BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.169 of 2022
and
CMP(MD)Nos.734, 4587 of 2022

G.Ramdoss : Petitioner

Vs.

1.Competent Authority /
District Revenue Officer,
O/o.the District Revenue Officer,
Madurai.

2.Global Capital Trading Services,
Rep. by its Managing Partner,
K.S.Palanichamy

3.K.S.Palanichamy

4.P.Packia Lakshmi

5.Ganesh Kumar : Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the order passed by the learned Judge, Special Court under Tamil Nadu Protection of Interest of Depositors (F & E) Act, 1997, Madurai, in I.A.No.62 of 2021 in unnumbered O.A.No. - of 2021, dated 20.12.2021 and set aside the same.

For Petitioner : Mr.Sricharan Rangarajan,
Senior Counsel

Assisted by
Mr.S.Ram Sundar Vijayaraj

For Respondents : Mr.R.Baskaran,
Additional Advocate General

Assisted by
Mr.G.V.Vairam Santhosh,
Additional Government Pleader
for R.1

No appearance for R.2 to R.5

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ORDER

This revision petition is arising out of an order passed by the Special Court under the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai in I.A.No.62 of 2021 dated 20.12.2021. This interlocutory application was filed by the first respondent herein under Section 5 of the Limitation Act to condone the delay of 1537 days in filing an application under Section 4(3) of the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997 (hereinafter referred to as “TNPID Act”). The trial Court, by order dated 20.12.2021, condoned the delay and allowed the interlocutory application. Aggrieved over the same, the petitioner has filed the present revision.

2.The brief facts of the case is that the revision petitioner and respondents 3 to 5 herein started the second respondent Company, namely, Global Capital Trading Services which is a financial establishment as defined under Section 2(3) of the TNPID Act. On 02.11.2010, the Deputy Superintendent of Police, Economic Offences Wing, Madurai, registered an FIR in Crime No.6 of 2010 against them for the offences under Sections 406, 420 of the Indian Penal Code and Section 5 of the TNPID Act, based on a complaint given by one Nattarayan that the money taken from him as deposits were not returned by the Company. After the completion of the investigation, a final report was also filed in CC.No.11 of 2013 before the Special Court in which this petitioner was arrayed as the accused no. 5.

3.If any Financial Establishment defrauds its depositors and if the Government is satisfied that this establishment is not likely to return the deposits, the Government may in order to protect the interest of the depositors, pass an ad-interim order attaching the money or other property alleged to have been procured either in the name of the Financial Establishment or in the name of any other person from and out of the deposits collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the Promoter, Partner, Director, Manager or member of the said Financial Establishment or a person who has borrowed money from the Financial Establishment to the extent of his default or, such other properties of that person in whose name properties were purchased from and out of the deposits collected by the Financial Establishment, as the Government may think fit, and transfer the control over the said money or property to the Competent Authority. The ad-interim order of attachment passed by the Government has to be made absolute by the Special Court constituted under the TNPID Act on an application filed by the Competent Authority within a period of thirty days as per Section 4(3) of the TNPID Act. The District Revenue Officers (hereinafter referred to as “DRO”) of respective Districts are appointed as Competent Authority under the TNPID Act vide G.O.Ms.No.1049, Home Department, dated 26.08.2004.

4.In the case on hand, the Government, on being satisfied that the accused Company is not likely to return the deposits to the depositors, invoked Section 3 of the TNPID Act and passed G.O.Ms.No.989, Home (Police XIX) Department, dated

24.12.2012, ordering interim attachment of the properties of the accused nos.2 and 3 in CC.No.11 of 2013. The control over those properties were also transferred to the District Revenue Officer, Madurai i.e., the first respondent herein.

