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

+ **Date of Decision: 04.01.2012**

% **W.P.(C) 76/2010**

AIRPORTS AUTHORITY OF INDIA AND ORS Petitioners

Through: Mr. V.P. Chaudhary, Sr. Adv. with
Mr. Digvijay Rai, Advocate

versus

STATE OF JAMMU AND KASHMIR AND ORS Respondents

Through: Mr. Sunil Fernandes for R-1&2

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (Oral)

1. The present writ petition under Article 226 of the Constitution of India has been preferred by the Airports Authority of India (the petitioner no.1); the C.P.F. Trusts constituted by the petitioner no.1 vide trust deed dated 08.06.1988, which has been formed for the purpose of managing the Contributory Provident Fund (CPF) of the employees of petitioner no.1, as petitioner no.2. The employees of petitioner no.1 are the beneficiaries of the said Trust, which has been constituted to prudently manage and invest the CPF of the said employees. Petitioner no.3 has been formed upon repeal of

the National Airports Authority Act and International Airport Authority Act, as petitioner no.1 was desirous of constituting a Provident Fund Trust after merging of the existing Provident Fund Trust (National Airports Authority Employees Contributory Provident Fund Trust and International Airport Authority Employees Contributory Provident Fund Trust) under the erstwhile two repealed Acts. Petitioner no.3 has been registered vide registration dated 27.02.2009 before the Sub Registrar-V, New Delhi. All the petitioners are collectively and severally referred to as the petitioners.

2. The case of the petitioners is that the respondent no.2, i.e. Jammu and Kashmir State Financial Corporation is a financial institution set up by respondent no.1, the Government of Jammu and Kashmir, to promote medium/large scale industries in the State of Jammu and Kashmir. The primary function of respondent no.2 is to extend financial assistance to industrial projects and undertake such other activities as may be necessary to speed up industrial investment in the State.

3. The petitioners submit that respondent no.2 invited investments in bonds issued by it, which were guaranteed by respondent no.1. The bonds were of two kinds. Some of these bonds carried interest @ 11.5%, while the others carried interest @ 10.5%. These bonds were offered by respondent

no.2 through its agents in various locations including in Delhi. The petitioners submit that they subscribed to the said bonds in Delhi by making payments therefor in Delhi. The details of the bonds subscribed for by the petitioners are as follows:

Name of Bond	Bond Certificate No.	Date of Investment	Invested amount (Rs. in crores)	Date of redemption
10.5% JKFC Bonds 2011	000235	25.01.2005	Rs.5.00	29.03.2011
11.5% JKFC Bonds 2011	001067	25.01.2005	Rs.1.00	15.02.2011
11.5% JKFC Bonds 2011	001070	06.04.2005	Rs.4.40	06.09.2011

4. These bonds were sold through the Securities International Limited (formerly SREI International Securities Limited) having their office at 8, Central Lane, Bengali Market, New Delhi. The petitioners submit that the respondents paid interest on the said bonds occasionally at Delhi. However, the respondents have defaulted in the payment of half yearly installments of interest and in redeeming the bonds upon maturity.

5. According to the petitioners, respondent no.2 defaulted in payment of the half yearly interest on the 11.5% JKFC SLR Bonds 2011 and the

10.5% JKFC SLR Bonds 2011. Consequently, the petitioners sent a communication dated 27.09.2005 to respondent no.2. Further reminders were sent thereafter. However, the respondents did not pay the interest, and also did not return the original bond certificates to the petitioners.

6. The petitioners sent another communication dated 19.01.2006 enclosing the original bond certificate in respect of the 11.5% secured redeemable JKFC SLR Bond 2011 of the face value of Rs.1 crore, interest whereof was due and payable on 15.02.2006. The petitioner requested for payment on an urgent basis.

7. On 28.01.2006, respondent no.2 expressed its inability to make payment on the ground of facing shortage of funds. It was stated that the matter had been taken up with the State Government. The respondent no.2 vide its communication dated 04.02.2006 once again expressed its inability to make payment to the petitioners, either of the interest or of the principal amount, on the ground that its cumulative losses had reached Rs.200 crores as on March 2005.

