

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Shekhar B. Saraf

WPA 22608 of 2013

SULEKHA CHATTERJEE & ANR.

VERSUS

UNION OF INDIA & ORS.

For the Petitioners:

Mr. Sanjoy Mukherjee, Adv.

Mr. Jayabrata Mukherjee, Adv.

For the Respondents:

Mrs. Indrani Chokraborty, Adv.

Ms. Sarda Jha, Adv.

Last Heard On: July 25, 2023

Judgement On: August 01, 2023

Shekhar B. Saraf, J.:

1. The instant writ petition has been filed by the petitioners, Sulekha Chatterjee (hereinafter referred to as the "Petitioner No. 1") and Smt. Payel Chaterjee (hereinafter referred to as the 'Petitioner No. 2') praying for writ of and/or a writ in the nature of Mandamus

and a writ of certiorari upon the respondents with prayers for a writ of and/or a writ in the nature of Mandamus commanding the respondents to settle the claim of INR 6,99,500/- (Six lakhs ninety nine thousand and five hundred only) along with interest at the rate of 18% per annum from the date of deposit till the settlement of such claim or within such time as may be fixed by this Court.

Facts

2. I have laid down the factual matrix of the instant case below:
 - a. Petitioner No. 1 is the wife of Shaheed Ashok Kumar Chatterjee, who was an Overseer in Border Road Organization and was attached to 69, Road Construction Company. Shaheed Ashok Kumar Chatterjee was engaged in the “Construction of ‘Basoli Bani’ highway in the State of Jammu & Kashmir”.
 - b. On September 2, 2003, Shaheed Ashok Kumar Chatterjee, along with three other colleagues while proceeding to the work site was severely injured as a result of an IED Blast, which was a terrorist attack. Sri Chatterjee was initially evacuated to the District Hospital, Kathua with severe injuries on the left arm, left eye, shoulder and head. Subsequently, he was then evacuated to the Government Medical College, Jammu and

then to his home town at Asansol, West Bengal. Unfortunately, Shri Chatterjee succumbed to his injuries on October 2, 2003 at the Daffodil Medical Centre, Asansol at a young age of 43 years.

- c. Subsequently, in the form of Compensation, Death Benefit, etc., the petitioners received certain amount of money from various Departments and the State and Central Government totalling up to INR 13,64,405/- (Thirteen lakhs sixty four thousand four hundred five only). The petitioners decided to invest some of the amount received to the tune of INR 7,00,000/- (Seven lakhs only) in the local Burnpur Post Office in MIS Scheme as well as in Fixed Deposit.
- d. Accordingly, the petitioners handed over INR 7,00,000/- (Seven lakhs only) to one Mr. Soumen Routh, an Authorised Postal Agent under Burnpur Market Sub-Post office, for investing in M.I.S. and Term Deposit (T.D). The above amount included a Cheque of INR 4,99,500/- (Four lakhs ninety nine thousand five hundred only) which was paid by the petitioner vide Cheque No. 789463 for making an MIS Account in Burnpur Market Sub- Post Office and the said cheque was drawn in the name of Sri Soumen Routh and handed over to him.

- e. The petitioners were then handed over a MIS Passbook depicting an Account No. being 14201 dated September 13, 2010 by Sri Soumen Routh, and the said pass book reflected a MIS investment amount of INR 4,99,500/- (Four lakhs ninety nine thousand five hundred only) and the petitioners started to draw monthly interest from the Post Office from October 20, 2010 onwards @ INR 3,330/- (Three thousand three hundred thirty only) per month for every month until June 2012. Sometime around June 2012, petitioners state that the said passbook was taken by Sri Routh on the pretext of computerizing the Account in the said Post Office and was never returned back. The said passbook was recovered subsequently from the police authorities.
- f. From July 2012, the Post office refused to give the MIS payment and when the petitioners confronted the concerned authorities at the post office, they were told that the accounts were not genuine and hence no further payments can be made. The petitioners gave a letter dated September 5, 2012 to the local post office seeking refund of INR 4,99,500/- (Four lakhs ninety nine thousand five hundred only) and this communication was allegedly never responded to by the post office.