5.The ad-interim order of attachment passed by the Government in G.O.Ms.No.989, Home (Police XIX) Department, dated 24.12.2012, was challenged by the accused nos.2 & 3 before this Court under Section 482 of the Code of Civil Procedure in Crl.OP.(MD)No.6607 of 2013. This Court, by order dated 19.03.2014, allowed the application on the ground that the procedure under Section 4 of the TNPID Act was not initiated. This order in Crl.OP(MD).No.6607 of 2013 was challenged by the Principal Secretary, Home (Police XIX) Department in Crl.A.No.933 of 2017 before the Hon'ble Supreme Court. The Hon'ble Supreme Court by its order dated 09.05.2017 set aside the order passed by this Court in Crl.OP(MD).No.6607 of 2013, holding that the order passed by the State Government under Section 3 of the TNPID Act attaching the immovable properties and directing the Competent Authority, namely, DRO, Madurai, to take recourse to the procedure contemplated under Section 4(3) as valid and is very much in consonance with the provisions of the TNPID Act.

6.Thereafter, the Competent Authority has filed an application as required under Section 4(3) of the TNPID Act on 16.09.2021 along with an application under Section 5 of the Limitation Act in IA.No.62 of 2021 to condone the delay of 1537 days in filing the application under Section 4(3) of the TNPID Act. The condone delay application was allowed by the special Court by order dated 20.12.2021. As against the same, the present revision petition is filed.

7.Learned Counsel appearing for the petitioner submitted that the Government has passed the order of attachment under Section 3 of the TNPID Act in the year 2012, attaching the properties of the accused no.2 / K.S.Palanichamy and accused no.3 / P. Packia Lakshmi. The petitioner is not a party to the above proceedings and his properties were not attached. However, in the application filed under Section 4 of the TNPID Act, the petitioner is also added as a party after the lapse of 9 years from the original Government Order, which is illegal and also beyond the scope of G.O.Ms.No.989, Home (Police XIX) Department, dated 24.12.2012.

8.By referring to the decision of the Hon'ble Supreme Court in ***Office of the Chief Postmaster General and Ors. v. Living Media India*** **[*(2012) 3 SCC 563*]** and other judgments of the Hon'ble Supreme Court, the learned Counsel submitted that the application was filed with a delay of 1537 days and the Competent Authority has not offered any explanation for this huge delay. As per the dictum laid down by the Hon'ble Supreme Court, each and every day delay needs to be accounted for. In this case, the first respondent has filed the application in a vague manner and the Special Court, without considering the principles laid down by the Hon'ble Supreme Court, has erroneously allowed the application.

9.Learned Additional Advocate General appearing for the first respondent submitted that the District Revenue Officer is designated as Competent Authority under Section 4(1) of the TNPID Act and the first respondent, as a DRO, is having several works such as,

i. Assisting the District Collector in discharging their duties. These functions include District Administration ranging from maintaining Law and Order, Planning and Development, General Elections, Arms licensing and etc.

ii. The District Revenue Officer looks after all the branches of the Collectorate which mainly deals with general administration and is also vested with supervision of day-to-day functions of the Collectorate.

iii. The District Revenue Officer runs the Revenue Administration under various enactments in a district.

iv. The District Revenue Officer is also designated as Additional District Magistrate.

v. The District Revenue Officer mainly deals with civil supplies, land matters, mines and minerals, village officers etc.

10.Learned Additional Advocate General further submitted that apart from this day-to-day work, the DRO was also working as the Returning Officer for the Lok Sabha elections conducted in 2019. Since the Competent Authority was busy with the election work, he could not file the petition under Section 4(3) of the TNPID Act in time.

11.Learned Additional Advocate General has also referred to the order of the Hon'ble Supreme Court ***In Re: Cognizance for Extention of Limitation*** **[*2022 LiveLaw (SC) 31*]**, that the period from 15.03.2020 to 28.02.2022 during the Covid period was rightly excluded by the Special Court. Therefore, the first respondent has accounted for the delay and it was rightly considered by the Special Court.

12.This Court considered the rival submissions made and perused the materials placed on the record.

13.The petitioner is one of the accused in a criminal case registered under the TNPID Act. The petitioner along with the other accused started a Financial Establishment in the name of “Global Capital Trading Services” and have collected money from the general public. The depositors, with a grievance that the deposited amount was not returned, lodged a complaint in the year 2010 and an FIR was registered in Crime No.6 of 2010 on the file of the Economic Offences Wing, Madurai. The investigating agency also filed a final report in CC.No.11 of 2013 before the Special Court constituted under the TNPID Act.

