

- THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

± WRIT PETITION No.3543 OF 2016

% 28th April, 2016.

WRIT PETITION No.3543 OF 2016

M/s Church of South India Trust Association – Medak Diocese, rep. by its
Treasurer and General Power of Attorney Holder, Dr.B.Vimal Sukumar and
another

.. PETITIONERs

VS.

\$ The Medical Council of India,
rep. by its Secretary and another

.. RESPONDENTs

! Counsel for the petitioner : Sri V.Venkataramana

^ Counsel for the respondents : Sri Vivek Chandrasekhar

< Gist:

> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.3543 OF 2016

Between:

M/s Church of South India Trust Association – Medak Diocese, rep. by its
Treasurer and General Power of Attorney Holder, Dr.B.Vimal Sukumar and
another

... Petitioner

and

-

The Medical Council of India,

rep. by its Secretary and another

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 28.04.2016

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

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1 Whether Reporters of Local newspapers may Yes/No
 be allowed to see the Judgments?

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2 Whether the copies of judgment may be Yes/No
 marked to Law Reports/Journals

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3 Whether Their Ladyship/Lordship wish to see Yes/No
 the fair copy of the Judgment?

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THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

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WRIT PETITION No.3543 of 2016

ORDER:

The 1st petitioner is a Christian religious charitable non-profit organisation. The 1st respondent is a statutory authority constituted under the Medical Council of India Act, 1956. The 1st petitioner established the 2nd petitioner-College at Nizamabad after obtaining permission from the 1st respondent and an essentiality certificate from the erstwhile State of A.P. It invested Rs.30 Crores for the said project. It admitted the first batch of students in 2003-04. It was not granted permission by the 1st respondent / Govt.of India for admitting students during the academic years 2004-05, 2005-06 and 2006-07 in view of

certain deficiencies.

2. At the time of establishment of the 2nd petitioner-Medical College, as part of compliance of requirements, the 1st petitioner had furnished a Bank Guarantee bearing No.194/2005 (for short 'the Bank Guarantee') through Federal Bank Limited, Hyderabad, for Rs.7.00 Crores in favour of the 1st respondent. The petitioner contends was meant to be utilized by the State Government in the event the students of the 2nd petitioner-College were diverted to Government institutions at a later point of time to augment infrastructural facilities in the Government Colleges.

3. The then State Government cancelled the essentiality certificate of the 2nd petitioner vide G.O.Ms.No.333 Health, Medical and Family Welfare (G.1) Department dt.06.10.2007 and requested the Government of India to invoke the Bank Guarantee of Rs.7 Crores provided by the 1st petitioner.

4. Aggrieved by the same, the petitioner filed W.P.No.1336 of 2008 before this Court.

5. During the pendency of the said writ petition, on 08.02.2008, the Bank Guarantee of Rs.7 Crores together with subsequent interest was encashed by the Government of India and proceeds thereof were transferred to the 1st respondent.

6. On 02.02.2011, the said Writ Petition was allowed. This Court held that as per the said G.O., inspection

has been conducted by the 1st respondent and certain deficiencies were pointed out; that the inspection report of the 1st respondent dt.06/07-06-2006 showed only one deficiency with regard to records relating to faculty, which had to be furnished to the 1st respondent directly; and even after furnishing such records to the 1st respondent, it did not act upon it; and in the meantime, the impugned G.O. was issued by the State Government cancelling the essentiality certificate under Section 10(1) of Indian Medical Council Act, 1956. It held that the 1st petitioner had invested Rs.30 crores, that the entire infrastructure was lying idle and the State had not contended that there was no necessity to establish a medical college in that area. It noted that there was a necessity to establish a medical college at Nizamabad and permission was granted for the academic year 2003-04 for intake capacity of 100 students and in fact 89 students were admitted. It also noted that though permission was not granted for the subsequent years for admission of students, all the 89 students admitted in the academic year 2003-04 studied in the same college for 5 ½ years and wrote examinations without any hindrance and this itself shows that the 2nd petitioner-College had sufficient infrastructural facilities to provide medical education to the students. It held that even if there are some deficiencies which are alleged to be not fulfilled as per norms of 1st respondent, it would not mean that the 2nd petitioner-College, which had invested Rs.30 Crores and which had 89 students completing their 5½ years course in the college, cannot provide the

infrastructural facilities to run the college warranting cancellation of essentiality certificate. It therefore issued the following directions while disposing of the Writ Petition on 02.02.2011:

