

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

Reserved on: 9th July, 2015

%

Date of Decision: 17th August, 2015

+ W.P.(C) 11822/2009

UPPER INDIA SUGAR MILLS
EMPLOYEES PROVIDENT FUND

..... Petitioner

Through: Mr.Ashish Rana, Advocate.

versus

STATE OF MADHYA PRADESH & ORS.

..... Respondents

Through: Mr. Sakesh Kumar, Advocate
for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of present petition the petitioner seeks a writ of mandamus directing respondent No.1 to honour its guarantee in respect of 13.70% secured redeemable bonds issued by the State of Madhya Pradesh i.e. respondent No.2 and pay sum of Rs. 7,62,633/- (Rupees Seven lakhs sixty two thousand six hundred and thirty three only) towards interest and principal amount of the bonds along with overdue interest @18% till payment.

2. Brief facts leading to the present petition are that the petitioner, a trust, in the name of Upper India Sugar Mills Employees Provident Fund situated at Triveni Engineering & Industries Ltd., Sugar Unit,

Khautauli 251201, District – Muzafarnagar (U.P.). On 17.09.1999 respondent No.2 issued an information memorandum to raise Rs. 100 crores with an option to retain oversubscription through an issue of redeemable, non-convertible and non-cumulative bonds (for short ‘MPEB bonds’) of Rs.1,00,000/- each by private placement. It was represented to the investors that the payment of interest and repayment of the principal amount under the bonds are unconditionally and irrevocably guaranteed by respondent No.1 who issued a guarantee vide letter no. 4758/F.5/72/13/99 dated 12.08.1999 to this effect. Respondent No.3 was appointed as the Sole Arranger to the private placement of the aforesaid bond issue. On 15.09.1999, respondent no.3 approached the petitioner seeking investment in the said bonds under the pretext that the said bonds are supported by unconditional and irrevocable guarantee by respondent No.1. The petitioner made an investment of Rs. 5,00,000/- by purchasing bonds of equivalent amount.

3. Accordingly, a board resolution dated 19.11.2009 was passed by the Board of Trust of the petitioner authorising Mr. S.C. Jaggi, Chairman jointly with Mr. Sunil Kumar Mittal or Mr. S.K. Dhar, Trustee to buy, sell and dispose of MPEB Bonds under 15% category of Rs. 5,00,000/-. On 22.11.1999, the petitioner made an application through respondent No.3 to respondent No.2 to invest an amount of Rs. 5,00,000/- in the said bonds. The application was accompanied by an account payee draft no. 033850 dated 22.11.1999 for Rs. 5,00,000/- in favour of MPEB bonds drawn on Central Bank of India, New Delhi. Subsequently, on 13.01.2001 an allotment letter was

issued to the petitioner. On 01.01.2001, the petitioner requested respondent No.2 to expedite the payment of interest without deduction of tax on due date. On 07.02.2001, due to non receipt of interest on due dates i.e. 13.07.2000 and 13.01.2001 the petitioner issued another letter to respondent No.2 requesting release of interest on the aforesaid bond and another letter on 14.03.2001. The petitioner also issued letter dated 16.06.2001 and 18.06.2001 to respondent No.2 to recover the interest amount due. On 27.06.2001, the petitioner received a letter No. 02-12/IV/Bond/652 from respondent No.2 intimating that acute financial crunch and bifurcation of State of Madhya Pradesh (for short 'MP') and Chhattisgarh w.e.f. 01.11.2000 and unauthorized retention of revenues by Government of Chhattisgarh and its new board i.e. Chhattisgarh Electricity Board (for short 'CEB'), the action as planned to extinguish liability could not be implemented. Respondent No.2 while acknowledging its liability also stated that:

“...we would clear all the default no sooner than we receive revenues from CEB. We would also continue to clear liabilities to the extent we can till apportionment and allocation of liabilities between CEB and MPSEB is effected....”

