HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.6270 of 2009

ORDER:

The petitioners seek writ of Mandamus declaring the order No.SAS Agents/2008 Dtd. At KVR the 20.12.2008 of the 5th respondent as illegal, arbitrary and violative of principles of natural justice, Articles 14, 19(1)(g) & 300-A of the Constitution of India and consequently restrain the respondents from enforcing the same.

2) The petitioners are appointed as Agents by respondents/postal authorities for collecting money from the investors of Small Savings Securities such as Kisan Vikas Patra, National Savings Certificates, Deposits under the Post Office Time Deposit Scheme, Monthly Income Savings Accounts Scheme and Senior Citizens Savings Scheme etc, under the Standardised Agency System (SAS) notified by the Government of India, Ministry of Finance (Department of Economic Affairs). The petitioners as Agents would accept cash and cheques from the prospective investors in respect of the aforesaid securities and remit to the respective post offices. They would get commission of 1% on the value of the security sold by them. The petitioners renewed their agency on 24.07.2008 for the period 09.07.2008 to 08.07.2010. The petitioners are attached to the Head Post Office at Kovvur (5th respondent). As per clause 20 of the notification, the petitioners will be issued receipt books which contain the counterfoils. The foil of the receipt will be issued by the Agents to the investors when they transact the business. The SAS

has fixed the maximum limit for cash receipt books to be issued to the Agents as Rs.50,000/- at a time and restricting the maximum limit of cash which an Agent can accept from a single investor to Rs.50,000/- at a time and the Agent shall not exceed the limit. The petitioners unaware of this norm, had done some investment transactions in the year 2006 for the benefit of investors and the Government of India and thereby the amounts deposited by cash at a time exceeded Rs.50,000/-. The head post master with whom the investments were made did not point out at that time that the cash deposited for each transaction should not be more than Rs.50,000/- at a time. By facilitating investors to make such deposits in cash in excess of Rs.50,000/-, no prejudice in any manner was caused either to the investors or the Government of India. There was no allegation that the petitioners had not properly accounted for the amounts received in cash from the investors. Even the commission paid being 1% of the amount invested was also paid by the Government of India through head post office and received by the petitioners and no excess commission was paid to the petitioners at any time. The petitioners are dependents on the commission alone for eaking out their livelihood.

a) While-so, the 5th respondent issued the impugned order No.SAS Agents/2008 Dtd. At KVR the 20.12.2008 stating that the audit party of Posts and Telegraphs Department during the audit conducted at Head Post Office, Kovvur in 2008 objected regarding commission paid to SAS Agents for deposits made in excess of Rs.50,000/- in a single transaction through cash and directed to recover the commission from the Agents and hence through the said order, the Agents were directed to credit the commission amount received by them. The petitioners were not aware about the rule and whenever they brought the investments in cash in excess of Rs.50,000/-, the 5th respondent accepted the investments without any objection and therefore, the requirement was only a directory but not mandatory, particularly when the investors and the Government were benefited. Hence the authorities are not empowered to order refund of the commission amounts. The petitioners undertake that they would not henceforth receive the investments in cash in excess of Rs.50,000/-.

Hence the writ petition.

3) The respondents filed counter and opposed the writ petition. It is mainly contended that as per Rule 17(11) of POSB Manual Volume-II, deposits made in excess of Rs.50,000/- at a time are not entitled for any Agents commission. As per the said rule, the Agents are not entitled for any amount if the investments exceeds prescribed limit and further, if any commission is paid, it has to be recovered. Hence the department initiated proceedings to recover amounts and the said action of the department is as per rules.

4) In W.P.M.P.No.8191/2009, this Court on 25.03.2009, granted interim stay of all further proceedings pursuant to the Order No.SAS

Agents/2008 Dtd. At KVR the 20.12.2008 of the 5th respondent pending the writ petition.

5) Heard arguments of Sri Sai Gangadhar Chamarthy, learned counsel for petitioners and learned Assistant Solicitor General for respondents.

6) The submission of learned counsel for petitioners is that the petitioners were not aware of the rule that cash transaction shall not exceed Rs.50,000/- and they have bonafidely conducted the business for the respondents/postal departments and remitted the amounts and commission was also given to them but all of a sudden the 5th respondent issued the impugned order directing the petitioners to credit the commission received by them in respect of the investments exceeding Rs.50,000/-. Learned counsel would argue that no show cause notice was issued to them calling for their explanation which is violative of principles of natural justice.

7) In oppugnation, learned Asst. Solicitor General would argue that the petitioners are supposed to know the rule which prohibits the Agents to conduct cash transaction in excess of Rs.50,000/-, in which case, they are not entitled to the commission and therefore, recovery process was conducted as per rules and hence the writ petition is not maintainable.

8) A perusal of the impugned order No.SAS Agents/2008 Dtd. At KVR the 20.12.2008 would show that the 5th respondent instructed the petitioners to credit the commission received by them in respect of the

cash transaction conducted by them exceeding Rs.50,000/-. In this context, Rule 17(13) of Post Office Savings Bank Manual (Volume - II), which is extracted below, reads thus:

> *"**(13) Investments on which commission is not payable to agents:- No commission will be payable to agents**:-*
>
> *(i) On sale of certificates presenting investment of Provident, Superannuation, Gratuity and Endowment Fund money, funds of Co-operative societies including co-operative banks, compensation money paid to displaced persons in the form of Savings Certificates, Court funds in the control of Government Officers or local or statutory authorities or conversion to certificates of cash securities already pledged to Government Officers by contractors, etc. or investments required to be made in Small Savings Securities under any statute or by an express order of the Government or investments made by Institutions. Trusts, Companies, Associations etc. or such other investments as may be notified by the Government in this behalf from time to time. <u>On holding invested in excess of the prescribed limit. If any commission is found paid to the authorized agent on the excess holdings, it should be recovered</u>."*

No doubt the above rule shows that no commission will be payable to the Agents in respect of the holding invested in excess of the prescribed limit and if any commission is found paid to the authorised agent on the excess holdings, it should be recovered. However, the contention of the petitioners is that they do not know about the said rule which was not brought to their notice at the time of inducting them into the postal agency for conducting the business on behalf of the respondents/postal department and further, whenever they conducted cash transaction exceeding Rs.50,000/- and remitted to the 5th respondent, he without any objection, received the same and allowed their commission and it was only after the audit objection, all of a sudden the 5th respondent issued the impugned order without giving any show cause notice calling for their explanation which is against the principles of natural justice. Admittedly the impugned order is in the form of a penalty as it was intended to recover the commission amount which was already paid to the petitioners. Therefore, before imposing such penalty, the 5th respondent ought to have issued a show cause notice calling for the explanation of the petitioners. However, that was not done in this case. Hence the impugned order suffers the vice of non-following the principles of natural justice. Hence the same is liable to be set aside. In a similar matter, a learned single Judge of this Court in Writ Petition No.859 of 2009 passed similar order.

9) In the result, this Writ Petition is allowed by setting aside the Order No.SAS Agents/2008 Dtd. At KVR the 20.12.2008 of the 5th respondent as being violative of principles of natural justice. However, this order will not preclude the respondents from initiating fresh recovery proceedings, in which case, they shall issue a prior show cause notice calling for the explanation of the petitioners and then pass an appropriate order on merits. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 03.10.2018
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