

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WRIT PETITION (CIVIL) NO.10517 OF 2009

Reserved on : 29th March, 2011
Date of Decision: 7th July, 2011

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NIVEDITA SHARMA
Through Petitioner
In person.

VERSUS

THE INDUSTRIAL CREDIT & INVESTMENT CORPORATION OF
INDIA & ORS.

....Respondents

Through Mr. R.S. Suri, Sr. Advocate with
Mr. Rahul Malhotra,
Advocate for the respondent
No.1.
Mr. A.S. Chandhiok, ASG with
Ms. Reeta Kaul, Mr. Sandeep
Bajaj and Ms. Riya Kaul,
Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE DIPAK MISRA, THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes.
3. Whether the judgment should be reported in the Digest ? Yes.

SANJIV KHANNA, J.:

The petitioner-Nivedita Sharma had invested Rs.26,000/- in ICICI Bonds, 1996. She was issued five bonds of face value of Rs.2,00,000/- each with maturity date 15th July, 2021, but with an option for premature redemption. The bonds were in nature of deep

discount. The relevant clause relating to premature option for early redemption reads as follows:-

“(2) Early Redemption.

The holder(s) of the Bond(s)/the Company shall have the option of Early Redemption of the Bond only at the date and at the Deemed Face Value mentioned below:

- a) On July 15, 2001 for Rs.11,000
- b) On July 15, 2006 for Rs.24,000
- c) On July 15, 2011 for Rs. 50,000
- d) On July 15, 2016 for Rs. 1,00,000

(3) Procedure for Redemption/Early Redemption by Bondholders.

The Bond Certificates, duly discharged by the Sole/all the joint-holders (signed on the reverse of the Bond Certificate) to be surrendered for Redemption on maturity or on Early Redemption should be sent by the Bondholder(s) by Registered Post with Acknowledgement Due or by hand delivery to the office of the Registrars/the Company or to such persons at such addresses as may be notified by the Company from time to time. Bondholders desirous of exercising the option for Early Redemption on any of the above dates should submit their requests in writing to the Company/Registrars or to such persons at such addresses as may be notified by the Company from time to time, along with the Bond Certificate (s) duly discharged by Sole/all the joint-holders by signing on the reverse of the Bond Certificates not more than six months and not less than three months prior to the relevant date. The Bond holder will be entitled to receive the applicable Deemed Face Value only if the request is received in writing within the specified time. Upon the Bondholder(s) receiving the said amount on Redemption/Early Redemption, the liability of the Company hereunder shall stand extinguished.

(4) Procedure for Early Redemption by the Company

In case the Company decides for an Early Redemption of Bonds. It will announce its intention to do so at least six months prior to the relevant date by giving a notice in the manner stated in (5) below.

(5) Notice

All notices to the Bondholder(s) required to be given by the Company or the Trustees shall be deemed to have been given if published in one English and one regional language daily newspaper in Mumbai, Madras, Delhi, Calcutta Bangalore and Baroda and may, at the sole discretion of the Company or the Trustees, but without any obligation, be sent by ordinary post to the original sole/first allottee of the Bonds. Individual notices to Bondholders will not be given.”

2. The petitioner on 2nd March, 2009 wrote to the Industrial Credit and Investment Corporation of India for redemption of their bonds. Correspondence was followed, but the respondent No.1 refused to make the payment and informed the petitioner that they had exercised the call option for early redemption in 2001. In the counter affidavit, it is stated that they had published a notice exercising their early redemption option in one English and one regional language newspaper published from Mumbai, Madras, Delhi, Calcutta, Bangalore and Baroda. Advertisements were published on 12th January, 2001 in terms of the bond and the prospectus. The bondholders were required to submit/tender the original bonds on or

before 31st March, 2001. As the petitioner had not submitted the bonds for payment, reminder letters dated 12th October, 2001, 26th February, 2002, 21st November, 2003 11th May, 2006 and 15th May, 2008 were sent to the petitioner and other bondholders, who had not surrendered the bonds. These letters were sent at the last known address available with the respondent No.1. The aforesaid letters, except the letter dated 15th May, 2008, were sent by ordinary post, but the letter dated 15th May, 2008 was sent by the registered post. The petitioner at the time when she had applied and allotted bonds was residing at C-742, New Friends Colony, New Delhi-110065. She, however, changed her address and shifted to A-30/9, DLF, Phase-I, Gurgaon, Haryana. The petitioner has not placed on record any document or letter to show and establish that she had written or informed the respondent No.1 about the change of her address. There is nothing on record to doubt or disbelieve the contention of the respondent No.1 that they had written letters to all the bondholders, who had not surrendered the duly discharged certificates/bonds for encashment.