8. The petitioners kept on demanding payment even thereafter, and the respondent again denied payment to the petitioners vide letter dated

21.07.2006. The petitioners sent a legal notice dated 05.03.2007 calling upon the respondents to make payment of interest due till 28.02.2007. Only thereafter, the petitioners received partial payment of an amount of Rs.50.60 lacs in respect of the 11.5% JKFC SLR Bonds of face value of Rs.4.5 crores for half year ending 06.09.2005 and 06.03.2006.

9. Respondent no.1 also issued a communication dated 19.04.2007 to respondent no.2 directing respondent no.2 to clear the outstanding dues of the petitioners. On 23.06.2008, the respondents communicated to the petitioners that the issue of discharge of liabilities of respondent no.2 had been taken up by the State Government. The petitioners were asked to await further action in the matter. Even the Secretary to the Government of India in the Ministry of Civil Aviation called upon the Chief Secretary of respondent no.1 to look into the matter and ensure payment of overdue interest to petitioner no.2 immediately. Further reminders were sent, but to no avail.

10. In this background, the petitioners have preferred the present writ petition.

11. The petitioners submit that a similar writ petition in the case of

Modern Food Industries (India) Limited v. State of Uttar Pradesh and Others, bearing W.P.(C.) No.16462-63/2004 had been allowed by this court vide judgment dated 21.11.2005. The said judgment has been upheld by the Supreme Court, as the Special Leave Petition bearing No.3146/2006 and the Civil Appeal arising therefrom bearing C.A. No.6126/2008 has been dismissed.

12. Upon issuance of notice, respondent nos.1 and 2 have filed their counter affidavits. The said respondents do not deny the aforesaid facts, and the fact that they have defaulted in making payment of the interest under the said bonds, and also the fact that the said bonds have not been redeemed on the due dates, which have already passed. The respondents plead financial stringency as the cause of their default in making the payments.

13. Learned counsel for the respondent has urged two legal submissions to oppose the present writ petition. It is firstly contended that since the respondents are located in the State of Jammu and Kashmir, this Court has no territorial jurisdiction. It is secondly argued that a writ petition to seek recovery of money alone is not maintainable.

14. In answer to the said submissions, Mr. Chaudhary, learned senior

counsel for the petitioner places reliance upon the decision in *Airports Authority of India & Others v. State of Uttar Pradesh & Anr.*, W.P.(C.) No.7949/2009, wherein this Court had rejected a similar objection to the territorial jurisdiction of the Court. The Court had held that a substantial part of cause of action had arisen within the territorial jurisdiction of this Court. The information memorandum was circulated through the lead arrangers of PICUP in Delhi. The cheques for the investments were issued in Delhi.

15. I have already noticed herein above that the investments had been made by the petitioners in Delhi through the agents/lead arrangers of the respondent no.2 in Delhi, namely, the Securities International Limited. This is evident from their communication dated 20.01.2005, whereby they offered the said bonds to the petitioner. It is also evident from the documents placed on record, such as the payment voucher dated 02.04.2005 that the petitioner had made the payment for purchase of the bonds in Delhi. In fact, it is not even denied that one of payment of interest by the respondent no.2 was also made at Delhi. It is, therefore, clear that a substantial part of the cause of action has arisen within the jurisdiction of this Court. The objection to the territorial jurisdiction of this Court to entertain the present petition is,

therefore, rejected.

16. The second objection raised by counsel for respondents that the present petition is not maintainable only to seek refund of the amounts due under the said bonds also cannot be accepted. The jurisdiction of the Court under Article 226 of the Constitution of India is unfettered. The only fetters are those which the Courts have itself placed on the exercise of its said jurisdiction. There are well known and well recognized grounds on which the Court chooses not to exercise its discretionary writ jurisdiction. One of them is, where disputed questions of fact are raised before it.

17. In the present case, firstly, it may be noted that the primary relief is to seek enforcement of a sovereign guarantee of the State of Jammu and Kashmir. Moreover, there is absolutely no disputed question of fact arising before this Court. The factum of the petitioner having invested in the said bond is not in dispute. The fact that the said bonds were issued by respondent no.2, and guaranteed by respondent no.1 has also not been disputed. The fact that there was consistent default in payment of interest, and in redemption of the said bonds on the due dates is also not in dispute. It is not the respondents case that any other amounts have been paid under the said bonds, apart from those disclosed by the petitioners in the writ

petition. There is no accounting dispute raised by the respondents.