4. The aforesaid letter was replied to by the petitioner vide letter dated 28.08.2001 stating *inter alia* that the money involved is that of Employees Provident Fund and requested respondent No.2 to expedite the payment of interest. In absence of any reply received from respondents, the petitioner vide letters dated 14.12.2001,

05.07.2002, 05.08.2002, 03.10.2002 requested respondent No.2 to release the interest amount. Vide letter dated 19.03.2005, respondent No.1 made a proposal to settle with the petitioner. The letter *inter alia* stated as under: -

“The overdues in this respect are proposed to be settled on following terms:-

- (i) Interest @7% p.a. from the date of default in making payment of half yearly installments of interest of 31.03.2005 or date of maturity whichever is earlier, alongwith principal overdue as on 31.03.2005 shall be paid in two equal installments in March 2005 and June 2005.
- (ii) Interest from 01.04.2005 on principal not yet due, if any, shall be paid @8% p.a. in place of coupon rate. This interest and principal not yet due shall be paid on the scheduled dated of the Bonds.
- (iii) No overrun or penal interest on principal under default and interest installments under default shall be claimed by the investor.
- (iv) Court cases or other litigations shall be withdrawn unconditionally by the investor.
- (v) The settlement would be subject to finalization or apportionment of liability of MPEB. Any additional liability on MPSEB (respondent No.2) arising out of this finalization shall also be settled on above principle.”

5. During the years 2006-2008, the petitioner wrote various letters, asking for 50% redemption of 13.70% MPEB bonds due on 13.01.2006 and half interest due on 13.07.2000 to 13.07.2006. On 03.02.2009, petitioner informed respondent No.2 that an amount of Rs. 11,74,934/- which includes principal as well as interest as on

31.01.2009 is due and payable by respondent No.2 to the petitioner and requested respondent No.2 to release the said amount. The petitioner informed respondent No.2 that it is liable to pay Rs.9,45,250/- i.e. the principal amount of Rs.5,00,000/- and interest Rs.4,45,250/- @ 13.70% w.e.f. 13.01.2000 to 13.01.2007 and @ 18% with quarterly rest w.e.f. 14.01.2006 to 31.01.2009 Rs.1,37,342/- and 14.01.2007 to 31.01.2009 Rs.92,342/- for and on behalf of MPEB. The petitioner therefore requested respondent No.1 to release an amount of Rs.11,74,934/-. On 04.04.2009, respondent No.2 issued a letter to the petitioner informing therein that it is not possible for respondent No.2 to revise their earlier offer which was communicated vide letter dated 19.03.2005 and enclosed a demand draft no.293268 dated 31.03.09 issued by SBI Nayageon, Jabalpur for Rs.7,33,914/- towards acceptance of the settlement offer, which was encashed by the petitioner herein without prejudice to its legal rights to claim the differential amount of Rs.7,62,633/- (as on 01.04.1999). Due to no further response from the respondents, to the petitioner's legally enforceable dues, the petitioner preferred the present petition.

6. Learned counsel for the petitioner contended that this court has the territorial jurisdiction to entertain the present petition since the entire transaction was undertaken and concluded at Delhi. The agents of Respondent No.2 approached the petitioner at Delhi, the application form was submitted at Delhi and the petitioner also made the investment at Delhi. Respondent No.1 being the unconditional and irrevocable guarantor to the issue of said bonds cannot abdicate its responsibilities and obligations as a guarantor. No adjudication is

required and the respondent No.1 is to be only directed to honour its solemn obligation and commitment made to the petitioner based on which the petitioner had changed its position and made the investment. Respondent No.1 being a sovereign Government is bound by its obligation and the principles of promissory estoppel to honour its obligation. Admittedly, the principal amount has been paid to respondent No.2, therefore, there remains nothing to contest except the discharge of remaining liability of the respondent to the petitioner and there does not remain any issue to be adjudicated upon by this court except making of the balance payment of interest by the respondents. The liability of repayment pursuant to MPEB bonds lies with the respondent No.2 after the said reorganization of the states and their liabilities. Bifurcation of the State of MP into two new states i.e., State of Chhattisgarh and MP shall not absolve the respondents and in particular respondent No.2 for making the payment of the balance amount payable as per the contract and has no bearing and relation to the facts of the present petition.

7. It was lastly contended by the learned counsel for the petitioners that the act of respondent No.2 offering a settlement itself indicates that the liability of repayment pursuant to MPEB lies with respondent No.2 after the said reorganization of the states. For establishing his contentions, learned counsel for the petitioner has relied upon the order of this Court in, **‘Tirath Ram Shah Charitable Trust & Anr. v. State of Uttar Pradesh & Anr.’**, *decided on 09.07.2010 in W.P.(C) No. 9150/2009* and judgment of this Court in

‘Airports Authority of India & Ors. v. State of Jammu and Kashmir & Ors.’, 186 (2012) DLT 405.

