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

Date of Decision: 26.09.2016

\+ W.P.(C) 11593/2015

D.S. KAUNTAE ..... Petitioner

Through: Petitioner-in-person.

Versus

PRINCIPAL SECRETARY MINISTRY OF TELECOMMUNICATION & INFORMATION TECHNOLOGY AND ORS. ..... Respondents

Through: Ms. Shubhra Parashar, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

Ms. G.ROHINI, CHIEF JUSTICE (ORAL)

1. This petition has been filed with the following prayer;

> *"(a) Issue a writ in the nature of certiorari and quash/set aside the relevant impugned portion of Rule 101(ii)(b) and Rule 101(ii)(b)(iv) of The Post Office Recurring Deposit Rules, 1981 (Annexure P-5, page-30) being ultra-vires to the general public policy;*
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> *(b) Further issue a writ in the nature of 'mandamus' commanding/directing the respondents to immediately release the entire sum of petitioner's R.D. Account No. 0454039711 along with 12% interest per annum payable w.e.f. 22.09.2015 till actual date of the payment of the entire sum lying with the Respondent No.6 in the above mentioned RD Accounts without any due authority of law;*

(c) Pass such other and further orders as this Hon'ble Court may deem fit and proper in the interest of justice."

2. The facts in brief are as under:

The petitioner opened a Recurring Deposit on 11.03.2014 in the Delhi High Court Post Office for a denomination of Rs.10,000/- per month for a period of 5 years. It is pleaded that the petitioner made regular payments every month till 06.02.2015. Thereafter, for a period of six months he could not deposit the monthly installments and on 22.09.2015, when the petitioner sought to deposit a sum of Rs.60,000/- together with penalty amount, if any, it was not accepted and the petitioner was informed that his R.D. Account stands "frozen" on account of default. On 22.09.2015 itself, the petitioner made a representation to the respondent Nos.3 to 5 herein stating that in terms of Rule 101(ii)(b) of the Post Office Recurring Deposit Rules, 1991, it is not proper to freeze his R.D. Account and accordingly requested to revive the account. As there was no response, the petitioner got issued a legal notice dated 16.11.2015 and then filed the present petition on 07.12.2015 with the above prayer.

3. A counter affidavit has been filed on behalf of the respondent Nos.1 to 6 stating that the revival of the R.D. Account of the petitioner is not permissible as per Rule 101(ii)(b) of the Post Office Savings Bank Manual Volume-I according to which the account shall be treated as discontinued if there are more than four defaults and that the revival can be permitted only within a period of two months from the month of fifth default after payment of necessary default fee. It is explained that the monthly installments in respect of the petitioner's R.D. Account were made till 06.02.2015 and

thereafter as admitted by the petitioner himself no deposits were made till 22.09.2015. It is therefore contended that on account of four defaults by 06.06.2015, the R.D Account was treated as discontinued. Though the petitioner could have sought revival of the account within a period of two months from the month of fifth default i.e. 06.07.2015, he failed to do so. Therefore, the R.D. Account of the petitioner was rightly treated as frozen. It is also pleaded that as per Rule 119(i)(a) of the Post Office Savings Bank Manual Volume-I read with Rule 9A of the Post Office Recurring Deposit Rules, 1981 as amended vide Notification dated 04.11.1999, pre-mature closure of R.D. Account is not permissible before expiry of three years from the date of opening of the account and that the three years period has not lapsed in the instant case.

4. Heard both the parties.

5. The material placed on record shows that the Small Savings Schemes of the Government of India are governed by the Government Savings Bank Act, 1873, Government Savings Certificates Act, 1959 and Public Provident Fund Act, 1968. In exercise of the powers conferred by the said Acts, the Central Government made Post Office Savings Bank General Rules, 1981, Post Office Savings Account Rules, 1981, Post Office Recurring Deposit Rules, 1981, Post Office Time Deposit Rules, 1981, Post Office Monthly Income Account Rules, 1987, Sr. Citizen Savings Scheme Rules, 2004 and PPF Rules, 1968. Based on these statutory rules, Department of Posts which is operating the schemes on behalf of the Ministry of Finance (Department of Economic Affairs) framed its procedural rules in the shape of Post Office Savings Bank Manuals which are issued under the authority of Director General of Posts.

