IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

209

CWP-8449-2018 (O&M)
Date of decision: 08.02.2024

Improvement Trust Ludhiana

...Petitioner

VERSUS

Punjab State Commission for NRIS and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Ms Kavita Arora, Advocate for the petitioner.

Ms. Anju Sharma Kaushik, DAG Punjab
for respondent No.1.

Mr. Eklavya Kumar, Advocate for respondents
for respondents No.2 and 3.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the order dated 01.06.2017 passed by respondent No.1 to the extent whereby the NRIs Commission has ordered waiver of the interest and penalty imposed upon respondent No.2 and has further directed the petitioner-Trust to take action against the erring officials of the Improvement Trust Ludhiana.

2. Learned counsel for the petitioner contends that respondent No.1 has been constituted under Section 3 of the Punjab State Commission for Non-Resident Indians Act, 2011 (hereinafter referred to as 'the Act of 2011'). It is submitted that the petitioner had issued "**Ludhiana**

Improvement Trust Scheme for allotment of MIG Flats" to be constructed by the Improvement Trust under its self-financing Scheme. As per the conditions of the self-financing scheme, all payments were to be accepted only by way of crossed Demand Drafts/Pay Orders payable to the Chairman, Improvement Trust, Ludhiana. The allotment letter was issued to all the applicants, who were successful in the draw of lots and payments were to be required to be made as per the schedule of payments. A letter of allotment in favour of respondent No.3-Jaskaran Singh Maan was issued vide letter No.11186 dated 15.11.1999 w.r.t. MIG Flat No.25-GF in the development scheme of 475 acres under self-financing. The payment schedule notified as per the letter of allotment is extracted as under:-

Sr. No.	**Installment**	**Amount**	**Due Date/ Actual Payment made**
1	Earnest Money	67,500/-	Already deposited vide receipt No.12575 dated 26/98.
2	Balance amount of 1/4th sale money within 30 days	1,06,250/-	15.12.99
3	1st installment	1,04,250/-	14.06.2000
4	2nd installment	1,04,250/-	14.12.2000
5	3rd installment	1,04,250/-	14.06.2001
6	4th installment	1,04,250/-	14.12.2001
7	5th installment	1,04,250/-	14.06.2002

3. It is averred that the dispute now pertains only to the payment of 1st installment which was due on 14.06.2000 and that the receipt of all other payments is not disputed.

4. The possession of flat in question was delivered on the deposit

of 25% of the amount. Respondent No.3 sought NOC from the petitioner-Trust in the year 2014. On verification of record, it transpired that the first installment of Rs.1,04,250/- which was due on 14.06.2000, had not been deposited by respondent No.3 and subsequently when an information was sought from respondent No.3-allottee, it was informed that he had sent the said payment vide Demand Draft bearing No.041685 dated 12.06.2000 for a sum of Rs.1,04,250/- in the name of Chairman, Improvement Trust, Ludhiana, issued by the Oriental Bank of Commerce. A photocopy of the same prepared by him was also shown by him. A report was thereafter sought from the office of the petitioner-Trust since the receipt of such Demand Draft was not being reflected in the accounts of the Trust. It was informed by the office that there was a tampering in the office record and the entry at Sr. No.4025 of the Diary Register pertaining to the same was not only in a different handwriting but is also a result of overwriting on an initial entry and had been made thereafter. Besides, it was reported that the above said details have been squeezed in between the numbers and no description of the amount deposited through the above said Demand Draft has been mentioned. There is also reported a cutting on the initials in the last column of the said Diary Register. It was further reported that the above said entry at Sr. No. 4025 qua deposit of the said Demand Draft is dated 28.06.2000 and the said interpolation has been done against a vacant space available.

5. On receipt of the report from the office, the department recommended registration of a criminal case on 30.10.2014 to the Incharge, Police Station Sarabha Nagar, Ludhiana. An inquiry officer was also appointed whereupon a detailed report was submitted admitting about the

interpolation and forgery in the record of the Trust. It is contended that a demand was thus raised by the petitioner pertaining to the penalty as well as the interest on account of non-deposit of the 1st installment. The respondent-allottee however raised a dispute before the NRIs Commission bearing complaint No.1007 about the demand being incorrect.

6. During the pendency of the proceedings before the NRI Commission, the petitioner-Trust passed a resolution thereby waiving off the penalty and interest against non-deposit of the first installment and sent the resolution to the higher authorities for its approval. The Government did not approve and rejected the same vide its order dated 31.05.2017. Consequently, the demand of the penal interest and delayed interest subsist against respondent No.3-allottee.

7. The respondent-Commission, however, proceeded further in the matter and vide order dated 01.06.2017 issued the directions as under:

> " ***In these circumstances recommendations are made that the order dated 31.05.2017 passed by Addl. Chief Secretary Local Bodies, Punjab be reviewed, interest and penalty imposed upon the complainant be waived and further immediate action be taken against erring officials of Improvement Trust, Ludhiana.***
>
> ***Complainant is given the liberty to seek damages and compensation from Improvement Trust, Ludhiana and the State Govt. for his unnecessary harassment.***
>
> ***However, it is made clear that in such an eventuality the Trust or the State Govt. as the case may be,***

shall be able to recover such amount from the erring officials after fixing their responsibility. Further recommendation is made to complete the investigation and file challan in FIR No.231 dated 10.10.2015 expeditiously."