- g. The petitioners then enquired about the balance of INR 2,00,000/- (Two lakhs only) which was given for Fixed deposit. They allegedly learnt that the pass book which was issued to them bearing Account No. 31822451 was not genuine. The petitioners subsequently came to know that another Savings Bank Account in their name being No. 388694 was opened at Burnpur Sub-Post Office and transactions have been made in that Account, but the petitioners state they never submitted any application for opening and withdrawal for those transactions at all. On a perusal of the transactions in the said account, it was revealed that the postal cheque which was given for making Fixed Deposit had already been encashed through this account and the cash had been withdrawn on the same day as the account was opened with merely INR 100/-.
- h. The petitioners allege that they subsequently came to know that criminal complaints have been lodged against Sri Routh and that he had been arrested and investigations are continuing in the matter, but the Post Office refused to take any responsibility for the same.
- i. Furthermore, the petitioners approached the Assistant Director of Postal Services (S.B), West Bengal Circle and in response to their complaint they had been assured by letter

SB 3/L – 770/10/12 dated December 11, 2012 that the matter is being forwarded to Senior Superintendent of Post Offices, Asansol Division for necessary action. However, for a long time, the petitioners state that they did not hear back from the Senior Superintendent of Post Offices.

- j. Being aggrieved by and dissatisfied with the aforesaid inaction, the petitions have filed the instant writ application under Article 226 of the Constitution of India before this Court.

Contentions

3. Mr. Sanjoy Mukherjee, learned counsel for the petitioners made the following submissions:
 - a. He argued that serious fraud has been committed involving the retirement benefit, ex-gratia benefit and death benefit received on account of the unfortunate demise of the Shaheed Ashok Kumar Chatterjee and the respondent authorities have failed to effectively resolve or take any steps for redressal of the petitioners' grievance.
 - b. He further submitted that the respondent authorities should have been vigilant about the fraudulent account being opened

and operated with the petitioners' money. The failure of respondent authorities to do the same seriously prejudiced the interest of the petitioners herein. He further submitted that proper checking mechanism had not been deployed by the respondent authorities to prevent the said fraud and forgery committed by the Standardised Agency System (SAS) agent of the Post Office.

- c. He also submitted that Sri Routh was an agent and representative of the respondent authorities and it is incumbent upon the respondent authorities to make good any loss suffered by the petitioners on account of the misdeeds of their agent. He then submitted that the petitioners are the rightful and genuine claimants of the amount kept in deposit in the Account in the Post Office and the respondent authorities are liable to settle the claim with interest and compensation of the petitioners. He also prayed that unless an appropriate order is passed by this Court, directing the respondent authorities to settle the claim of amount which have been withheld in spite of assurances given by them, the petitioners will suffer irreparable loss and will be highly prejudiced.
- d. He also submitted that no adequate, alternative, and efficacious remedy other than the writ jurisdiction of this

Court is available and the prayer made herein, if granted, would afford complete remedy to the petitioners.

- e. He placed on record the judgments of Hon'ble Supreme Court in ***Pradeep Kumar and Anr. -v- Postmaster General and Anr.*** reported in ***(2022) 6 SCC 351***, and ***Canara Bank -v- Canara Sales Corporation and Ors.*** reported in ***(1987) 2 SCC 666*** in support of his contentions.
- f. He further submitted that Sri Routh acted as an authorised SAS agent of the Respondents attached to the concerned post office at the relevant point in time. He also submitted that the cheque had been issued in the name of the agent as it was a common practice. He also submitted that it was within knowledge of the then Post Master of concerned Post Office. He further argued that all the passbooks had been issued by the Burnpur Market Post Office and were duly signed by the Post Master under his seal and signature. Furthermore, he said that, the petitioners collected the passbooks personally from the post offices.
- g. He further submitted that the respondent authorities have falsely stated that the fraud has been committed by the SAS agent. In the police investigation, he submits that it has been revealed that the Post Master of the post office, Sri Tapan

Mallick, is also involved and the officer had been arrested also. He further submits that respondent authorities had filed the FIR against the SAS Agent under Section 409 of the Indian Penal Code, 1860 for Criminal Breach of Trust by an Agent.