6. As could be seen, the Post Office Recurring Deposit Rules, 1981 are made by the Central Government in exercise of the powers conferred by Section 15 of the Government Savings Bank Act, 1873, providing for the persons by whom and the terms and conditions subject to which the Post Office Recurring Deposits may be made. Rule 5 of the said Rules provides for the maturity period of a recurring deposit account; Rule 6 provides for the manner of making the deposits; Rule 7 provides for the consequences of defaults if any in making the monthly deposits; Rule 8 provides for advance deposits; Rule 9 provides for repayment on maturity of the recurring deposit account; Rule 9A provides for premature closure of R.D. Account; and Rule 10 provides for the accounts which are continued beyond maturity period.

7. Rules 5 to 7, Rule 9A and Rule 10 which are relevant for the purpose of the present case read as under;

> *"5.* ***Maturity period****:- Maturity period of an account shall be five years.*
>
> *6.* ***Deposits****:- (1) Subject to the provisions of sub rule (2) to (4) and rule 10, a depositor shall make sixty monthly deposits in an account.*
> *(2) The amount of monthly deposit on accounts opened on or after the 1st day of April, 1986 shall be a multiple of five rupee, subject to minimum of ten rupees.*
> *(3) The first monthly deposit shall be made at the time of opening the account and the amount of such deposit shall be the denomination of the account. Each subsequent monthly deposit shall be made before the end of the calendar month and shall be equal to the first deposit.*
> *(4) Where a deposit is made by means of a cheque, pay order or demand draft, the date of its presentation to the Post Office Savings Bank shall be deemed to be the date of deposit.*

*7. **Defaults in deposits**:- (1) If there are not more than four defaults in the monthly deposits, the depositor may, at his discretion, extend the maturity period of the account by as many months as the number of defaults and deposit the defaulted instalments during the extended period.*
(2) If there are more than four defaults, the account shall be treated as discontinued. Revival of the account shall be permitted only within a period of two months from the month of fifth default. Interest at the rate of ten paise for every five rupee of a defaulted instalment for each month of default shall also be paid alongwith such deposit in lump sum and an account in which defaulted instalments are so deposited, shall not be treated as discontinued.

8. xxx xxxx
9. xxx xxxx

***9A. Premature Closure**:- The holder of an account may prematurely close the account after three years from the date of opening of the account provided that interest at the rate applicable from time to time to post office savings account shall be payable on such premature closure of account. However, no premature closure of account is permissible until the period for which the advanced deposits made under rule 8 is over.*

*10. **Accounts continued beyond maturity period**:- (1) Notwithstanding anything contained in the forgoing rules, if sixty monthly deposits have been made in an account during its maturity period or maturity period as extended under sub-rule (1) of the rule 7, the depositor may, at his option, continue the account for a further period upto maximum of five years and make monthly deposits during such further period. Each such monthly deposit shall be equal to the first deposit in the account. The provisions of rules 7 and 8 shall be applicable to such deposits also.*
(2) An account continued under sub-rule (1) may, at any time, be closed by the depositor and on such closure he shall

be entitled to receive repayment of the amount, inclusive of interest as follows:

(a) If the account is closed after being continued under sub-rule (1) for a completed number of years, the depositor shall be entitled to receive the amount as specified in Table 1, 2, 11, 13, 17, 20, 22, 26, 29, 32, 35, 38 or 41as the case may be.

(b) If the account is closed after being continued under sub-rule (1) for a period of less than one year, the depositor shall be entitled to receive the amount as specified under sub-rule (1) of rule 9 together with (i) interest on such amount for the complete months for which the account was continued and (ii) the amount of deposits made by him during the period for which the account was continued.

(c) If the account is closed after being continued under sub-rule (1) for a completed number of years not exceeding 4 and for a part of a year thereafter, the depositor shall be entitled to receive (i) the amount as specified in table 1,2,11,13,17, 20,22, 26,29,32,35,38 or 41 as the case may be relevant to the completed number of years; (ii) interest on such amount for the complete months in the partial years, and (iii) the amount of deposits made by him during the partial year.

(d) The interest referred to in a clause (b) and (c) shall be calculated at the rate applicable, from time to time, to savings accounts of the type of single or joint account."