3. As the petitioner did not submit the bond certificates even after seven years of redemption, the respondent No.1 transferred the maturity proceeds/redemption amounts under Section 205 C of the Companies Act, 1956 (Act, for short) to the Ministry of Corporate

Affairs. The respondent No.1 has placed on record copy of the challan dated 14th August, 2008 whereby they had transferred the total unclaimed amount of Rs.14,37,32,595/-. The said amount becomes part of the corpus of the Investors Education and Protection Fund. The petitioner has challenged the constitutional vires of the said section along with Section 205 A of the Act. The two provisions read as under:-

“205A. Unpaid dividend to be transferred to special dividend account.—

(1) Where, after the commencement of the Companies (Amendment) Act, 1974, a dividend has been declared by a company but has not been paid or claimed within 3[thirty days] from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid 4[or unclaimed] within the said period of thirty days, to a special account to be opened by the company in that behalf in any scheduled bank, to be called “Unpaid Dividend Account of Company Limited/Company (Private) Limited”.

[Explanation.—In this sub-section, the expression “dividend which remains unpaid” means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.]

(2) Where the whole or any part of any dividend, declared by a company before the commencement of the Companies (Amendment) Act, 1974, remains unpaid at such commencement, the

company shall, within a period of six months from such commencement, transfer such unpaid amount to the account referred to in sub-section (1).

(3) Where, owing to inadequacy or absence of profits in any year, any company proposes to declare dividend out of the accumulated profits earned by the company in previous years and transferred by it to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be made by the Central Government in this behalf, and, where any such declaration is not in accordance with such rules, such declaration shall not be made except with the previous approval of the Central Government.

(4) If default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the unpaid dividend account of the concerned company, the company shall pay, from the date of such default interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent per annum and the interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(5) Any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company to the Fund established under sub-section (1) of section 205C.

(6) The company shall, when making any transfer under sub-section (5) to the Fund established under section 205C any unpaid or unclaimed dividend, furnish to such authority or committee as the Central Government may appoint in this behalf a statement in the prescribed form setting forth in respect of all sum included in such

transfer, the nature of the sums, the names and last known addresses of the person entitled to receive the sum, the amount to which each person is entitled and the nature of his claim thereto and such other particulars as may be prescribed.

(7) The company shall be entitled to a receipt from the authority or committee under sub-section (4) of section 205C for any money transferred by it to the Fund and such a receipt shall be an effectual discharge of the company in respect thereof.

(8) If a company fails to comply with any of the requirements of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

205C. Establishment of Investor Education and Protection Fund.—

(1) The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the “Fund”).

(2) There shall be credited to the Fund the following amounts, namely:—

(a) amounts in the unpaid dividend accounts of companies;

(b) the application moneys received by companies for allotment of any securities and due for refund;

(c) matured deposits with companies;

(d) matured debentures with companies;

(e) the interest accrued on the amounts referred to in clauses (a) to (d);

(f) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and

(g) the interest or other income received out of the investments made from the Fund:

Provided that no such amounts referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment.

Explanation.—For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.

(3) The Fund shall be utilised for promotion of investors' awareness and protection of the interests of investors in accordance with such rules as may be prescribed.

(4) The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(5) It shall be competent for the authority or committee appointed under sub-section (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.”