- h. He finally argued that the respondents have admitted that a massive fraud has been committed and intends to put the entire blame on the “delinquent” agent, suppressing the fact that the respondents’ own men and employees and officers are also directly involved and connived in the same fraudulent practice. He further argued that the entire liability to compensate the loss and refund of the principal amount lies with the respondent authorities.
- 4. Mrs. Indrani Chokraborty, learned counsel for the respondents made the following submissions:
 - a. She submitted that the instant writ petition should be dismissed in limine as the instant writ petition suffers from suppression of material facts and incorporation of incorrect and misleading statements.
 - b. She further argued that while the writ petitioners have alleged that they opened one MIS account bearing number 14201 for

INR 4,99,500/- (Four lakhs ninety nine thousand five hundred only) at Burnpur Market Post Office and one TD account bearing number 31822451 amounting to INR 2,00,000/- (Two lakhs only) at Burnpur Market Post Office, it revealed on enquiry that no MIS Passbook bearing account number 14201 exists in the name of the petitioner and others. She argued that since the MIS account number 14201 claimed to have been opened by the petitioners is a fake one, hence the respondents will not accept any liability for a fake account.

- c. She stated that cheque of INR 4,99,500/- (Four lakhs ninety nine thousand five hundred only) was drawn in favour of Sri Routh, instead of the Sub Postmaster, Burnpur Market S.O. and Sri Routh is not the employee of the postal department and he was appointed by the State government. She further stated that this proves that the amount was not paid to the Post Office and Post Office cannot take any responsibility for the amount paid to others.
- d. She further submits that the S.B. account number 388694 was actually opened by the petitioners at Burnpur MDG on September 16, 2011 with initial deposit of INR 100/- (One hundred only) and further two transactions were made on the same day. She also submits that since the petitioners are

claiming not to have opened the said S.B. account, the signatures appearing on the documents ought to be examined by Government Examiner of Question Documents (GEQD).

- e. She also submits that a large fraud case was unearthed in departmental enquiry wherein it was found that the SAS Agent duped a large number of investors in the name of Post Office. She also submits that since neither the amount claimed to have been invested came in the Government account nor any of the monthly interests have been accounted for and hence the Department is not in a position to entertain the petitioners' claim. She also stated that there is no direct control of the Department of Posts over the appointment or conduct of an SAS Agent, who is appointed by the Dy. Director of Small Savings, Government of West Bengal.
- f. She submits that for making investments in post office the investors are required to issue the cheque for the amount of investment drawn invariably in favour of the post office and not in favour of any other person, as is the petitioners' case.
- g. She finally submitted that both the MIS as well the TD accounts claimed to have opened by the petitioners, were actually not opened at Burnpur Market Sub Post Office. In

both the cases, she argued that the transactions were between the petitioners and the agent and the postal department will not take any responsibility for these accounts and the respondents have no liability to pay the money in respect of the fake accounts.

Observations and Analysis

5. I have heard the learned counsel appearing for the parties and perused the materials on record.
6. **What transpired in this entire matters bewilders me. Trust is the basic foundation on which the relationship between citizenry and the government stands. When a citizen becomes part of the nations' defence forces, be it manning it or building it, it is not only their devotion for the nation that drives them but also the trust that in case something untoward happens and they have to make the Supreme Sacrifice, their loved ones will be taken care of. Likewise, the courage shown by the family of the ones who build our defences, is no less than the ones that man it. That courage needs to be respected and rewarded.**
7. Although money can never compensate for the loss of a loved one, recognising the same and honouring the sacrifice of Shaheed

Ashok Kumar Chatterjee, various amounts were received by the petitioners through Central and State Governments, and various other departments. A portion of the received amount, up to the tune of INR 7,00,000/- (Seven lakhs only) was invested by the petitioners in the post office.

8. Post office, in many cases, do not only act as the nation's preferred carrier of words and emotions, but also serve as the guardian of its savings. It is the trust that has been built over decades that citizens place on their local post offices and it is the sacred duty of the postal department to forever and continuously uphold that trust. The breach of that trust, is not just limited to only the person who is affected by that breach, but can also affect the conscious and trust of the citizenry towards the postal system, which is the lifeblood of Indian republic, at large.