8. *Per Contra*, learned counsel for respondent No.1 contended that no cause of action has accrued within the territorial jurisdiction of this Court and therefore the present petition is liable to be dismissed on this ground alone. The MPEB issued the bonds in question, which is no longer in existence. The State of MP has been bifurcated into two newly created states i.e. Chhattisgarh and MP as per Madhya Pradesh Re-organisation Act 2000. With effect from 15.11.2000, MPEB was dissolved by the Government of India under Section 58(3) of the Re-organization Act. Consequently, the State of Chhattisgarh and M.P. constituted two separate boards for different states namely C.S.E.B. and M.P.S.E.B. The M.P.S.E.B. is a new entity created by notification-dated 27.12.2000 under the said Reorganization Act. The Bonds of Rs.5,00,000/- were issued by MPEB and not MPSEB. However, it is true that the Bonds were backed by the government guarantee by the State of MP as it existed prior to Reorganization of State. The investor wise allocation of Bonds liability has been indicated on 23.05.2003. The Government of India finally decided the capital liability by notification dated 04.11.2004 dividing the liability in the ratio of 90:10 between MPSEB and CEB. This government of India's notification was challenged by the government of MP and MPSEB before the Supreme Court of India, who passed an order dated 25.04.2005 to maintain status quo, which is still prevailing. Therefore, the payment of interest to the bondholders could not be made on due date. The bonds related to locality was decided by the

Government of India by a provisional order dated 23.05.2003 which is under challenge before this Court in W.P.(C) No. 5083/2003. The investment of the petitioner was allocated to MPSEB. The settlement scheme was offered to the petitioner by MPSEB and also the principal amount was paid. The present petition is liable to be dismissed for non-joinder of parties as the State of Chhattisgarh and CSEB are necessary parties, who have not been joined and the Writ Petition has been filed against the MPSEB.

9. Learned counsel for the respondents further contended that on 18.06.2009 out of 329 investors whose total investment with respondent No.2 was of Rs.523.78 crores. 279 investors having investment of Rs.406.55 crores accepted the settlement and respondent No.2 started making payment accordingly. Out of the total number of investors, 180 investors were Provident Fund related, who accepted the offer. The amount as per the scheme stood paid to the petitioner. The repo rates are further down, but the petitioner and other were paid at the prevailing rate of 8%.

10. I have heard learned counsel for the parties and have also perused the material on record.

11. Before advertng to the facts of the present case, this court seeks to entertain the question of territorial jurisdiction of this court raised by the respondents.

12. In order to appreciate the jurisdictional aspect, it would be relevant to discuss the meaning of the expression 'cause of action'. Cause of action is a fundamental element to confer the jurisdiction

upon any Court, which has to be proved by the petitioner/plaintiff to support his right to a judgment of the court. In '**State of Bombay v. Narothamdas Jethabai and Anr.**', *AIR 1951 SC 69*, the Supreme Court was of the view that:

“18. ...The jurisdiction of the courts depended in civil cases on a "cause of action" giving rise to a civil liability, and in criminal cases on the commission of an offence, and on the provisions made in the two Codes of Procedure as to the venue of the trial and other relevant matters....”

13. Further in '**Oil and Natural Gas Commission v. Utpal Kumar Basu and Ors.**', *(1994) 4 SCC 711*, the Supreme Court further stated that:

“8. It is well settled that the expression 'cause of action' means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In *Chand Kaur v. Pratap Singh* 1889 (16) Cal 98 Lord Watson said:

...the cause of action has no relation whatever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action or in other words to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

9. Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has

territorial jurisdiction to entertain a Writ Petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition....”

Therefore, from the above discussion, it can be established that compendiously the expression ‘cause of action’ means every fact which would be necessary for the petitioner to prove, if traversed, in order to support his right to the judgment of the Court. To constitute the territorial jurisdiction, the whole or a part of cause of action must have arisen within the territorial jurisdiction of the court and the same must be decided on the basis of the averments made in the complaint without embarking upon an enquiry as to the correctness or otherwise of the said facts.