4. The contention of the petitioner is that transfer of the maturity proceeds adversely affected the right of the petitioner and others. The amendment was made in Section 205 A and 205 C of the Act with effect from 31st October, 1998 which is after the said bonds were issued in 1996 and, therefore, cannot be given retrospective effect. It is also contended that Section 205 C of the Act does not apply to promissory notes, which are not covered by the said Section. It is contended that the provisions of Section 205 A and 205 C are arbitrary and violate Article 14 of the Constitution. In the rejoinder affidavit the petitioner has contended that a huge corpus is accumulated in the Investors Education and Protection Fund, but no steps are being taken to utilize the said corpus.

5. We have examined the contentions raised by the petitioner. At the very outset, it may be noticed that a challenge to vires of a statute requires specific pleadings. This is missing in the present case. The pleadings at best are vague and do not meet the prescribed standard and legal requirements. Reference in this regard can be made to the decision dated 30th July, 2010 in W.P.(C) No.8663/2008, ***Sunita Bugga Vs. Director of Education and Ors.***, wherein it has been held:-

10. It is well settled in law that a person who assails the constitutional validity of an Act or a notification must specifically set forth the grounds

for such challenge. In this context, we may refer with profit to certain decisions in the field.

11. In *State of Uttar Pradesh v. Kartaar Singh*, AIR 1964 SC 1135, while dealing with the constitutional validity of Rule 5 of the Food Adulteration Rules, 1955, their Lordships opined as follows:-

“(15).....if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any a priori reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Art. 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Art. 14 the burden is on him to plead and prove the infirmity is too well established to need elaboration.”

12. In *State of Andhra Pradesh and another v. K. Jayaraman and others*, AIR 1975 SC 633, it has been stated thus:-

“3. It is clear that, if there had been an averment, on behalf of the petitioners, that the rule was invalid for violating Articles 14 and 16 of the Constitution, relevant facts showing how it was discriminatory ought to have been set out.”

13. In *Union of India v. E.I.D. Parry (India) Ltd.*, AIR 2000 SC 831, a two Judge Bench of the Apex Court has expressed thus:- “There was no pleading that the Rule upon which the reliance was placed by the respondent was ultra vires the Railways Act, 1890. In the absence of the pleading to that effect, the trial Court did not frame any issue on that question. The High Court of its own proceeded to consider the validity of the Rule and ultimately held that it was not in consonance with the relevant provisions of the Railways Act, 1890

and consequently held that it was ultra vires. This view is contrary to the settled law...”

14. In *State of Haryana v. State of Punjab & another*, (2004) 12 SCC 673, a two Judge Bench of the Apex Court has expressed thus:-

“82..... It is well established that constitutional invalidity (presumably that is what Punjab means when it uses the word “unsustainable”) of a statutory provision can be made either on the basis of legislative incompetence or because the statute is otherwise violative of the provisions of the Constitution. Neither the reason for the particular enactment nor the fact that the reason for the legislation has become redundant, would justify the striking down of the legislation or for holding that a statute or statutory provision is ultra vires. Yet these are the grounds pleaded in subparagraphs (i), (iv), (v), (vi) and (vii) to declare Section 14 invalid. Furthermore, merely saying that a particular provision is legislatively incompetent [ground (ii)] or discriminatory [ground (iii)] will not do. At least prima facie acceptable grounds in support have to be pleaded to sustain the challenge. In the absence of any such pleading the challenge to the constitutional validity of a statute or statutory provision is liable to be rejected in limine.”

6. Section 205 C stipulates that the Central Government shall create a fund called Investors Education and Protection Fund. Sub-Section 2 stipulates what money/amount shall be credited to the said fund. This includes unpaid dividend or unpaid application money, which have become refundable, maturity proceeds of debentures as well as matured deposits with company and interest accrued thereon. For an amount to be transferred, it should have remained unclaimed

and unpaid for a period of seven years from the date they became due for payment. Explanation to sub-section (2) to Section 205 C mandates and clarifies that no claim shall lie against the fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the date they became due for payment and no payment shall be made in respect of any such claims. Thus a limitation period is provided. The limitation period is reasonable.