Coming to the facts of the case, as I see it, there are primarily two issues that need to be determined in the present case before arriving at the conclusion –

- 1. Issue No. 1 – Whether or not the respondent department can be held liable for the actions of Sri Routh or not ?**
- 2. Issue No. 2 – If answer to issue no. 1 is in affirmative, then whether or not a Writ of Mandamus can be issued in the**

**present case directing the respondents to settle the claim
of the petitioners ?**

Issue No. 1

9. It is the case of the Postal Department that Sri Routh was appointed by the Government of West Bengal, and hence, the postal department cannot be held liable for the actions of Sri Rout. Since Sri Rout was an official SAS agent authorised to act to canvass for deposits in MIS account, the department cannot allege and hold the petitioners to be at fault for trusting Sri Routh and depositing their cheque in his name, in order to be further invested into MIS.

Reliance in this regard can be placed on **Ministry of Finance (DEA) O.M. No. F1(53)/NS/57 dated 31.12.1959 and D.G.'s Special P.O. Circular No. 66 dated 4.3.1960 and further amended from time to time.** Relevant portion on the scope of a SAS agent has been reproduced below:

“ 2. Scope of the Agency:- *The agency at present is confined to canvass for the sale of Kisan Vikas Patras, National Savings Certificates (VIII-Issue), deposits in Time Deposits Accounts, Monthly Income Savings Accounts and Senior Citizens Savings Scheme Accounts. It may be extended to such other small savings securities as may be notified by the*

Government of India from time to time as being saleable through Authorized Agents.”

10. At this juncture, this Court makes a reference to the decision of the **High Court of Jammu and Kashmir and Ladakh** in ***United India Insurance Co. Ltd. -v- Sajjad Hussain and Ors.*** reported in **MANU/JK/0200/2023** wherein it was held that contracts which have been entered through an agent maybe enforced in the same manner as if the contracts had been entered into by the principal. Relevant paragraphs have been reproduced below:

“18. Section 226 of the Contract Act provides that contracts entered into through an agent may be enforced in the same manner and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person. In the instant case, admittedly, the premium was collected by the agent of the appellant/Insurance company from the attorney holder of the owner, whereafter the policy of insurance came to be issued. Therefore, it would be deemed as if the amount of the premium had been collected by the insurance company, even though the agent may have instead of depositing the premium with the company, issued a cheque from his own account which ultimately got dishonored.

19. The Principal is bound by the acts of his agent and as such, the appellant/Insurance company cannot wriggle out of its liability by stating that it is the agent who had committed fraud with the company. Whatever contracts the insurance company

has entered into with the third parties through the agent are enforceable against the company as if these contracts have been entered into by the insurance company itself.”

11. Furthermore, the judgment of the Hon’ble Supreme Court in ***Canara Bank -v- Canara Sales Corporation and Others (supra)***, reliance on which was placed by the petitioners also bears relevance to the question at hand. The Hon’ble Supreme Court had held in that case that an account holder’s claim against the bank, where the amount has been fraudulently drawn by a third person, is valid. Relevant portions of the said judgment have been extracted below –

“30. A case of acquiescence also cannot be flourished against the plaintiff. In order to sustain a plea of acquiescence, it is necessary to prove that the party against whom the said plea is raised, had remained silent about the matter regarding which the plea of acquiescence is raised, even after knowing the truth of the matter. As indicated above, the plaintiff did not, during the relevant period, when these 42 cheques were encashed, know anything about the sinister design of the second defendant. If the bank had proved to the satisfaction of the court that the plaintiff had with full knowledge acknowledged the correctness of the accounts for the relevant period, a case of acquiescence against the plaintiff would be available to the bank. That is not the case here.

