Fund had not assured any particular return to the petitioners. The investment in mutual funds by its very nature carries certain risks which are inherent in such investments. The amount collected by mutual funds is invested primarily in the share market and if the equity market goes up, the value of the investment increases, whereas in case the market goes down the investment made in the mutual fund schemes also goes down. The person who invests in mutual fund is made aware of such risks which are inherent in investments in the equity market whether such investment is made directly or through a mutual fund. If the market goes down he can blame only his luck, and not the mutual fund. In any case, the State Commission found that no assurance was given by the respondent Indian Bank Mutual Fund to pay double the invested amount after five (5) years from the date of investment when the scheme was to mature. In the absence of any such assurance, there was no contract between the parties for payment of double the invested amount to the petitioners. Consequently, the petitioners were entitled only to such amount as would be the net value of their investment at the time the mutual fund units matured. The view taken by the State Commission and reaffirmed by the National Commission is unquestionable and there is no scope for any interference by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India. The petitioner No. 1, Mr. T.S. Sawhney has drawn my attention to the observations made by a Division Bench of this Court in a writ petition which the petitioners had filed and which have been extracted in the order of the Commission. I have perused the said observations. However, since there is a finding of fact that there was no assurance given to the petitioners at the time they made investment in the mutual fund units, the State Commission was fully justified in rejecting their complaint. In this petition, the Court is examining only the equality of the order passed by the National Commission and not the effect of the assurance, if any, given before a Division Bench of this Court, in independent proceedings. The grievance, if any, on account of the assurance given to the Division Bench could not have been agitated before the State Commission or before the National Commission. If the petitioners are aggrieved on account of non-fulfillment of any assurance given to them by the counsel for the respondent before the Division Bench, they can have such remedy as is open to them in this regard but a complaint before the State Commission was certainly not an appropriate remedy in this regard.

The writ petition is dismissed. No order as to costs.

Dasti.