

GAHC010081632021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3358/2021

ANIL KUMAR DAS
S/O LATE PARASU RAM DAS
RESIDENT OF AZARA DEURIPARA POST OFFICE AND POLICE STATION,
AZARA, GUWAHATI 781017, DIST KAMRUP (M) ASSAM

VERSUS

THE EASTERN AND NORTH EASTERN FRONTIER RAILWAY CO
OPERATIVE BANK LTD AND 2 ORS
REPRESENTED BY THE CHIEF MANAGER, E AND NF RAILWAY CO
OPERATIVE KAMRUP M ASSAM

2:THE SECRETARY/CHIEF MANAGER

ASSAM RAILWAY EMPLOYEES CONSUMER ASSOCIATION (AREC) LTD.
MALIGAON GUWAHATI 781012
DIST KAMRUP M ASSAM

3:THE MANAGER
EASTERN AND NORTH EASTERN FRONTIER RAILWAY COOPERATIVE
BANK LTD MALIGAON
GUWAHATI 781012
DIST KAMRUP M ASSAM

4:THE DIVISIONAL RAILWAY MANAGER
RANGIA N.F.RAILWA

Advocate for the Petitioner : MR. R SARMA

Advocate for the Respondent : MS M DAS

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT & ORDER

22.03.2023

By invoking the extra-ordinary and discretionary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has instituted the instant writ petition seeking **inter alia** a direction to the respondent authorities to refund a sum of ₹ 2,09,975/- along with interest to the petitioner from the period of deposit of the said amount till its realization and/or to deposit the loan amount by way of cheque/demand draft/cash in his Savings Account no. 20661145458 maintained at the State Bank of India, CGON, Gumi Branch Kamrup, Assam.

2. The necessary facts can be narrated, briefly, as follows : the petitioner is an employee of the North East Frontier Railway [NF Railway] and in the year 2016, he was serving as an Welder-II under the Senior Section Engineer [SSE]/P-Way/Chaygaon under the territorial jurisdiction of the Divisional Railway Manager [DRM][P], Rangia, NF Railway. The petitioner's service records are maintained at and his salaries are being paid by the office of the DRM [P], Rangia, NF Railway i.e. the respondent no. 4. During the course of his service tenure, the petitioner in the year 2016, had applied to the Eastern & North East Frontier Railway Co-operative Bank Limited, Kolkata [the Bank', for short] through the respondent no. 4 for extending him financial facility in the form of a loan. On receipt of the loan application, the Bank processed and sanctioned a loan amount of ₹ 2,43,900/- to the petitioner vide Loan Account no. 23203/53077 & CRBD Account no. 10216/5563 on 19.10.2016. The details of the loan amount, equated monthly installments [EMIs] to be paid, loan duration, etc. were mentioned in a Loan Deduction Memo issued by the Bank on 20.10.2016. As per the Loan Deduction Memo, the loan amount and interest were to be recovered by EMI @ ₹ 5,675/- and the CRBD recovery of ₹ 300/-. Thus, the total amount to be deducted every month from the monthly salary of the petitioner was ₹ 5,975/-. The loan amount of ₹ 2,43,900/- were to be recovered through 60 nos. of EMIs during the period from December 2016 to November, 2021 by way of deduction from the monthly salary of the petitioner.

2.1. It is the case of the petitioner that the employer of the petitioner i.e. the Divisional Railway Manager [DRM][P], Rangia, NF Railway started deducting the EMI amount from the salary of the