42. *We adopt the reasoning indicated above with great respect. Unless the bank is able to satisfy the court of either an express condition in the contract with its customer or an unequivocal ratification it will not be possible to save the bank from its liability. The banks do business for their benefit. Customers also get some benefit. If banks are to insist upon extreme care by the customers in minutely looking into the pass book and the statements sent by them, no bank perhaps can do profitable business. It is common knowledge that the entries in the pass books and the statements of account sent by the bank are either not readable, decipherable or legible. There is always an element of trust between the bank and its customer. The bank's business depends upon this trust. Whenever a cheque purporting to be by a customer is presented before a bank it carries a mandate to the bank to pay. If a cheque is forged there is no such mandate. The bank can escape liability only if it can establish knowledge to the customer of the forgery in the cheques. Inaction for continuously long period cannot by itself afford a satisfactory ground for the bank to escape the liability. The plaintiff in this case swung into action immediately on the discovery of the fraud committed by its accountant as in the case before the Privy Council.*

44. *This is how this Court understood how a plea of estoppel based on negligence can be successfully put forward. We have seen that there is no duty for a customer to inform the bank of fraud committed on him, of which he was unaware. Nor can inaction for a reasonably long time in not discovering fraud or irregularity be made a defence to defeat a customer in an action for loss. Thus the contentions put forward by the bank cannot be accepted to defeat the plaintiff. The various submissions made by the counsel for the bank based on*

constructive notice in the general law and on other branches of law cannot be extended to relationship between a bank and its customer.”

12. In the instant case, the petitioners kept drawing monthly interest from the post office starting from October 10, 2010 at the rate of INR 3330/- (Three thousand three hundred thirty only) per month for every month until June 2012. There was no reason for the petitioners' to suspect any wrongdoing when the amount was being received without fail for over a year and a half. As soon as the fraud was discovered, the petitioners informed the local post office and multiple letters were addressed by them in this regard. As soon as the fraud perpetrated by Sri Routh in tandem with certain postal officials came to notice of the petitioners, relevant authorities were intimated in this regard, who failed to act and take action on the petitioners' claim. Therefore, petitioners claim in the instant writ petition cannot be rejected on the grounds that their conduct was negligent in the instant case.

13. The judgment of the Hon'ble Supreme Court in ***Pradeep Kumar Agarwal v. Postmaster General (supra)***, also helps the petitioners' case wherein the Hon'ble Supreme Court held that acts of post office/bank employees when done during their course of employment, are binding on bank/post office at the instance of the

person who is damnified by the fraud. Relevant portions have been extracted below –

“57. We begin by noting that M.K. Singh is not a third person but an officer and an employee of the Post Office. Post Office, as an abstract entity, functions through its employees. Employees, as individuals, are capable of being dishonest and committing acts of fraud or wrongs themselves or in collusion with others. [See Punjab National Bank v. Durga Devi, 1977 SCC OnLine Del 93] Such acts of bank/post office employees, when done during their course of employment, are binding on the bank/post office at the instance of the person who is damnified by the fraud and wrongful acts of the officers of the bank/post office. Such acts of bank/post office employees being within their course of employment will give a right to the appellants to legally proceed for injury, as this is their only remedy against the post office. Thus, the post office, like a bank, can and is entitled to proceed against the officers for the loss caused due to the fraud, etc. but this would not absolve them from their liability if the employee involved was acting in the course of his employment and duties.

58. This Court in SBI v. Shyama Devi [SBI v. Shyama Devi, (1978) 3 SCC 399] held that for the employer to be liable, it is not enough that the employment afforded the servant or agent an opportunity of committing the crime, but what is relevant is whether the crime, in the form of fraud, etc. was perpetrated by the servant/employee during the course of his employment. Once this is established, the employer would be liable for the employee's wrongful act, even if they amount to a crime. Whether the fraud is committed during the course of employment would be a question of fact that needs to be determined in the facts and circumstances of the case.”

14. Sri Routh, although not an employee of the post office, was an agent authorised to act for MIS Schemes and as such, the trust of the petitioners on Sri Rout was not misplaced. It was the duty of the post office and the government to constantly maintain strong vigilance and disciplinary checks to ensure that its agents do not act in a fraudulent manner. The submissions unravelled a blame game wherein the post office tried to shrug off its liability by stating that Sri Rout was appointed by the Government of West Bengal.