18. The guarantee issued by the respondent no.1 is that of the State of Jammu and Kashmir, which is a sovereign guarantee. The State cannot say that it does not have the fund to honour its sovereign guarantee. The Court would enforce the sovereign guarantee, because a sovereign guarantee cannot be allowed to fail, if rule of law is to be upheld. This aspect, as well as the aspect of maintainability of the writ petition to recover amounts which have been guaranteed by the State has been dealt with by this Court in ***Modern Food Industries (India) Limited*** (supra). I consider it appropriate to extract the relevant portion of the said judgment, which stands affirmed by the Supreme Court. The same reads as follows:

“4. Learned counsel for the Respondent have raised a Preliminary Objection with regard to the maintainability of the Writ Petition. It stands uncontroverted that Respondent No.1 had extended its sovereign guarantee to the Bonds issued in favour of investors, such as the Petitioners, issued by Respondent No.2. Over thirty years ago the Hon'ble Supreme Court had clarified in The Gujarat State Financial Corporation vs. M/s. Lotus Hotels Pvt. Ltd., AIR 1983 SC 848 that it was too late in the day to contend that the ‘‘State can commit breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract’’. The Apex Court applied the principle of promissory estoppel for enforcement of such contractual undertakings. Thereafter, similar views have been expressed in Kumari

Shrilekha Vidyarthi vs. State of U.P., JT 1990 (4) SC 211 by a Bench comprising J.S. Verma, J. (as the learned Chief Justice then was) and R.M. Sahai, J.

It was opined that ‘the primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve ‘new tools’ to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law’.

5. *In ABL International Ltd. vs. Export Credit Guarantee Corporation of India Limited, JT 2003 (10) SC 300 the following principles were culled out and explained:*

From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition:-

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

6. *Contemporaneously, the Bench presided by Sabyasachi Mukharji (as the learned Chief Justice then was) and S. Ranganathan, J. held in Salonah Tea Company Ltd. vs. The Superintendent of Taxes, Nowgong, AIR 1990 SC 772 that a Writ Court was competent to order a refund of tax deposited under a mistaken understanding of the law. In Smt. Nilabati Behera v. The State of Orissa, JT 1993 (2) SC 503 the Apex Court did not find any fetters in granting relief to heirs of a victim of custodial death on the foundation of an infraction of fundamental rights guaranteed under Article 21 of the Constitution of India and observed as follows:*

“Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his

rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortuous act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right of life, he cannot get any relief under the public law by the Courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the Courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title 'Freedom under the law' Lord Denning in his own style warned:

‘No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power if not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to-date machinery, by declarations, injunctions and actions for negligence. This is not the task of Parliament, the Court must do this. Of all the great tasks that lie ahead this is the

greatest. Properly exercised the new powers of the executive lead to the welfares state; but abused they lead to a totalitarian state. None such must ever be allowed in this country''.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The court has imposed upon itself certain restrictions in the exercise of this power [See: Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors. JT 1998 (7) SC 243 : 1998 (8) SCC 1]. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction.

7. In State of Jammu and Kashmir vs. Ghulam Mohd. Dar, (2004) 12 SCC 327, after noting that writs in the nature of mandamus would not ordinarily issue for enforcement of a contract, it has been observed that a writ can issue when questions of public law character arise for consideration. The preliminary objection is wholly without substance and is rejected”.

For the aforesaid reasons, the second objection of the respondent is also rejected.

19. Accordingly, the present writ petition is allowed and a direction is issued to respondent no.1 to honour its sovereign guarantee in respect of 11.5% and 10.5% JKFC SLR Bonds 2011 issued by Jammu and Kashmir State Financial Corporation i.e. respondent no.2, and to make payments of the amount due comprising of the face value of the bonds which is Rs.10,40,00,00/- alongwith interest upto the date of redemption at the rates prescribed in the said bonds. The overdue interest from the date of maturity/redemption shall be paid on the entire amounts found due and payable on the due date of maturity/redemption at the rate of 8% p.a. till actual payment. The petitioners are also entitled to costs quantified at Rs.25,000/-.

VIPIN SANGHI, J

JANUARY 04, 2012
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