8. It is contended that the above said order was passed on the very next day of the decision dated 31.05.2017 taken by the State Government. She contends that even though the Commission used the expression that a recommendation is made to the Additional Chief Secretary, Local Bodies, Punjab, to review the order dated 31.05.2017, however, the tenor of the order is that the interest and penalty imposed upon the complainant be waived and a further liberty has been granted to the complainant to seek damages and compensation from the petitioner-Trust as well as the State for unnecessary harassment. The counsel for the petitioner contends that the respondent-Commission could not have issued a direction for waiver of the interest and penalty and further contends that being a recommendatory body, it could have at best made its recommendations and left the remainder for the competent authority to adjudicate and thereby leaving the parties to claim their respective remedies in accordance with law.

9. Learned counsel for the contesting respondents, however, contends that the Demand Draft in question was duly deposited by respondent No.3 with the petitioner-Trust and an entry in this regard is reflected to the said effect in the record. He further submits that the account statement of the petitioner not only shows the preparation of Demand Draft but also the availability of the amount in his account for which the Demand Draft had been prepared. There would be no occasion for the petitioner to

have the Demand Draft prepared and to retain the same with himself. A mere failure on the part of the Trust in maintaining their record and/or in not seeking credit of the said amount cannot be construed to the prejudice of the respondent and thus he cannot be further burdened with the liability of interest/penalty for an evident failure on the part of the petitioner in non-deposit of the first installment.

10. The counsel for respondent No.3 further contends that the petitioner never raised any objection with respect to non-deposit of the said amount, at any prior point of time, and that above said demand was raised after a period of nearly 14 years and that too on submission of an application by respondent No.3 seeking no dues certificate from the petitioner-Trust. It is contended that respondent No.3 has never defaulted in payment of the installments and the lapse, if any, lies only on the petitioner-Trust and its employees. The liability thereof cannot be fastened against respondent No.3-applicant and burdening him with penalty and interest for delayed deposit of the said amount. He further contends that FIR No. 231 dated 10.01.2015 under Sections 465, 468, 471 and 167 IPC at Police Station Division No.5, Ludhiana has already been registered at his behest.

11. He, however, does not dispute the fact that the Commission is only a recommendatory body and cannot make a decision on behalf of the State authorities. The competence to take a decision on the basis of the recommendations, if any, of the NRIs Commission is that on the competent authority.

12. No replication/rejoinder has been filed to the written statement file on behalf of the respondent-applicant.

13. I have heard the learned counsel for the parties and have gone through the documents appended with the petition.

14. The dispute is now confined only to the liability of the respondent to pay the penalty or interest on delayed deposit of the first installment and the subsequent receipt of the amount is not in dispute. The issue as to whether the Demand Draft in question was originally deposited by the respondent well in time or not, is a subject matter of investigation in case FIR No. 231 dated 10.01.2015. It is further evident that a report was submitted by the Commissioner of Police, Ludhiana pursuant to an order passed by the Punjab State Commission for NRIs vide memo No.2712/PC dated 30.11.2015 wherein it had submitted that the lapse in non-depositing of the draft was on the employees of the petitioner-Trust. The relevant extract of the report furnished by the office of Commissioner of Police, Ludhiana is as under:

> ***" Later on Improvement Trust Ludhiana imposed an amount of interest Rs.553568.00/- and penalty Rs.20850.00/- for not paying 1st installment. Further enquiries revealed that first installment i.e. bank draft No. 041685 dated 12.06.2000 for Rs. 104250.00/- was received by Improvement Trust, Ludhiana vide register entry No. 4025 dated 21.06.2000. But employees of Improvement Trust, Ludhiana did not en-cash the draft that lapsed and the draft amount remained in the bank account. Jaskaran Singh in lieu of unencashed draft No.041685 dated 12.06.2000 got duplicate draft for Rs.104250.0 Cr.-draft No.516099 dated 23.02.2015 from bank***

and deposited with Improvement Trust, Ludhiana.

Jaskaran Singh had no bad intention to delay payment of 1st installment. He deposited 1st installment draft in time on 12.06.2000 which was not en-cashed by Improvement Trust, Ludhiana due to carelessness and negligence by employees of Trust.".

15. The factum of inquiry report submitted by the Commissioner of Police, Ludhiana, in the office of the Commission of NRIs is not in dispute. Hence, at this juncture, balance of convenience cannot be vested in favour of the petitioner-Trust and *prima facie*, the respondent-applicant is not in default in depositing the amount in question. The failure in encashment of the above installment is attributable to the employees of the petitioner-Trust.

16. Taking into consideration the peculiar facts of the case and noticing that even though the Commission of NRIs may not be competent to issue a direction for waiver of the interest and penalty imposed by the petitioner-Trust, however, considering that this Court is sitting in a power of judicial review and interest of justice needs to be balanced, the matter is being decided on preponderance and probabilities.

17. Thus, after noticing an unimpeached report, which has been furnished by the office of the Commissioner of Police, Ludhiana, attributing the lapses to the employees of the petitioner-Trust, the allottee cannot be burdened with the liability of paying interest and penalty for failure on the part of the employees of the Corporation itself.

18. The respondent-applicant cannot be held responsible to offer explanation for the lapses on the part of the employees of the petitioner-

Trust or entry in record especially when the allottee is not an accused or suspect of forgery. Hence, while holding that the above-said order of the NRI Commission was beyond the powers conferred on the Commission to the extent whereby it has directed waiver of the interest and penalty, however, in exercise of the powers vested in this Court, the demand raised by the Improvement Trust from the petitioner for interest and penalty is held to be bad and liable to be set aside in the totality of the circumstances and in the interest of justice.

19. The petition is **disposed of.**

20. The petitioner-Trust would however be at liberty to initiate recovery of loss, if any, from its erring and defaulting officials as per law.

21. All other misc. applications, if any, stands disposed of.

(VINOD S. BHARDWAJ)
JUDGE

08.02.2024
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No