14.The TNPID Act enables the Government to attach the properties of the Company, Director, Promoter and the properties which were purchased from the deposits collected. Accordingly, an ad-interim order in G.O.Ms.No.989, Home (Police XIX) Department, dated 24.12.2012, attaching the properties of the accused was passed by the Government invoking Section 3 of the TNPID Act. The ad-interim order needs to be made absolute by filing an application before the Special Court within a period of 30 days. In this case, the ad-interim order of attachment passed on 24.12.2012 was challenged in Crl.OP(MD).No.6607 of 2013. This Court has also allowed the original petition by order dated 19.03.2014 which was challenged before the Hon'ble Supreme Court in Crl.A.No.933 of 2017. The Hon'ble Supreme Court set aside the order passed by this Court in Crl.OP.No.6607 of 2013, thereby, upheld G.O.Ms.No.989, Home (Police XIX) Department, dated 24.12.2012.

15.Thereafter, on 16.09.2021, the original application was filed by the Competent Authority as required under Section 4(3) before the Special Court under the TNPID Act. However, since there is a delay of 1537 days in filing, an application under Section 5 of the Limitation Act was also filed. The first respondent / DRO, as the Competent Authority, has assigned the reasons for the delay that on receipt of G.O.Ms.No.989, Home (Police XIX) Department, dated 24.12.2012, he intended to conduct an enquiry with the investigation officer and the complainants. But the accused nos.2 and 3 have filed the above Crl.OP(MD).No.6607 of 2013 before this Court and therefore, they could not proceed further. After the order of this Court dated 19.03.2014 in Crl.OP.No.6607 of 2013, the State preferred an SLP which was allowed and disposed only on 19.05.2017. The first respondent also adduced reasons that he was busy in duty in conducting the election and the application could be filed only after the Covid period on 16.09.2021.

16.The Hon'ble Supreme Court in ***Postmaster General***'s case (supra) has held as follows:-

> "*28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.*
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> *29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government*

departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

17.Section 4(3) of the TNPID Act provides 30 days for the Competent Authority to file necessary application before the Special Court to make the ad-interim order passed under Section 3 as absolute. In Section 4(3) of the TNPID Act, the legislature has used the word "shall" before mentioning the thirty days. However, this is not determinative of the fact that the limitation given here is mandatory or directory. The Hon'ble Supreme Court in ***Raza Buland Sugar Co. Ltd. v. Municipal Board*** **[*AIR 1965 SC 895*]** per majority has held as follows:-

"*8. The question whether a particular provision of a statute which on the face of it appears mandatory, inasmuch as it uses the word "shall" as in the present case — is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be* *taken into account in arriving at the conclusion whether a particular provision is mandatory or directory."*

18.This Court in ***Antony v. Competent Authority*** **[*Crl.A.No.504 of 2005, dated 01.04.2008*]**, held that under the provisions of TNPID Act, even though the word "shall" is used in Section 4(3) of the TNPID Act, such provision is directory in nature and not mandatory. It was also held that the provisions of the TNPID Act should be given a literal interpretation, otherwise, public interest would be affected. The Court further held that considering the beneficial special statute and the injustice that may be occasioned to the innocent depositors, who lost their hard-earned money, the time frame prescribed under Section 4(3) of the TNPID Act will have to be construed only as directory in nature and not mandatory.

19.The objective of the TNPID Act is to protect the deposits made by the public in the Financial Establishments and matters relating thereto. The Government Order in G.O.Ms.No.989, Home (Police XIX) Department, dated 24.12.2012, was an interim order attaching the properties of the accused financial establishment in order to secure the interest of the deposits made by the public. If the time limit of thirty days under Section 4(3) of the TNPID Act is held to be mandatory, the Competent Authority cannot proceed with the application to auction the properties and realize the sale proceeds of the property, thereby, the entire purpose of the TNPID Act fails.