7. During the course of hearing, a contention was raised that a premature or early encashment/redemption should not be covered by Section 205 C of the Act. It is not possible to accept the said contention as the language of the said provision is lucid and clear. Section 205 C (2)(c) refers to matured deposits with a company. The term “matured deposits” will mean all deposits, which have become due for payment. Deposits which were payable, but had remained unclaimed for seven years and, therefore, unpaid amounts had to be transferred to the fund. The maturity date cannot be counted from the date when the bond was to mature without taking into account the early redemption date. The investors or public when they deposit the amount must stake their claim within seven years, when the amount became payable. In case they fail to make any claim within seven years they lose their right. Once a right is lost, it is lost forever in view of the proviso to Section

205 C (2) of the Act. The proviso to Section 205 C (2) itself specifically has not been challenged and no specific ground has been raised. Even otherwise, we do not see any reason to strike down the proviso. Once the money is transferred, it has to be utilized for the purpose of the fund. It ceases to be the money of the company or the depositor/creditor. The depositor/creditor loses his right because of the period of limitation during which he is required to make the claim.

8. Section 205 C is a salutary and virtuous provision. It has been enacted to ensure that a company does not unjustifiably and unduly enrich themselves, as the depositors have failed to stake claim and have not been paid for a period of seven years from the date the amount became due. The word “unclaimed” used in the proviso to Section 205 C (2) clarifies that in case a claim is made within a period of seven years from the date amount became due and payable; the money shall not be transferred to the said fund. Thus, if a person makes a claim within a period of seven years, Section 205 C will not apply. Period of seven years is substantially long. A depositor or a person dealing with a company, therefore, should make a claim within a period of seven years. In case he makes a claim, provisions of Section 205 C of the Act are not applicable and money cannot be transferred to the fund. We do not see any reason to hold that the said provisions are

unconstitutional or they violate Article 14 or any other provisions of the Constitution. It cannot be said that the aforesaid provisions are faulty and violate the fundamental rights guaranteed in the Constitution.

9. To strike down Section 205 C will amount to negating and striking down a worthy and meritorious legislation which is on the whole beneficial and advantageous and in public interest. The petitioner is aggrieved because she did not stake her claim for refund within seven years. She did not inform change of address and, therefore, could not be communicated and informed about the premature redemption. The petitioner also did not bother to read the terms and conditions of allotment including the early redemption clause. These are serious lapses on the part of the petitioner. It is because of these lapses that the petitioner is in the present infelicitous situation. However, these cannot be a ground to strike down Section 205 C, which has been enacted in public interest and has a public purpose. Another contention during the course of arguments raised was that forfeiture clause should be struck down as unreasonable. It is not possible to agree with the said contention. The investors or public when they deposit the amount must make a claim within seven years otherwise they will lose their right to make the claim. Rules of

limitation are founded on consideration of public policy. The law of limitation affords a guarantee and ensures that cause of action is not raised after a lapse of particular period. Limitation is preventive and not curative and seeks to give quietus to claims which have not been enforced. It ensures that litigants are diligent in seeking remedies in court and prohibits stale claims. It ensures promptitude and assist vigilant persons who do not sleep over their rights. Laws prescribing reasonable period of limitation have been upheld, though whenever the period prescribed expires a claimant suffers, but this invariably happens as the said litigant has been grossly negligent and has failed to take steps. This has happened in the present case.

10. It is also not possible to accept the contention of the petitioner that the Companies Act cannot deal with the deposits or promissory notes. There is no such limitation or prohibition in the Companies Act. Companies Act itself is a principal enactment and not a delegated legislation.

11. The contention of the petitioner that Section 205 C has been given retrospective effect has no merit. The aforesaid Section was introduced by Companies Amendment Act, 1999 with effect from 31st October, 1998. The call option was exercised by the respondent in January, 2001 and the bonds became due and payable in July, 2001.

The contention of the petitioner that they were not aware of this provision also does not merit acceptance.

12. In view of the aforesaid analysis, we do not find any merit in the present writ petition and the same is dismissed without any order as to costs.

**-Sd-
(SANJIV KHANNA)
JUDGE**

**-Sd-
(DIPAK MISRA)
CHIEF JUSTICE**

JULY 7, 2011
NA