(2012) 07 AHC CK 0205

In the Allahabad High Court

Case No : Writ Case No. 56927 of 2010

Urmila Tripathi APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Citation : (2012) 07 AHC CK 0205

Hon'ble Judges : Abhinava Upadhya, J

Final Decision : Dismissed

Judgement

Abhinava Upadhya, J.

Under the National Savings Scheme, a Scheme has been floated known as Mahila Pradhan Kshetriya Bachat Yojana. The objective of the Scheme is to educate housewives in family budgeting to inculcate the habit of thrift (savings) among the households and self employed people and to canvass for and secure investments in the Post Office in 5 years recurring Deposit Accounts from small savers and to raise resources for financing development and defence of the country.

The petitioner was appointed as Authorized Agent by the authority concerned under the National Savings Scheme, Deoria under Mahila Pradhan Kashetriya Bachat Yojana. The main duty of the agent was to secure investments in 5 years recurring Deposit Accounts from small depositors.

It is alleged that the petitioner Smt. Urmila Tripathi appointed/designated her son Govind Tripathi alias Golu as messenger for depositing money collected by her in the Post Office. The allegation in the counter affidavit is that no such authorization or permission is provided under the Scheme. The petitioner continued to secure such money from the small investors and deposited in the Post Office Account. On 10.8.2008 an FIR was lodged by one such investor in Police Station Rudrapur, District Deoria upon which Case Crime No. 869 of 2008 under Sections 408, 406, 419 and 420 IPC was registered against Govind Tripathi alias Golu, son of the petitioner.

According to the allegation in the counter affidavit the petitioner Smt. Urmila Tripathi, who was the Pradhan of the Village along with her son Govind Tripathi alias Golu opened more than 400 recurring deposit account but embezzled a sum of Rs.18,90,185/ collected from several petty depositors.

It is submitted that an extensive and detailed departmental enquiry was conducted and in that enquiry vide enquiry report dated 9.9.2009 and supplementary enquiry report dated 29.4.2010 at Regional and Divisional Level (annexure1 to the supplementary counter affidavit), it was found that the petitioner along with her son committed fraud in respect of 162 accounts out of 400 accounts opened by her. It is alleged that bogus entries were made in the pass books after misappropriation of the money and consequently, a recovery was issued to the tune of Rs. 18,90,185/ for causing loss to the Government as the amount so embezzled was to be disbursed to the depositors by the Government.

The finding is that the fraud committed by the petitioner was that she used to secure higher amount from the investors which was shown in the pass books but less amount was deposited in the Post Office. Such a chart bearing each account has been filed as Annexure1 to the counter affidavit and from the detailed enquiry reports filed as Annexure1 to the supplementary counter affidavit, it is clear that each of the depositors were examined.

The grievance of the petitioner is that without affording any opportunity recovery has been directed without there being any order of the competent authority and without fixing responsibility upon the petitioner for the loss of any Governmental money. Initially a prayer was made in the writ petition for setting aside the recovery citation dated 26.8.2010 and also not to use any coercive method for the recovery of the amount.

This Court, while calling for counter affidavit, vide order dated 27.9.2010, without interfering with the recovery, merely directed that pursuant to the recovery citation the petitioner may not be arrested.

It is submitted that since recovery was not stayed the authorities proceeded to recover the amount as arrears of land revenue and in pursuance thereof put the property of the petitioner for auction by way of sale proclamation dated 23.4.2012 with regard to Araji No. 398 of Khata No. 127 situated at Village Rudrapur, District Deoria. The petitioner then filed amendment application bringing the aforesaid prayer seeking a writ of certiorari to quash the sale proclamation dated 23.4.2012 and also for mandamus restraining the respondents from auctioning the property in question.

We have heard Sri Deepak Kumar Jaiswal, learned counsel for the petitioner, learned Standing Counsel appearing for the Staterespondents and Sri R.B. Singhal, assisted by Sri K.C.Misra, learned counsel appearing for respondents no.

4 and 5.

It can not be disputed that the embezzlement has taken place from the Post Office. It is also not disputed that the embezzlement has surfaced from the accounts that were opened by the petitioner under the Savings Scheme. It is also not disputed that the petitioner was responsible for depositing of the amount in the Post Offices. It is also not disputed that the petitioner''s son was also involved along with the petitioner for collection and deposit of the amount in the Post Office. All that the petitioner''s dispute is that no authority has assessed the amount of loss and no order has been passed fixing the responsibility upon the petitioner and in the absence of any assessment and also in the absence of any positive order against the petitioner, no recovery can be initiated.

We are unable to accept the aforesaid assertion as from the counter affidavit and supplementary counter affidavit, it is clear that the authorities made very detailed and extensive enquiry and from the chart attached with the counter affidavit and the enquiry records each and every account has been mentioned and the amount realized by the Agent from the investors and the deposits made in the Post Office and the loss incurred by the Government in view of the lesser amount being deposited in the Post Office. That apart, the petitioner being appointed as an agent for collection of amount and deposited in the Post Office as to prima facie be held to be responsible if any amount is deposited less than the amount received from the investors. The petitioner being Gram Pradhan was under obligation as an agent and a trust was reposed in her being a local person to educate the people of the village to inculcate habit of savings was her responsibility to deposit the amount in the Post Office.

No material has been shown as to under which authority the petitioner has appointed her son as messenger for collection and deposit of amount in the Post Office. Even if as alleged that some authority has permitted the petitioner''s son to work as messenger yet under the Scheme it is not shown to us that there is any provision for appointment of sub agent by the agent and on this count it cannot be pleaded that since FIR was lodged against her son and if at all any discrepancy has been made by her son in deposit of the amount, she cannot be held responsible, not worth consideration.

Similar view has been taken by a Division Bench of this Court in its judgment dated 9.8.2012 in Writ Petition No. 33207 of 2006 (Daya Ram Singh Rawal and another Vs. Tehsildar and others).

In writ jurisdiction in exercise of power under Article 226 of the Constitution of India, we are not inclined to interfere with the recovery under the provisions of The Public Accountant''s Default Act,1850 in the matter as serious allegations have been levelled and a criminal case is also pending, besides extremely disputed question of facts are involved, which can be looked into at the appropriate forum but not under Article 226 of the Constitution of India.

In view of the foregoing discussion, the prayer of the petitioner for quashing the citation dated 26.8.2010, annexure6 to the writ petition, is refused. The auction/ sale of the properties held on 24.8.2012, being an event consequent to the recovery proceedings, the petitioner has a remedy under the provisions of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 to challenge the auction.

We refrain ourselves from expressing any opinion on the merits of the auction and it is open for the petitioner to seek such statutory remedy against the auction proceedings, which is available in accordance with law. Petitioner may avail such remedy.

Subject to above the writ petition is dismissed.