20.Though the Hon'ble Supreme Court upheld the Government Order in G.O.Ms.No.989, Home (Police XIX) Department, dated 24.12.2012, as early as on 09.05.2017, the Competent Authority filed the original Application for making the interim order of attachment absolute only in September, 2021. The ones who are getting affected by this torpid attitude of the Competent Authority are the innocent public who have invested money in this financial establishment. Therefore, considering the purpose of the legislation and the injustice it may cause to the depositors, this Court arrives at the conclusion that these thirty days' time period is only directory.

21.Also, this Court in ***K. Veerasamy v. Secretary to Government*** **[*(2012) 3 Mad LJ 630*]** has held that Section 5 of the Limitation Act is applicable in considering the application of the Competent Authority seeking to condone the delay in filing the application to make the interim attachment absolute under Sections 4(3) and 4(4) of the TNPID Act, by virtue of Section 29 of the

Limitation Act. From Section 5 of the Limitation Act, it can be seen that at the discretion of the Court, any application can be admitted after the prescribed period, if there is sufficient cause. In view of the same, the Hon'ble Supreme Court in ***Ramlal, Motilal and Chhotelal v. Rewa Coalfields Ltd.*** **[*AIR 1962 SC 361*]** held that Section 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide imputable to the appellant.

22.The words "sufficient cause" in Section 5 of the Limitation Act has to be construed liberally in order to advance substantive justice. Here, the Competent Authority is only appointed by the Government to exercise control over the attached properties. Whereas the depositors i.e., the defacto complainants are the parties who are affected by the delay of the Competent Authority. The negligent attitude or inaction of such authority need not affect innocent depositors. Therefore, in the interest of substantial justice, there is sufficient cause to condone the delay in filing the application and there is no infirmity in the decision of the Special Court.

23.The Government appoints Competent Authority under Section 4(1) of the TNPID Act. The powers and duties of the Competent Authority are also defined under Section 4 of the TNPID Act. For the sake of convenience, Section 4 of the TNPID Act is extracted hereunder:-

> *"4. Competent authority. - (1) The Government may, by notification, appoint one or more authorities for such area or areas or such case or cases as may be specified in the notification hereinafter called "the Competent authority" to exercise control over the properties attached by the Government under section 3.*
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> *(2) The Competent authority shall have such other powers as may be necessary for carrying out the purposes of this Act.*
>
> *(3) Upon receipt of the order of the Government under section 3, the Competent authority shall apply within thirty days to the Special Court constituted under this Act for making the ad-interim order of attachment absolute and for a direction to sell the property so attached by public auction, and realise the sale proceeds.*
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> *(4) An application under sub section (3) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the Financial Establishment has committed any default or is likely to defraud, is founded, the amount of money or value of other property believed to have been procured by means of the deposit, and the details, if any, of persons in whose name such property is believed to have been invested or purchased out of the deposits or any other property attached*

under section 3.

(5) The Competent authority shall make an application to any court having jurisdiction to try similar cases or deal with the subject matter pertaining to money or property belonging to a Financial Establishment or any person specified in section 3 situated within the territorial jurisdiction of that court for appropriate orders.

(6) For the purpose of crediting the dealing with the money realised by the Competent authority, he shall open an account in any Scheduled commercial bank."

24.The DROs of respective districts are designated as Competent Authority vide G.O.Ms.No.1049, Home Department, dated 26.08.2004. As pointed out by the learned Additional Advocate General, the DROs are also having other duties such as,

i. Assisting the District Collector in discharging their duties. These functions include District Administration ranging from maintaining Law and Order, Planning and Development, General Elections, Arms licensing and etc.

ii. The District Revenue Officer looks after all the branches of the Collectorate which mainly deals with general administration and is also vested with supervision of day-to-day functions of the Collectorate.

iii. The District Revenue Officer runs the Revenue Administration under various enactments in a district.

iv. The District Revenue Officer is also designated as Additional District Magistrate.

v. The District Revenue Officer mainly deals with civil supplies, land matters, mines and minerals, village officers etc.