14. Reverting to the facts of the present case, it is the contention of the petitioner that a substantial part of cause of action has arisen within the territorial jurisdiction of this Court. In support of this contention the petitioner has relied upon certain documents. A perusal of the information memorandum dated 17.09.1999 suggests that R.R. Financial Consultants Ltd./respondent No.3 was the ‘Sole Arranger’ for the private placement of the MPEB bonds. Further, the forms for the MPEB bonds could have been submitted at the New Delhi (Parliament Street) branch of State Bank of India as well. Also, in addition to the application form submitted by the petitioner in New Delhi, the investment had been made by the petitioner in Delhi as well through respondent No.3 i.e. the agent/lead arrangers of

respondent No.2. Therefore, the entire transaction was undertaken and concluded at Delhi and no reasonable ground is made out for this court to not entertain the present writ petition.

15. Further it is the contention of respondents that repo rates are further down, but the petitioner and others were paid at the prevailing rate of 8%. This contention does not find favour with this court as it is not tenable in the eyes of the law. The petitioner invested the amount of Rs.5,00,000/- in the bonds offered by respondent No.2 to raise Rs.100 crores. This was backed and supported by an unconditional and irrevocable guarantee issued by respondent No.1 with 13.70% p.a. coupon rate and 14.17% p.a. annualized yield payable half yearly for a tenure of 7 years. The very purpose behind the guarantee provided by respondent No.1 is to ensure the payment in case respondent No.2 is not able to make payment. In the circumstances, the fact that the respondent No.2 is in financial difficulties cannot be a ground for respondent No.1 to say that it would make the payment of interest based on the available repo rates. A perusal of the guarantee dated 12.08.1999 (affixed as Annexure P-15, Page 47) states the usage of the following words:

“...This guarantee is unconditional and irrevocable and shall remain in force until all the bonds pursuant to the above are redeemed.”

16. A ‘contract of guarantee’ has been aptly coded under section 126 of the Indian Contract Act, 1872 which reads as under:

“126. ‘Contract of guarantee’, ‘surety’, ‘principal debtor’ and ‘creditor’—A ‘contract of guarantee’ is a

contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person to whom the guarantee is given is called the 'creditor'. A guarantee may be either oral or written. —A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person to whom the guarantee is given is called the 'creditor'. A guarantee may be either oral or written."

Therefore, if this court accepts the contention of the respondents, the very purpose of an unconditional and irrevocable guarantee will be defeated.

17. It is another contention of the respondents that the MPSEB is a new entity created by notification-dated 27.12.2000 under the Reorganization Act and the Bonds of Rs.5,00,000/- were issued by MPEB and not MPSEB. This contention does not find favour with this Court as well. The guarantee in respect of the said bonds has been made by respondent No.1 and irrespective of the distribution of assets and liabilities between MPSEB and CEB, the guarantees so made by the government should withstand any form of distribution proportion. Therefore, the amount receivable by the petitioner, shall be payable by respondent No.1 even on behalf of the successor entity of MPEB i.e. MPSEB, which shall form part of all the dues payable by MPSEB.

18. This court shall now determine the question of the dues payable by respondent No.1 in this case and if the interest is payable by respondent No.1, how should the same be calculated. In '**State of U.P. v. Hindustan Unilever Ltd.**', *civil appeal No.6126/2008 (arising out of SLP (C) No.3146/2006 decided on 15.10.2008* the Supreme Court has determined the computation on the basis of which a rate of interest on a guarantee is payable in the following manner:

“7. In the circumstances, we are of the view that the State Government should pay the interest also. However, on the facts and circumstances, we are of the view that interest should be paid at the rate of 14.9% p.a. for a period of five years from the date of deposit and thereafter at the rate of 9.5% per annum (which is equal to the minimum rate of interest that is payable by the first respondent to its workers on the provident fund dues). The above concession regarding interest is granted on the peculiar facts of these appeals. Three months' time is granted to the Government of Uttar Pradesh to pay the balance interest.”

19. The aforementioned judgment in **Hindustan Unilever Ltd.**'s case (*supra*) squarely applies to the facts of the present case.

20. In view of the aforesaid discussion, the petition is allowed. The respondent No.1 is directed to pay to the petitioner the principal amount i.e. Rs.5,00,000/- (Rupees five lakhs) along with simple interest @14.9% per annum for a period of seven years from the date of deposit and thereafter @9.5% per annum simple interest (equal to the public provident fund rate of interest).

21. It is made clear that the respondent No.1, will pay the aforementioned amount within the period of 12 weeks failing which a

further simple interest at 15% p.a. shall be levied on respondent No.1 for the period of delay. The amount, if any, paid by respondent No.1 shall be adjusted.

22. No order as to costs.

(VED PRAKASH VAISH)
JUDGE

AUGUST 17, 2015
hs