- “1. *The petitioners are directed to make an appropriate application seeking inspection before the MCI within a period of four (04) weeks from the date of receipt of a copy of this order. On such a representation being filed, the MCI shall conduct a fresh inspection of the second petitioner college as to the infrastructural facilities available in the college for the purpose of granting permission for admission of fresh students in the next academic year. This exercise shall be completed within six (06) weeks from the date of submission of the representation by the petitioners.*
2. *The impugned G.O.Ms.No.333 dated 06.10.2007 is directed to be kept in abeyance till the MCI re-inspects the second petitioner college and takes a fresh decision as to the grant of permission for admitting the students.*
3. *In the meanwhile, the petitioners are at liberty to make an application before the NTR University of Health Sciences for refund of the fees collected by it i.e., Rs.5 lakhs insofar as ‘C’ category students and as fixed by the Government insofar as ‘A’ & ‘B’ categories at that point of time, since the students have pursued their entire education in the second petitioner College. The said application shall be considered by the NTR University of Health Sciences within a period of four (4) weeks from the date of receipt of the said application.*
4. ***Insofar as the Bank Guarantee furnished by the second petitioner College, which has already been invoked by the MCI is concerned, the same shall be refunded by the MCI on the petitioners furnishing a fresh Bank Guarantee.”***

7. The last direction in the said judgment to return or refund the amount subject to the petitioner submitting a fresh guarantee was given, keeping in mind the fact that the

proceeds of encashed Bank Guarantee given by the petitioner, which had been encashed on 18.02.2008, had been transferred to 1st respondent.

8. It is stated by Counsel on both sides that the State Government had not preferred any appeal against the said judgment, but the 1st respondent had filed appeal W.A.No.1003 of 2011 questioning the order in the said Writ petition, but no interim order was granted in its favour.

9. Petitioners furnished a fresh Bank Guarantee on 20.04.2015 and claimed refund of amount of Rs.7 Crores from the 1st respondent on 20.08.2015. The 1st respondent refunded/returned the said amount to the 1st petitioner by RTGS transfer.

10. As per information furnished to petitioners under the Right To Information Act, 2005, the interest accrued on this amount till end of February,2015 was Rs.392 lakhs.

11. In this Writ Petition, petitioners contend that the 1st respondent had utilized the proceeds of the Bank Guarantee amount of Rs.7 Crores from 18.02.2008 to 20.08.2015 as well as accumulated interest which is more than Rs.4 Crores; that it has no authority in law to appropriate the accumulated interest on the Bank Guarantee amount, the principal of which had been refunded by it on 20.08.2015; and in spite of various representations, requesting the 1st respondent to refund the

accumulated interest (which as on Feb, 2015 was Rs.392 lakhs) including the one dt.18.01.2016, the 1st respondent had not done so. It is alleged that 1st respondent, being a statutory authority, had no authority in law to appropriate the interest amount which legitimately belonged to the 1st petitioner and therefore, the 1st respondent should be directed to pay the petitioners the accumulated interest aggregated to over Rs.4 Crores, which had been utilized by the 1st respondent from 18.02.2008 to 20.08.2015, after the Bank Guarantee given by the 1st petitioner was encashed.

12. Sri Vedula Venkata Ramana, learned Senior Counsel appearing for the petitioners, contended that the respondents are trustees of the money which they have received on the encashment of Bank Guarantee for Rs.7 Crores given by the petitioner which was encashed on 18.02.2008, for which the actual beneficiary is the State Government and its Medical colleges. This is because the money payable under the Bank Guarantee was not intended under any circumstances for use by the respondents and it was to be paid to the State Government in the contingency of students of the 2nd petitioner-College being shifted to Government Institutions for augmenting facilities for further training and teaching therein. He also contended that trustees are liable to pay interest on the amount appropriated by them which are intended for the beneficiary and the trustees, such as the respondents, cannot plead the bar of such limitation and so a direction be given to the respondents to pay interest

accumulated on the amount of Rs.7 Crores.