15. As is evident in the instant case from the letter of Department of Post O/o the Sr. Supdt of Post Offices, Asansol Division, no. – CPT-C/WP 22608(W) of 2013/Sulekha Chatterjee & Anr/2023-24, in the subsequent enquiry that took place, actions were initiated against post officials posted at Burnpur Market SO during the material period. Moreover, FIR was also lodged by the department against Sri Routh, authorised SAS agent and Sri Tapan Kr Mallick, then postmaster at Burnpur Market SO and Sri Kartick Ch Mondal, then Postal Assistant, Burnpur Market SO. This proves that Sri Routh's actions were not Sri Routh's alone and certain officials who were employees of the Burnpur Market SO, who were direct employees of the postal office, were involved in this fraudulent practice too. As a result of the involvement of not only the authorised Agent but also the employees of the Burnpur

Market SO, liability of the postal department cannot be denied and petitioners' claim against the department is maintainable.

16. In view of the aforesaid, Issue No. 1 is answered in the affirmative.

Issue No. 2

17. The contours of the Writ of Mandamus were defined by the Supreme Court in the case of **Praga Tool Corpn. -v- C.A. Imanual** reported in **(1969) 1 SCC 585**. Relevant portion from the aforesaid judgment has been reproduced below:

*“6. No doubt, **Article 226 provides that every High Court shall have power to issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus etc. or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest.** Thus, an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See Sohan Lal v. Union of India), [1957 SCR 738].*

.....

Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal

right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities. [Cf. Halsbury's Laws of England, (3rd ed.), Vol. II, p. 52 and onwards].”

(Emphasis Added)

18. Furthermore, Halsbury’s Laws of England (4th Edn., Vol. 1, p. 111, para 89) delineate the nature and scope of the Writ of Mandamus as follows:

“The order of mandamus is of a most extensive remedial nature, and is in form, a command issuing from the High Court of Justice, directed to any person, corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to supply defects of justice; and accordingly it will issue to the end that justice may be done, in all cases enforcing such right and it may issue in cases where although there is an alternative legal remedy, yet

such mode of redress is less convenient, beneficial and effectual.”

19. I, also find it prudent to refer to the Hon’ble Supreme Court’s decision in ***DN Jeevraj v Chief Secretary, Government of Karnataka & Ors.*** reported in **(2016) 2 SCC 653**. Supreme Court. In this case again, the Supreme Court defined the purview of Writ of Mandamus. Relevant portions are extracted below:

“37.insofar as the issuance of a writ of mandamus is concerned, this Court held in Union of India v. S.B. Vohra [Union of India v. S.B. Vohra, (2004) 2 SCC 150 : 2004 SCC (L&S) 363] that: (SCC p. 160, para 13)

“13. A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.”

38. *A salutary principle or a well-recognised rule that needs to be kept in mind before issuing a writ of mandamus was stated in Saraswati Industrial Syndicate Ltd. v. Union of India [Saraswati Industrial Syndicate Ltd. v. Union of India, (1974) 2 SCC 630] in the following words: (SCC pp. 641-42, paras 24-25)*

“24. ... The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well-recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in Halsbury's Laws of England (3rd Edn.), Vol. 11, p. 106:

‘198. Demand for performance must precede application.—As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal.’

25. In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution.”

(Emphasis Added)

20. In the instant case, demands for settlement of claim were first made to postal authorities and having received no relief, the petitioners approached this Court for issuance of appropriate orders. It cannot be said that the petitioners have not first tried to solve the matter with the Postal Department and have directly

approached this Court for issuance of appropriate writs. Accordingly, prayer for Writ of Mandamus against the postal authorities is also maintainable.

21. Lastly, this Court makes reference to the power of the High Court to issue Writ of Mandamus under Article 226 of the Constitution of India which was defined by the Supreme Court in the case of ***Director of Settlements, A.P. and Others -v- M.R. Apparao and Anr.***, reported in **(2002) 4 SCC 638**. Relevant paragraph has been extracted below for reference -

“17..... The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognised lines and subject to certain self-imposed limitations. The expression “for any other purpose” in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Courts must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. “Mandamus” means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring

him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalyan Singh v. State of U.P. [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.....”