Therefore, it appears that they are not effectively discharging their duties as a Competent Authority under the TNPID Act.

25.The present case at hand is a glaring example for the same. The ad-interim order of attachment passed in G.O.Ms.No.989, Home (Police XIX) Department, dated 24.12.2012 was challenged by the accused in Crl.OP(MD).No. 6607 of 2013, in which one of the main grounds raised is that the application under Section 4 of the Act to make the order as absolute was not filed. This Court allowed the petition on 19.03.2014 recording that the application required under Section 4(3) has not been filed. Even thereafter, the Competent Authority has failed to file necessary application and filed this application belatedly only in September 2021.

26.This delay maybe due to their work pressure as claimed or due to malafide intentions. In this case, it appears that the application under Section 4(3) was not filed, deliberately, even though the application in Crl.OP(MD).No.6607 of 2013 was allowed by this Court on the same ground. The Hon'ble Supreme Court in Crl.A.No.933 of 2017 set aside the order passed by this Court, as early as on 09.05.2017. Even thereafter, the first respondent / Competent Authority has failed to take any immediate action. In view of this delay, the application filed in the year 2021 was not concluded for past 2 years. Therefore, this Court has verified with the learned Additional Advocate General as to the functioning of the system to achieve the objective of the TNPID Act. The details furnished by the authorities is extracted as under:-

PARTICULARS OF CASES UNDER TNPID ACT	
Number of Cases filed under the TNPID Act	1,249
Number of deposits involved	6,90,166
Number of GOs issued	366
Worth of properties attached	Rs.827,67,75,644/-
Value of sale of properties	Rs.321,45,37,093/-
Amount deposited through TNPID Court, Frozen amount and advance amount	Rs.50,71,61,303/-
Total Amount deposited in the DRO Account under the TNPID Act	Rs.372,16,98,396/-

Amount disbursed to the depositors through DRO under the TNPID Act	Rs.264,73,34,273/-
Number of depositors who received their deposits under the TNPID Act	60,824

27.From the details furnished, it appears that only 39% of the properties attached have been subjected to auction and the sale proceeds were realized. The official website of Economic Offences Wing of Government of Tamil Nadu also shows the details of the amount refunded to the general public, but this data is only up to August, 2017. For better appreciation, the same is extracted as follows:-

Year	**Amount Refunded**
2012	Rs.46.96 Crores
2013	Rs.56.99 Crores
2014	Rs.23.44 Crores
2015	Rs.38.61 Crores
2016	Rs.41.13 Crores
2017 (upto August)	Rs.23.84 Crores

28.The number of criminal cases registered under the TNPID Act are increasing every year. The volume of fraud is also huge. The depositors are mostly poor and illiterate. There is a considerable delay in attaching the properties and bringing the property to auction. Considering the volume of cases and the amount involved, the Government may consider appointment of an exclusive officer in the cadre of IAS or a retired High Court Judge as a Competent Authority for disposing the property which were attached under the TNPID Act. If the properties are brought for auction by a retired High Court Judge or an IAS officer, the confidence among the general public would increase in purchasing the property attached which would see a raise in the number of poor depositors in getting their deposits back.

29.In the interest of the depositors, as discussed above, this Court is not inclined to interfere with the discretion exercised by the Special Court in condoning the delay of 1537 days. Hence this civil revision petition is dismissed.

30.Learned Additional Advocate General is expected to address the issue raised by this Court to the Government and make necessary recommendations as suggested above.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Internet : Yes
Index : Yes / No
NCC : Yes / No

08.06.2023

gk

Note:

Mark a copy of this order to

i. The Chief Secretary,
State of Tamil Nadu,
Secretariat, Chennai.

ii. The Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Secretariat, Chennai.

To

1.The Judge,
Special Court under Tamil Nadu Protection of Interest of Depositors Act,
Madurai.

2.The District Revenue Officer,
O/o.the District Revenue Officer,
Madurai.

B.PUGALENDHI, J.

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