petitioner since December, 2016 onwards continuously. The petitioner was, therefore, under the impression that after the deductions of the EMIs, the amount equal to the EMI was being duly adjusted against the Loan Account no. 23203/53077 of the Eastern & North East Frontier Railway Co-operative Bank Ltd., Kolkata each month. But, the petitioner was surprised when he received a Revised Variation Memo dated 19.12.2019 from the respondent no. 4. The Revised Variation Memo was issued in connection with the recovery of the loan amount and CRBD installments. By the Revised Variation Memo dated 19.12.2019, the Bank had requested the respondent no. 4 to recover the loan amount and CRBD installments from the petitioner as per the Statement mentioned therein. As per the Bank, the total outstanding dues of the petitioner as on 19.12.2019, stood at ₹ 3,10,294/- against the loan amount of ₹2,43,900/-. Declaring the status of the petitioner as defaulter, the Bank had asked the respondent no. 4 to deduct a sum of ₹ 15,461/- per month as EMI and ₹ 300/- per month as CRBD. Thus, the respondent no. 4 was asked to deduct an amount of ₹ 15,761/- each month from the monthly salary of the petitioner from the month of January, 2020 onwards till December, 2021.

2.2. Aggrieved by receipt of the Revised Variation Memo dated 19.12.2019 despite deduction of the EMI amounts from the salary account of the petitioner continuously since December, 2016, the petitioner approached the respondent no. 4 seeking clarification as regards the entire matter. Subsequent thereto, the position became clear to the petitioner when a Communication dated 18.02.2020 was sent from the office of the Senior Section Engineer [SSE]/P-Way/Chaygaon to the Secretary, Assam Railway Employees Consumer Association [ARECA] [the respondent no. 2]. By the Communication dated 18.02.2020, the office of the Senior Section Engineer [SSE]/P-Way/Chaygaon had intimated the respondent no. 2 about sanction and disbursement of the loan, referred above, in favour of the petitioner by the Bank on 20.10.2016. It was further intimated that though the EMI amount @ ₹ 5,675/- per month had to be deducted from the monthly salary of the petitioner from December, 2016 onwards in 60 nos. of installments, the office of the Senior Section Engineer [SSE]/P-Way/Chaygaon had after deduction of the EMI amount of ₹ 5,675/- from the monthly salary of the petitioner, kept on mistakenly adjusting the said amount of ₹ 5,675/- each month against the Control Code of the respondent no. 2 w.e.f. December, 2016 to December, 2019 by depositing the amount in favour of the Society [ARECA] and the same had resulted in deposit of 37 nos. of installments, that is, an amount of ₹ 2,09,975/- in total in the account of the respondent no. 2, instead of being adjusted against the Loan Account no.

23203/53077. By the Communication dated 18.02.2020, the respondent no. 2 was requested to refund the amount and pay the same either through cheque or cash to the concerned Savings Bank Account no. 20061145458 of the petitioner.

3. I have heard Mr. R. Sarma, learned counsel for the petitioner; Mr. M. Biswas, learned counsel for the respondent no. 2; and Mr. C.K.S. Baruah, learned Central Government Counsel [CGC] for the respondent no. 4.

4. The facts narrated above are not in dispute. The respondent no. 4 in its counter affidavit, filed on 06.01.2023, has admitted the facts averred by the petitioner. Thus, the fact that 37 nos. of EMIs were deducted from the monthly salary of the petitioner each month starting from December, 2016 till December, 2019 and that such deducted amounts were credited mistakenly to the account of the respondent no. 2 each month during the aforesaid period, instead of the same being adjusted in favour of the petitioner against the Loan Account no. 23203/53077 maintained at the Bank, are admitted. It further transpires that the Communication dated 18.02.2020 [supra] of the respondent no. 4 contained a Statement of Refund Accounts detailing the amounts credited to the account of the respondent no. 2 from the month of December, 2016 to December, 2019. As per the Statement of Refund Account, the total amount so credited in the account of the Society [ARECA] was ₹ 2,09,975/-.