22. To answer the issue at hand, the condition precedent for issuance of a Writ of Mandamus is that whether or not, a legal right has been violated? Based on the material on record, I cannot help but conclude that whenever a citizen deposits or invests, either directly or through an authorised SAS agent, she is legally entitled to receive the benefit of the same. However, for no fault of her own, if a fraud is committed by the said authorised SAS agent and the employees of the department are involved in the same, she cannot be deprived of her rightful claim. If the argument of the respondents in the instant writ petition was to be accepted, great prejudice would have been caused to the petitioner and a wrong precedent would be set by this Court. As has already been discussed, it was not just Sri Routh who was a part of this nexus

of fraudulent activities being committed against the petitioners, but involvement of other postal officials has also been established.

23. In view of the same, Issue No. 2 is also answered in the affirmative.

Summary and Conclusion

24. For ease of reference and for the sake of brevity, I have extracted the relevant principles emerging from the abovesaid discussion of the law:

- a. A principal cannot elude from its responsibility towards the acts committed and contracts entered into by its agents. (See: ***United India Insurance Co. Ltd. -v- Sajjad Hussain and Ors., High Court of Jammu and Kashmir and Ladakh, supra***)
- b. A person can file a claim against the bank (or as the case maybe, post office) for recovery of the amount lying in the bank/post office account if the said amount has been withdrawn fraudulently by a third person. The said claim cannot be dismissed by the bank/post office merely on the ground of negligence. (See: ***Canara Bank -v- Canara Sales Corporations and Others, Hon'ble Supreme Court of India, supra***)

- c. Banks and post offices can be held accountable and liable for the conduct and actions of their agents and employees. (See: ***Pradeep Kumar Agarwal -v- Postmaster General, Hon'ble Supreme Court of India, supra***)
 - d. Writ of Mandamus can be issued to secure the performance of a public, statutory, or legal duty in favour of anyone who has an interest in the performance of the said public, statutory, or legal duty. (See: ***Praga Tool Corpn. -v- C.A. Imanuel, Hon'ble Supreme Court of India, supra***)
 - e. Writ of Mandamus can be issued against a person who has failed to perform his legal duties whether such duty is in the nature of a public duty or emanates by the operation of law. Furthermore, the scope of Writ of Mandamus is wide enough and can be used to prevent the disorders emanating from a failure of justice. (See: ***Halsbury's Laws of England: 4th End, Vol. 1*** and ***DN Jeevraj -v- Chief Secretary, Government of Karnataka & Ors., Hon'ble Supreme Court of India, supra***)
25. Based on the unfortunate events that led to this writ petition, this Court cannot help but conclude that the submissions made by the respondents are nothing but an attempt to shrug off their legal and ethical responsibility to compensate the petitioners for the loss

suffered by them on account of the fraud perpetrated by Sri Routh, the authorised SAS agent, acting in nexus with the concerned officials of the post office.

26. This Court, in the strongest possible terms, condemns the actions of Sri Routh, and other officials from the post office who were involved in the entire scheme of fraud in the instant case. This Court, also expresses its regret at the unnecessary and undue suffering caused to the petitioners for no fault of their own.

27. Accordingly, this Court holds the respondents liable for the actions of Sri Routh, and the concerned officials of the Burnpur Post Office.

Order and Directions

28. In view of the aforesaid discussion, let there be a Writ of Mandamus issued in terms of prayer (a) against the respondents. Accordingly, this Court directs the respondent no. 2 being the Chief Postmaster General to settle the claim of the petitioner to the tune of INR 6,99,500/- (Six lakhs ninety nine thousand five hundred only) along with interest at the rate of 9% per annum applicable from the date of deposit i.e. September 13, 2010 till the date of actual payment. Such payment is to be made within four weeks from the date of this order.

29. Accordingly, this Writ Petition being WPA/22608/2013 is disposed of. There shall be no order as to the costs.
30. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with requisite formalities.

(Shekhar B. Saraf, J.)