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

\+ W.P.(C) 7348/2014

Lt. COL. (Retd.) N.S. GULIA ..... Petitioner
Through: Ms Swaty Malik & Mr Sanjeev Kr. Baliyan, Advs.

versus

GENERAL SECRETARY, THE INDIAN EX-SERVICES LEAGUE & ORS ..... Respondents
Through: Mr Amitava Chauhan, Adv. for R-1 & 2.
Mr Manish Mohan, CGSC with Mr Brajesh Kumar, Ms Manisha Rana, Ms Sidhi Arora & Ms Hina Shaheen, Advs. for R-3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% **29.01.2015**

1. This is a petition filed under Article 226 of the Constitution. The reliefs sought in the writ petition is as follows:

> "a. Direct the respondents to refund the donation of Rs. 2,50,000/- along with interest, made towards the construction of a one room set at the Sainik Rest house in IESL Complex.
>
> b. Any other order/ direction which this Hon'ble Court may deem fit & Proper to be passed in the given facts and circumstances of the case."

2. Notice in this petition was issued on 31.10.2014. On that date, respondent no.3, was represented. On return on notice, i.e., on 18.11.2014, respondent no. 1 and 2, also entered appearance. The contesting respondents in this matter are respondent no. 1 and 2. In effect, it is the Indian Ex-Services League (in short the League), which is a society

registered under the Societies Registration Act, 1860. The league, thus, seeks to contest the present writ petition.

2.1 Counter affidavit has not been filed on behalf of the respondents to date, despite opportunity. In so far as respondent no.3 is concerned, opportunity was given as far back as on 31.10.2014, while as regards respondent nos. 1 and 2, opportunity was given as far back as on 18.11.2014.

2.2 I may only note that on 18.11.2014, this court had directed that respondent nos. 1 and 2 would deposit a sum of Rs. 2.50 lacs, which was given as donation by the petitioner to the League, with the registry of this court. I am informed by the learned counsel for respondent nos. 1 and 2, that the said sum, has been deposited.

3. This is, according to me, is a sad case where the petitioner, who donated Rs. 2.50 lacs for construction of a one-room set in the memory of his son Wg. Cdr. Nitender Singh Gulia, as far back as on 09.11.2010, has not been able to get the League to do the needful in the matter. There is no dispute before me that the said sum was donated by the petitioner; a fact which is evident from the order of this court dated 18.11.2014 and its compliance by the League. The factum of receipt of donation from the petitioner is also evidenced from a bare perusal of this letter dated 10.01.2011, issued by the League. At that stage, it was indicated that the donation had been accepted, and that, the petitioner, will be entitled to exemption under Section 80G of the Income Tax Act, 1961 (in short the I.T. Act).

4. The petitioner, after waiting for nearly year and half, wrote to the League on 02.05.2012, bringing to fore his agony that the donation he made

in the memory of his late son, had not borne fruit, as no announcement had been made with regard to the project, envisaged. The petitioner, expressed his disappointment with the state of affairs and sought refund of the amount, with interest, by 31.05.2013.

4.1 It is in response to the petitioner's letter dated 02.05.2012, that the League, addressed a communication dated 13.05.2013. The response of the League, in my view, made matters worse, as what was communicated to the petitioner was that, though the project was definitely in pipeline, the League, could not fix an exact date qua the commencement of the project. It was also indicated, in the very same communication, that the amount, had been donated voluntarily by the petitioner and, therefore, such a donation, once made, are "ethically" and "morally", never claimed back.

4.2 The petitioner, however, followed up his request with: the communication dated 14.08.2013; and refund of notice dated 03.02.2014, and 18.08.2014. Having failed to secure his money, the petitioner, has approached this court by way of the present petition.

5. Learned counsel for respondent no. 1 and 2 says that this writ is not maintainable, against the League, as it is neither State nor a public authority. It is his submission that once a donation is made, it cannot be claimed back by the donor.

6. According to me, a writ under Article 226 of the Constitution is maintainable. The League, i.e., respondent no.1, is operating in the realm of public law, and therefore, is amenable to writ jurisdiction of this court. [See: ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & ors. vs V.R. Rudani & Ors., (1989) 2 SCC 691***].

7. The only question left is, whether this money can be claimed back. According to me, the petitioner can claim back the money because, though it was given voluntarily, the act of giving had a condition attached to it which was to build a room in the memory of his late son, Wg. Cdr. Nitender Singh Gulia. The said transaction was ingrained with the implicit condition that the money given, would be utilized for the specified purpose, albeit within a reasonable time frame. Strictly, the money handed over, in this case, may not be in the nature of a donation, as it had a condition attached to it. The League, having not put the money to use for the specified purpose, and there being no timeline put in place as to when the project will commence, it will only be proper that the League returns the money to the petitioner, so that he can make use of it, and if he desires, give the money for the same cause, to another organization. The failure to act on the mandate of the petitioner being unsustainable in law, the necessary consequences of refund should follow in this case.

8. In these circumstances, the writ petition is allowed. The money deposited in this court will be released to the petitioner forthwith. The interest accrued thereon shall also be paid to the petitioner.

9. Needless to say, since the petitioner would have, I presume, claimed exemption under Section 80G of the I.T. Act, the said disclosure would be made in the petitioner's return, so that the exemption is suitably reversed by the income tax authorities.

10. The petition is, accordingly, disposed of.

RAJIV SHAKDHER, J

JANUARY 29, 2015
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