5. The respondent no. 2 who is the Secretary of the registered co-operative society named M/s Assam Railway Employees Consumer Association [ARECA], Pandu ['the Society', for short] in its affidavit, had taken a plea that the registered society, M/s Assam Railway Employees Consumer Association [ARECA] has not been made a party-respondent and as such, the writ petition is not maintainable solely against the respondent no. 2 in his capacity as the Secretary, M/s Assam Railway Employees Consumer Association [ARECA]. Such plea in the context of the facts and circumstances of the case, is found unsustainable and is not appreciated. The respondent no. 2 in its affidavit-in-opposition has admitted about receipt of the Communication dated 18.02.2020 but a plea has been taken in the affidavit that the Communication was not issued from the office of the respondent no. 4 but was issued from the office of the Senior Section Engineer [SSE]/P-Way/Chaygaon. Another plea has been taken in the affidavit-in-opposition filed by the respondent no. 2 to the effect that though the respondent no. 4 in its

affidavit-in-opposition has admitted that an amount equal to the EMI was kept on being credited in the account of the Society [ARECA] every month since the month of December, 2016 till December, 2019, but the money, which amounted to ₹ 2,09,975/-, cannot be refunded on the strength of a Communication dated 18.02.2020 as the same was from an authority subordinate to the respondent no. 4. From the affidavit-in-opposition of the respondent no. 2, it has emerged that the petitioner had even made a personal visit to respondent no. 2, but the respondent no. 2 while turning down the request of the petitioner to return the amount, had advised him to get a letter from the office of the respondent no. 4 for release of the amount, which is lying in the bank account of the Society [ARECA].

6. When a specific query is made to the learned counsel for the respondent no. 2 as to whether the Bye-Laws of the Society [ARECA] has empowered any other authority, other than the Secretary of the Society, to represent the registered society no specific answer has been received by this Court. Thus, it does not lie on the part of the Secretary of the Society [ARECA] i.e. the respondent no. 2 to take such specious pleas, mentioned above, not to refund the amount of ₹ 2,09,975/- which it had received from the respondent no. 4 erroneously. Having received the amount of ₹ 5,675/- per month during the period from December, 2016 till December, 2019, the respondent no. 2, in the capacity of the Secretary of the Society [ARECA], is sitting over the amount without making any kind of enquiry as to the source of such amount it had retained in custody unauthorizedly. Such retention of money is clearly found to be unauthorized in law. The respondent no. 2 had known fully well that the amount of ₹ 2,09,975/- did not belong to the Society [ARECA] as soon as he received the Communication dated 18.02.2020. But, the respondent no. 2 despite receipt of the Communication dated 18.02.2020 [supra] refused to take any steps for refund of the money to the appropriate source. When a query is made to the learned counsel for the respondent no. 2, it is submitted by him that an amount of ₹ 2,09,975/- is still retained by the Society, M/s Assam Railway Employees Consumer Association [ARECA] where the respondent no. 2 is the Secretary.

7. After amendment of the Constitution by the Forty-Fourth Amendment Act, 1978, the status of the right to property has been changed from a fundamental right to a Constitutional right. The right to property is enshrined in Article 300A of the Constitution of India and Article 300A has declared that no person shall be deprived of his property save by authority of law. In the case in

hand, the loan amount had already been recovered from the petitioner in the manner indicated in the Revised Variation Memo dated 19.12.2019 and as on date, there is no outstanding in connection with Loan Account no. 23203/53077. But the amount of ₹ 2,09,975/- deducted from the monthly salary of the petitioner during the period from December, 2016 to December, 2019 and deposited wrongly by the employer of the petitioner in the account of the Society [ARECA] is yet to be received back by the petitioner. The said amount of ₹ 2,09,975/- is lying in deposit with the Society [ARECA] and such retention of the Society [ARECA] is, thus, clearly unauthorized, atleast after receipt of the Communication dated 18.02.2020. The said amount of ₹ 2,09,975/- clearly belongs to the petitioner and can, thus, be termed as the property of the petitioner.