8. The provisions of the above noticed Rules have been codified in the Post Office Savings Bank Manual Volume-I as Rule 101 and the same may be reproduced hereunder for ready reference;

"**101**(i) *In case of RD accounts opened between 1st Day and 15th day of a calendar month, the each subsequent deposit in the account shall be made up to 15th day of the next month and in case of RD accounts opened between 16th day and last working day of the calendar month, the each subsequent deposit in the account shall be made up* *to the end of the next calendar month. Where a depositor defaults in payment of any monthly installment, installments for subsequent months will be accepted so long as the number of defaults does not exceed four.*

Note:- *Advance deposits may also be allowed in accordance with RD Rules, 1981 and rebate on advance payment will be allowed in accordance with provision of Rule 111.*

(ii)(a) Penalty at the prescribed rate will be levied on defaulted installments subsequently deposited during the currency of the account.

(b) The account will be treated as discontinued if there are more than four defaults. Revival of such account will be permitted only within a period of two months from the month of fifth default after payment of necessary default fee. If the account is not revived within this prescribed period, it will be treated as discontinued and shall not be permitted to be revived after the said period. For example, if there are five defaults in a RD account from January to May 2002, this account will be treated as discontinued. The account can be revived if all the defaulted installments along with interest from January, 2002 are deposited in lump sum by June, 2002. The account will not be revived thereafter.

(iii) In an account which has defaults within the prescribed limits mentioned in sub-para (ii) above, the date of maturity will be extended by the number of months for which default has occurred. During the extended period, the defaulted installments can be paid without penalty and the depositor will be entitled for the full maturity value at the end of the extended period. However, it may be noted that the defaulted installments paid with penalty during the currency of the account will not operate to extend the date of maturity nor will they be counted as defaults for any other purpose. If the defaulted installments are paid with interest on maturity or during the extended period of maturity, full maturity

value with interest will be paid without waiting for the expiry of extended period of maturity.

(iv) A depositor whose account has been treated as "Discontinued" will not be eligible for the following benefits:-

(a) Withdrawal
(b) Rebate of advance deposits"

9. It is contended by the petitioner who appeared in person that the interpretation sought to be given by the respondents to Rule 101 of Post Office Recurring Deposit Rules, 1981 (for short 'the Rules') is erroneous. According to the petitioner he is entitled to revive his R.D Account till September 2015. It is also contended that the Clause (iv) of Rule 101 which disentitles the depositor from withdrawing the amount accumulated at any point of time is not in conformity with the statutory rules.

10. We are unable to agree.

11. A combined reading of Rules 5 to 7 of the Rules shows that the maturity period of a recurring deposit account shall be five years and that a depositor shall make 60 monthly deposits. The first monthly deposit shall be made at the time of opening the account and each subsequent monthly deposit shall be made before the end of the calendar month. If there are not more than four defaults in the monthly deposit, the depositor may extend the maturity period of the account by as many months as the number of defaults and the defaulted installments can be deposited during the extended period. If there are more than four defaults, the account shall be treated as discontinued and the revival of such account is permissible only within a period of two months from the month of fifth default. For such revival the defaulted amount shall be paid in lump sum together with interest at the rate

of 10 paise for every Rs.5 of a defaulted installment for each month of default. Rule 9A makes it clear that premature closure of the account is permissible only after three years from the date of opening of the account.

12. As we could see, the substance of the afore-noticed Rules has been codified as Rule 101 in the Post Office Savings Bank Manual Volume-I. We find absolutely no ambiguity in the Rule 101 of the said Manual**.** On a careful reading of Rule 5 to Rule 10 of the Rules, we are of the view that the procedure prescribed in Rule 101 of the Manual is in conformity with the Statutory Rules.

13. It may also be added that as per the settled principles of law, a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account vital facts which expressly or by necessary implication are required to be taken into account by the statute or the Constitution. This can be done on the ground that the subordinate legislation does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19 of the Constitution. {**Vide:** ***J.K. Industries Ltd. v. Union of India***, **<u>(2007) 13 SCC 673</u>**}. None of the above contingencies is attracted to the case on hand and absolutely no case is made out to hold that the Rules 5 to 10 of the Post Office Recurring Deposit Rules, 1981, the substance of which has been codified as Rule 101 of Post Office Savings Bank Manual Volume-I, are ultra vires the Government Savings Bank Account Act, 1873 much less the provisions of the Constitution.

14. In our considered opinion, the procedure followed by the Respondents in freezing the RD Account of the Petitioner does not suffer from any

infirmity since the Petitioner had admittedly failed to seek revival of the Account within a period of two months from the month of fifth default.

15. For the aforesaid reasons, the writ petition is devoid of any merit and the same is accordingly dismissed. However, this shall not preclude the petitioner to claim withdrawal of the amount in deposit in terms of the statutory rules.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 26, 2016
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