13. The respondents filed counter contending that the Writ petition is not maintainable and that it was barred by delay, laches and acquiescence. It is stated that although Writ Petition No.1336 of 2008 was allowed on 02.02.2011 directing the petitioners to furnish a fresh Bank Guarantee for the original amount to the respondents in order to get refund of the amount on the original Bank Guarantee No.194 of 2005 given by the petitioners which had been invoked on 18.02.2008, the petitioners have furnished the fresh Bank Guarantee of the original amount to the respondent only on 20.04.2015. It is therefore contended that the petitioners are solely responsible for the delay in refunding of the amount of the original Bank Guarantee, that the said delay of more than five years on the part of the petitioners in furnishing the fresh Bank Guarantee, cannot be condoned and the Writ petition should be dismissed on the ground of delay and laches. It is further contended that the petitioners are bound by the provisions of the Limitation Act, 1963 and that Article 101 of the Schedule thereto prescribes three years from the date of judgment as the period of limitation for filing a suit to recover the amount after judgment or revision before the Court, that the period of three years commenced from 02.02.2011 when W.P.No.1336 of 2008 was allowed and ended on 02.02.2014 and even if Article 113 of the Limitation Act 1963 applies, still after 02.02.2014 the claim for interest became barred by limitation.

14. Reliance was placed on the decisions of the

Supreme Court in **State of Madhya Pradesh & Anr. Vs. Bhailal Bhai & Ors.**^[1], **M/s Tilokchand Motichand & Ors. V. H.B.Munshi & Anr.**^[2], **Municipal Corporation of Greater Bombay v. Bombay Tyres International Ltd. &Ors.**^[3], and **P.R.Narahari Rao v. State of Kerala & Ors.**^[4].

15. It is also contended that the Writ Petition is in the nature of a suit for recovery of money without paying requisite Court fee and the same is not maintainable. Reliance is placed on **Raja Bahadur Motilal & Anr. V. State of Maharashtra &Ors.**^[5]; **Marudhara Conductors & Anr. V. Haryana State Electricity Board**^[6]; **City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandwala & Ors.**^[7]; and **Kanaiyalal Lalchand Sachdev & Ors v. State of Maharashtra & Ors.**^[8].

16. Certain contentions on the regulatory power of the Medical Council of India under the Indian Medical Council Act, 1956 as well as certain case law in support of the said contentions were referred to in the counter, which are not necessary to be considered for the disposal of this case. Also certain contentions touching on the merits of the judgment in W.P.No.1336 of 2008 are also raised, which also cannot be considered in this Writ Petition, since a Writ Appeal against the order passed in the said Writ Petition filed by the respondents is pending consideration before this Court.

17. Sri Vivek Chandrasekhar, learned counsel for respondents, also raised a new contention that the petitioners ought to have sought interest on the amount received by the respondents on the encashment of the Bank Guarantee for Rs.7.00 crores in W.P.No.1336 of 2008 itself and since they did not do so, in view of Order 2 Rule 2 CPC, their claim ought to fail.

18. However, it is admitted in para 58 of the counter filed by the respondents that the Central Government by letters dt.09.01.2008 and 01.02.2008 informed the respondents that the proposal to shift 89 MBBS students without any reduction in MBBS seats in the subsequent year in the Government Medical Colleges of the State of Andhra Pradesh had been accepted and that *permission was given to the respondents to invoke performance Bank Guarantee provided by the petitioners so as to make available the funds to the State Government of Andhra Pradesh so that the State Government could facilitate shifting of the said students from the 2nd petitioner College to other government medical colleges with the State.*

19. From the pleadings raised by the parties, the following issues arise for consideration:-

a) *Does the 1st respondent stand in a position of a trustee?*

b) *If so, is a trustee entitled to withhold the interest on the amount received by him in law ?*

c) *Whether the claim of the petitioners for recovery of interest on the amount of Rs.7.00 crores paid to the 1st respondent is barred by*

the plea of limitation?

d) Whether the bar of Order 2 Rule 2 CPC can be invoked by the respondents to deny the claim for interest made by the petitioners in this Writ Petition on the ground that such a claim was not made by the petitioners in W.P.No.1336 of 2008?

e) Whether the Writ Petition filed for recovery of interest on the amount of Rs.7.00 crores paid to the 1st respondent should be dismissed since the petitioners have an alternative remedy of civil suit?

f) Whether the petitioners are entitled to the interest for the period from 18-02-2008, the date when the proceeds of the Bank Guarantee were received by 1st respondent till the principal amount of Rs.7.00 crores was refunded to the petitioners by 1st respondent on 20-08-2015 and whether petitioners should be denied interest for the period 02-02-2011, the date when W.P.No.1336 of 2008 was allowed till fresh Bank Guarantee was given by petitioners on 20-04-2015 pursuant to the order in the said Writ Petition?

POINT (a):-

20. It is the contention of the learned counsel for the petitioners that the 1st respondent is in the nature of a trustee since it is admittedly not the beneficiary of the said Bank Guarantee and the intended beneficiary is the State Government who was entitled to utilize the sum of Rs.7.00 crores given as Bank Guarantee by the petitioners in the event the students of the 2nd petitioner college were diverted to State

Government Institutions for augmenting facilities for further training and teaching.

21. This is not disputed by the respondents. In para 58 of their counter, it is admitted by the respondents that the 1st respondent was permitted to invoke the Bank Guarantee submitted by the petitioners for making available the required fund to the Government of Andhra Pradesh so that the State Government could facilitate the shifting of students from 2nd petitioner medical college to other Government medical colleges within the State.

22. No provision of the Medical Council Act, 1956 is brought to my notice empowering the 1st respondent to appropriate to itself the proceeds of such Bank Guarantees for its own benefit.

23. From this admitted legal and factual position, it follows that the 1st respondent is in the position of a trustee and holds the money received on encashment of Bank Guarantee given by the petitioners for the benefit of the State Government only.

POINT (b):-

24. It is settled law that a trustee committing a breach of trust is liable to pay interest where he actually received interest. Section 23 (a) of the Indian Trusts Act, 1882 makes this clear. In **Hukumchand Gulabchand Jain v. Fulchand Lakshmichand Jain** ^[9], the Supreme Court held that a trustee has to conduct the affairs of the Trust in the same manner as

an ordinary prudent man of business would conduct his own affairs, and that he has to account for the principal trust money and can also be charged with interest on it, when he retains the trust money by mixing it with his own money or property.

25. Therefore, if the 1st respondent is said to be a trustee at law, it is liable for interest on the principal trust money of Rs.7 crores which it has received from the Federal Bank Limited when the Bank Guarantee given by the petitioners was encashed on 18.02.2008.

POINT (c) :

26. Section 10 of the Limitation Act, 1963 states:

“Section 10 - Suits against trustees and their representatives:

Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

Explanation.--For the purposes of this section any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of the property shall be deemed to be the trustee thereof.”

27. Thus no suit against a person in whom property has become vested in trust for any specific purpose shall be barred by any length of time for the purpose of following in his hands such property or proceeds thereof or for an account of

such property or proceeds.

28. In **Beli Ram and Brothers Vs. Md. Afzal**^[10], the Privy Council observed that the time never runs in favour of a trustee so as to enable them to claim the trust property himself.

29. In **Vankamamidi Balakrishna Murthi v. Gogineni Sambayya**^[11], a Division bench of this Court observed that for an express trust, two tests are prescribed in paragraph 1 of Section 10 i.e vesting and specification of purpose.

30. In **M/s.Brahmayya & Co. Official Liquidators, Hanuman Bank Limited (in liquidation) Vs. V.S.Ramaswami Aiyar and another**^[12], cited by the learned counsel for respondents also it was held that Section 10 of the Limitation Act, 1963 applies only to “trust for any specific purpose” i.e. cases of express trust and would have no application to implied trust i.e. such trust as law implies from the existence of particular facts or fiduciary relationship.

31. In the present case, both these conditions are fulfilled. The amount covered by the Bank Guarantee vested in the 1st respondent and the purpose was specific i.e for making available the required fund to the Government of Andhra Pradesh so that the State Government could facilitate the shifting of students from 2nd petitioner medical college to other Government medical colleges within the State. Thus there is an express trust in favour of the 1st respondent. I do not agree with

the contention of the learned counsel for the respondents that there is no express trust in this case and that the trust is only implied by law.

32. In this view of the matter, it cannot be said that the claim for interest on the amount of the Bank Guarantee proceeds retained by 1st respondent is barred by time in view of Section 10 of the Limitation Act, 1963. Therefore the claim of petitioners for interest cannot be barred by any length of time and it subsisted on the day the Writ Petition was filed and even subsequent thereto. This point is accordingly answered in favour of the petitioners and against the respondents.

POINT (d):-

33. A Constitution Bench of the Supreme Court of India in **Devendra Pratap Vs. State of U.P.** ^[13], observed that the bar of Order 2 Rule 2 CPC may not apply to a high prerogative writ under Article 226 of the Constitution of India.

34. Though the learned counsel for the respondents relied upon the decisions in **Sumer Mal Vs. State of Rajasthan** ^[14] and **Swatantra Agarwal Vs. M.D., U.P. Finance Corporation** ^[15] to contend that the said provision also applies to writ proceedings, both these decisions did not refer to the decision of the Supreme Court in **Devendra Pratap** (9 supra). Therefore they are not good law and cannot be said to be binding on this Court.

35. Accordingly, it is held that the respondents cannot raise the plea of bar of Order 2 Rule 2 CPC and plead for dismissal of this Writ Petition on that ground.

POINT (e):-

36. The counsel for petitioners contended that the Writ Petition is maintainable for recovery of the interest received on the amount of Rs.7 crores by the 1st respondent since no disputed questions of fact arise for consideration. The counsel for respondents however refuted the said contention and contended that the petitioners ought to be relegated to a civil suit for recovery of the said amount also.

37. This issue was considered in **ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.** ^[16]. It held that 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; merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a Writ Petition in all cases as a matter of rule; and a Writ Petition involving a consequential relief of monetary claim is also maintainable. It observed :

*“25. The learned counsel for the respondent then contended that though the principal prayer in the writ petition is for quashing the letters of repudiation by the first respondent, in fact the writ petition is one for a “money claim” which cannot be granted in a writ petition under Article 226 of the Constitution of India. In our opinion, this argument of the learned counsel also cannot be accepted in its absolute terms. This Court in the case of **U.P. Pollution Control Board v. Kanoria Industrial Ltd** ^[17] while dealing with the question of refund of money in a writ petition after discussing the earlier case-law on this subject held: (SCC pp. 556-58, paras 12 & 16-17)*

“12. In the para extracted above, in a similar situation as arising in the present cases relating to the very question of refund, while answering the said question affirmatively, this Court pointed out that the

courts have made distinction between those cases where a claimant approached a High Court seeking relief of obtaining refund only and those where refund was sought as a consequential relief after striking down of the order of assessment etc. In these cases also the claims made for refund in the writ petitions were consequent upon declaration of law made by this Court. Hence, the High Court committed no error in entertaining the writ petitions.

* * *

16. In support of the submission that a writ petition seeking mandamus for mere refund of money was not maintainable, the decision in **Suganmal v. State of M.P.** ^[18] was cited. In AIR para 6 of the said judgment, it is stated that

‘we are of the opinion that though the High Courts have power to pass any appropriate order in the exercise of the powers conferred under Article 226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax’.

17. Again in AIR para 9, the Court held:

‘We, therefore, hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The aggrieved party has the right of going to the civil court for claiming the amount and it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases, be appropriately raised and considered in the exercise of writ jurisdiction.’

This judgment cannot be read as laying down the law that no writ petition at all can be entertained where claim is made for only refund of money consequent upon declaration of law that levy and collection of tax/cess is unconstitutional or without the authority of law. It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, in the cases on hand where facts are not in dispute,

collection of money as cess was itself without the authority of law; no case of undue enrichment was made out and the amount of cess was paid under protest; the writ petitions were filed within a reasonable time from the date of the declaration that the law under which tax/cess was collected was unconstitutional. There is no good reason to deny a relief of refund to the citizens in such cases on the principles of public interest and equity in the light of the cases cited above. However, it must not be understood that in all cases where collection of cess, levy or tax is held to be unconstitutional or invalid, the refund should necessarily follow. We wish to add that even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case.”

26. *Therefore, this objection must also fail because in a given case it is open to the writ court to give such monetary relief also.*

27. *From the above discussion of ours, the 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 fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

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

38. **In Godavari Sugar Mills Ltd. v. State of Maharashtra**^[19], the Court reiterated the said principle by holding :

“8.

*(i) Normally, a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of a breach of a contract or a tort to pay an amount of money due to the claimants. The aggrieved party will have to agitate the question in a civil suit. But an order for payment of money may be made in a writ proceeding, in enforcement of statutory functions of the State or its officers. (Vide *Burmah Construction Co. v. State of Orissa*^[20].)*

(ii) If a right has been infringed—whether a fundamental

right or a statutory right—and the aggrieved party comes to the Court for enforcement of the right, it will not be giving complete relief if the Court merely declares the existence of such right or the fact that existing right has been infringed. The High Court, while enforcing fundamental or statutory rights, has the power to give consequential relief by ordering payment of money realised by the Government without the authority of law. (Vide *State of M.P. v. Bhailal Bhal*^[21].)

(iii) A petition for issue of writ of mandamus will not normally be entertained for the purpose of merely ordering a refund of money, to the return of which the petitioner claims a right. The aggrieved party seeking refund has to approach the civil court for claiming the amount, though the High Courts have the power to pass appropriate orders in the exercise of the power conferred under Article 226 for payment of money. (Vide *Suganmal v. State of M.P.*^[22].)

(iv) There is a distinction between cases where a claimant approaches the High Court seeking the relief of obtaining only refund and those where refund is sought as a consequential relief after striking down the order of assessment, etc. While a petition praying for mere issue of a writ of mandamus to the State to refund the money alleged to have been illegally collected is not ordinarily maintainable, if the allegation is that the assessment was without a jurisdiction and the taxes collected was without authority of law and therefore the respondents had no authority to retain the money collected without any authority of law, the High Court has the power to direct refund in a writ petition. (Vide *Salonah Tea Co. Ltd. v. Supdt. of Taxes*^[23].)

(v) It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, where the facts are not in dispute, where the collection of money was without the authority of law and there was no case of undue enrichment, there is no good reason to deny a relief of refund to the citizens. But even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case. (Vide *U.P. Pollution Control Board v. Kanoria Industrial Ltd.*^[24].)

(vi) Where the lis has a public law character, or involves a question arising out of public law functions on the part of the

State or its authorities, access to justice by way of a public law remedy under Article 226 of the Constitution will not be denied.

(Vide Sanjana M. Wig v. Hindustan Petroleum Corpn. Ltd. ^[25])”

39. In the present case, the 1st respondent had already been directed by this Court to refund the principal amount of Rs.7 crores received by it from the Federal Bank Limited when the Bank Guarantee was encashed on 18.02.2008. The claim for interest flows from the right declared by this Court of the entitlement of the petitioners to the principal amount. The 1st respondent, being a statutory authority, that too one in the position of a trustee is seeking to appropriate the interest amount on the sum of Rs. 7 crores which it had also received from the said bank along with the principal without any authority in law knowing fully well that it was not the intended beneficiary for the principal as well as the interest. Undoubtedly, therefore there is a public law character to this *lis* arising out of public law functions on the part of the 1st respondent and there are no disputed questions of fact to be gone into.

40. In **City and Industrial Development Corporation** (7 supra), cited by counsel for respondents it was observed in para 30 as under :

“30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;
(e) ex facie barred by any laws of limitation;
(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

That was a case where there was a delay of 35 years in filing a Writ Petition for illegal land acquisition by the State and the Court held that inordinate / unexplained delay in moving the Writ Court is an adequate ground for refusing relief. It was not a case for recovery of money. Therefore, the said decision has no application.

41. In **Kanaiyalal Lalchand Sachdev** (8 supra), a Writ Petition was filed against an order of possession of secured assets under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 without availing the remedy of appeal under Section 17 of the said Act. The High Court had dismissed the Writ Petition on the ground that efficacious remedy was available to the appellants under Section 17. This was confirmed by the Supreme Court observing that *ordinarily* relief under Article 226 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. The said principle is not in dispute but as a matter of law it cannot be said that the High Courts do not have powers to direct payment of money under Article 226 of the Constitution of India. As observed in **Godavari Sugar Mills Limited** (19 supra), where facts are not in dispute and where the collection of money was without the authority of law and

there was no case of undue enrichment, there is no good reason to deny a relief of refund under Article 226 of the Constitution of India.

42. In my considered opinion, this is a fit case for entertaining the Writ Petition and granting relief to the petitioners for the refund of the interest component on the principal amount of Rs.7 crores unjustly retained by the 1st respondent without any authority in law. Therefore, this point is also answered against the respondents.

POINT (f):

43. Under this point I will consider whether the petitioners are entitled to the interest for the period from 18-02-2008 (the date when the proceeds of the Bank Guarantee were received by 1st respondent) till 20-08-2015 (when the principal amount of Rs.7.00 crores was refunded to the petitioners by 1st respondent). In other words whether petitioners should be denied interest for the period 02-02-2011 (the date when W.P.No.1336 of 2008 was allowed) till 20-04-2015 when fresh Bank Guarantee was given by petitioners pursuant to the order in the said Writ Petition.

44. I have already held that the 1st respondent is in the position of a trustee and is liable to pay interest on the amount of Rs.7.00 crores which it had received on the encashment of the Bank Guarantee given by the petitioners. No statute or principle of law is cited by the respondents to retain any portion of the interest for any reason. Merely

because there was a delay on the part of the petitioners to furnish a fresh Bank Guarantee from 02-02-2011 till 20-04-2015, the respondents cannot be allowed to retain the interest on the amount of Rs.7.00 crores which they had received from the Bank along with the principal of Rs.7.00 crores when the Bank Guarantee was encashed for this period. Therefore I hold that the petitioners are entitled to the entire interest received by 1st respondent from the Federal Bank Limited on the principal amount of Rs.7.00 crores from 18-02-2008 till 20-08-2015 including the period from 02-02-2011 till 20-04-2015.

45. In the result, the Writ Petition is allowed with costs of Rs.10,000/- (Rupees Ten Thousand only) and the 1st respondent is directed to refund to the petitioners the entire interest received by 1st respondent from the Federal Bank Limited on the principal amount of Rs.7.00 crores from 18-02-2008 till 20-08-2015 including the period from 02-02-2011 till 20-04-2015 within one month from the date of receipt of a copy of this order.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-04-2016

GRA/KVR/NDR

Note: L.R.Copy to be marked.

[\[1\]](#) AIR 1964 SC 1006

[\[2\]](#) 1969(1) SCC 110

[\[3\]](#) 1998(4) SCC 100

[\[4\]](#) 2012(12) SCC 451

[\[5\]](#) 2003(1) BomCR 251

- [\[6\]](#) AIR 1998 Raj 322
- [\[7\]](#) 2009(1) SCC 168
- [\[8\]](#) 2011(2) SCC 782
- [\[9\]](#) AIR 1965 SC 1692
- [\[10\]](#) AIR 1948 P.C. 168
- [\[11\]](#) AIR 1959 AP 186 (DB)
- [\[12\]](#) AIR 1966 Madras 247
- [\[13\]](#) AIR 1962 S.C. 1334
- [\[14\]](#) AIR 2000 Rajasthan 1
- [\[15\]](#) AIR 1994 Allahabad 187
- [\[16\]](#) (2004) 3 SCC 553
- [\[17\]](#) (2001) 2 SCC 549
- [\[18\]](#) AIR 1965 SC 1740
- [\[19\]](#) (2011) 2 SCC 439
- [\[20\]](#) (2004) 3 SCC 553
- [\[21\]](#) AIR 1962 SC 1320
- [\[22\]](#) AIR 1964 SC 1006
- [\[23\]](#) (1988) 1 SCC 401
- [\[24\]](#) (2001) 2 SCC 549
- [\[25\]](#) (2005) 8 SCC 242