8. A Bench of three-Judges of the Hon'ble Supreme Court of India in Comptroller and Auditor General of India, Gian Prakash, New Delhi and another v. K.S. Jagannathan and another, reported in [1986] 2 SCC 679, with regard to the scope of writ of mandamus has observed as under :-

"18. The first contention urged by learned counsel for the appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus was the relief prayed for by the respondents in their writ petition. What the Division Bench did was to issue directions to the appellants in the exercise of its jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any government, throughout the territories in relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of habeas corpus, mandamus, quo warranto and certiorari or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In *Dwarkanath v ITO* [AIR 1966 SC 81: (1965) 3 SCR 53, this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country." In *Hochtief Gammon v. State of Orissa* [(1975) 2 SCC 649: 1975 SCC (L&S) 362: AIR 1975

SC 2226: (1976) 1 SCR 667, 676] this Court held that the powers of the courts in England as regards the control which the Judiciary has over the Executive indicate the minimum limit to which the courts in this country would be prepared to go in considering the validity of orders passed by the government or its officers.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

8.1. In *Andi Mukta Sadguru Shree Kuktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others v. V.R. Rudani and others*, reported in [1989] 2 SCC 691, the Hon'ble Supreme Court of India has observed as under :-

"20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the

body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." [Judicial Review of Administrative Action, 4th Edn., p. 5 40] We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

9. From the above two authorities, it can be easily culled out that a direction in the nature of mandamus is available for the Court to reach injustice wherever it is found and technicalities does not come in the way of granting relief under Article 226 of the Constitution of India. A person owes a duty not to derive any unjust benefit from the property of another person so as to deprive the other person of his Constitutional right to property under Article 300A of the Constitution of India in an unauthorized way and to cause wrongful loss to the other person in order to gain wrongfully. From the discussion made above, it has aptly clear that the petitioner has suffered due to inaction on the part of the respondent no. 4 since the date of receipt of the Revised Variation Memo dated 19.12.2019 as well as on the part of the respondent no. 2 since the date of receipt of the Communication dated 18.02.2020, that is, the date from which the respondent no. 2 had realized about his mistake of wrongfully adjusting the EMI amounts in the account of the Society, M/s Assam Railway Employees Consumer Association [ARECA] and the date the respondent no. 2 i.e. the Secretary, Assam Railway Employees Consumer Association [ARECA]

had atleast realized that the amount of Rs. 2,09,975/- it had received in its account actually belonged to the Loan Account no. 23203/53077 pertaining to the petitioner. But the conduct of these two respondent authorities thereafter, are found far from satisfactory. As a result, the petitioner has been deprived of the amount of ₹ 2,09,975/-, which is his hard earned money as a Welder-II under the Senior Section Engineer [SSE]/P-Way/Chaygaon.

10. It is settled that if a person is deprived of the use of money to which he is legitimately entitled, he has a right to be compensated for the deprivation. Interest is paid for the deprivation of the use of money. Interest in general terms has been interpreted to be the return or compensation for the use or retention by one person of an amount of money belonging to another person and it is, thus, consideration paid for the use of money or forbearance of money. The Hon'ble Supreme Court of India in Secretary, Irrigation Department, Government of Orissa and others vs. G.C. Roy, reported in [1992] 1 SCC 508, has observed to the effect that a person deprived of the use of money to which he is legitimately entitled to has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages.

11. Having regard to the fact situation obtaining in the case, it is directed that the respondent no. 2 shall immediately refund the amount of ₹ 2,09,975/- to the account of the respondent no. 4 who, on such receipt, shall refund the same to the account of the petitioner forthwith. Further, having taken into account the facts and circumstances of the case, this Court deems it fit to observe that in the event the respondent no. 4 and the respondent no. 2 fail to carry out the above direction within a period of 1 [one] month from today, they will be liable to pay interest @ 6% per annum, in equal proportion, on the principal amount of ₹ 2,09,975/- from the date of the Communication dated 18.02.2020.

12. With the observations made and the direction given above, the writ petition is allowed to the extent indicated above. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant