"REPORTABLE"

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4854 OF 2009

M/s. Bhagwati Vanaspati Traders .... Appellant

versus

Senior Superintendent of Post Offices, Meerut .... Respondent

J U D G M E N T

Jagdish Singh Khehar, J.

1. M/s. Bhagwati Vanaspati Traders, the appellant before us, is a proprietorship concern. Mr. B.K. Garg is its sole proprietor. On 28.4.1995, M/s. Bhagwati Vanaspati Traders purchased one, six years' National Savings Certificate (hereinafter referred to as, NSC) bearing number 6NS/06DD 387742, by investing a sum of Rs.5,000/-. The above NSC was to mature on 28.4.2001. The maturity amount payable on 28.4.2001 was Rs.10,075/-.

2. Since M/s. Bhagwati Vanaspati Traders was not paid the amount due on maturity, B.K. Garg made repeated visits to the office from where the NSC was purchased. He was informed, that an NSC could only be issued in the name of an individual, and that, the NSC taken in the name of M/s. Bhagwati Vanaspati Traders, was not valid. He was also informed, that the matter had been referred for advice to the Post Master General, Bareilly, and that, the question of payment of the maturity amount would be considered only after the receipt of inputs from Bareilly. Having

waited for a substantial length of time, and realizing that no further action had been taken at the hands of the respondent, B.K. Garg visited the office of the Post Master General, Bareilly. At Bareilly he was informed, that the matter had been referred to the Director General (Post), Department of Posts, New Delhi, and that, he would have to await the decision of the Director General (Post). Having waited long enough, without any fruitful result, M/s. Bhagwati Vanaspati Traders preferred Complaint Case no. 513 of 2004 before the District Consumer Disputes Redressal Forum, Meerut (hereinafter referred to as, the District Forum). The District Forum, by its order dated 1.2.2007 accepted the claim of M/s. Bhagwati Vanaspati Traders, and accordingly, directed the respondent to pay the maturity amount of Rs.10,075/- with 12% interest, from the date of maturity till the date of payment. The respondent was additionally directed to pay, a sum of Rs.5,000/- as compensation, and also cost of Rs.2,000/-, to the appellant proprietorship concern.

3. Dissatisfied with the order dated 1.2.2007, passed by the District Forum in favour of the appellant, the respondent Senior Superintendent of Post Offices, Meerut, preferred Appeal no. 460 of 2007 before the State Consumer Disputes Redressal Commission, Lucknow. The aforestated appeal was allowed by the State Commission vide its order dated 21.1.2008. The appellant concern then preferred Revision Petition no. 1456 of 2008 before the National Consumer Disputes Redressal Commission, New Delhi. The National Commission dismissed the revision petition, vide the impugned order dated 4.9.2008. The special leave to appeal preferred by the appellant, against the impugned order dated 4.9.2008, was granted by this Court on 27.7.2009.

4. A perusal of the orders passed by the State Commission, as also, the National Commission reveals, that the same were premised on the fact, that the NSC purchased by M/s. Bhagwati Vanaspati Traders, had an irregularity, inasmuch as, an NSC could only be purchased by an individual, and the same could not be issued in the name of a concern, firm, institution, banking institution or company etc. On account of the aforesaid irregularity, the respondent placed reliance on rule 17 of the Post Office Savings Bank General Rules, 1981. The above rule is being extracted hereunder:-

> "17. Account opened in contravention of rules:- Subject to the provision of rule 16, where an account is found to have been opened in contravention of any relevant rule for the time being in force and applicable to the account kept in the Post Office Savings Bank, the relevant Head Savings Bank may, at any time, cause the account to be closed and the deposits made in the account refunded to the depositor without interest."

In addition to the above, the respondent had placed reliance on a decision rendered by this Court in Post Master, Dargamitta HPO, Nellor v. Raja Prameeelamma, (1998) 9 SCC 706, wherein this Court had held as under:-

> "But as this contract was contrary to the terms notified by the Government of India and this was due to inadvertence of the staff. In my opinion it does not become a contract binding the Government of India being unlawful and void. As such this is not a case of deficiency in service either in terms of the law or in terms of the contract as defined in Section 2(1)(g) of the Consumer Protection Act, 1986."
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> (emphasis is ours)

During the course of hearing, learned counsel for the respondent, in addition to the judgment extracted hereinabove, placed reliance on a recent decision rendered by this Court in Arulmighu Dhandayadhapaniswamy Thirukoil, Palani, Tamil Nadu v. Director General of Post Offices, Department of Posts & Ors., (2011) 13 SCC 220, and drew our attention to the following conclusions recorded therein;-

> "18. This Court in Raja Prameeelamma case, (1998) 9 SCC 706, held that even though the certificates contained the terms of contract between the Government of India and the holders of the National Savings Certificate, the terms in the contract were contrary to the Notification and therefore the terms of contract being unlawful and void were not binding on the Government of India and as such the Government refusing to pay interest at the rate mentioned in the Certificate is not a case of deficiency in service either in terms of law or in terms of contract as defined under Section 2(1)(g) of the Consumer Protection Act, 1986. The above said decision is squarely applicable to the case on hand.
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> 19. It is true that when the Appellant deposited a huge amount with the third Respondent from 5.5.1995 to 16.8.1995 under the Scheme for a period of five years, it was but proper on the part of the Post Master to have taken a note of the correct Scheme applicable to the deposit. It was also possible for the Postmaster to have ascertained from the records, could have applied the correct Scheme and if the Appellant, being an institution, was not eligible to avail the Scheme and advised them properly. Though Mr. S. Aravindh, learned Counsel for the Appellant requested this Court to direct the third Respondent to pay some reasonable amount for his lapse, inasmuch as such direction would go contrary to the Rules and payment of interest is prohibited for such Scheme in terms of Rule 17, we are not inclined to accept the same."
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> (emphasis is ours)

Based on the decision of this Court relied upon by the State Commission, as also, the National Commission in the impugned orders dated 21.1.2008 and 4.9.2008 respectively, as also, the latest judgment rendered by this Court in Arulmighu Dhandayadhapaniswamy Thirukoil case (supra), it was the emphatic contention of the learned counsel for the respondent, that there was no question of release of the maturity amount to the appellant.

5. It was also the contention of the learned counsel for the respondent, that the mistake at the hands of the postal authorities was innocent. After the appellant's claim was examined, a preliminary enquiry disclosed, that the NSC was issued to M/s. Bhagwati Vanaspati Traders by Ved Bahadur Singh (an employee of the postal department). A departmental proceeding was held against the above employee, and he was duly punished. Accordingly it was sought to be asserted, that it was not as if, the postal authorities were intentionally depriving the appellant of the benefits of the

NSC purchased by him on 28.4.1995. The deprivation of the appellant, according to learned counsel, was based on a pure determination of the legal rights of the appellant.

6. The first contention advanced at the hands of the learned counsel for the appellant was based on the decision rendered by this Court in Tata Iron & Steel Co. Ltd. v. Union of India & Ors., (2001) 2 SCC 41, wherefrom learned counsel invited our attention to the following observations:-

> "20. Estoppel by conduct in modern times stands elucidated with the decisions of the English Courts in Pickard v. Sears, 1837 6 Ad. & El. 469, and its gradual elaboration until placement of its true principles by the Privy Council in the case of Sarat Chunder Dey v. Gopal Chunder Laha, (1891-92) 19 IA 203, whereas earlier Lord Esher in the case of Seton Laing Co. v. Lafone, 1887 19 Q.B.D. 68, evolved three basic elements of the doctrine of Estoppel to wit:
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> > "Firstly, where a man makes a fraudulent misrepresentation and another man acts upon it to its true detriment: Secondly, another may be where a man makes a false statement negligently though without fraud and another person acts upon it: And thirdly, there may be circumstances under which, where a misrepresentation is made without fraud and without negligence, there may be an Estoppel."
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> Lord Shand, however, was pleased to add one further element to the effect that there may be statements made, which have induced other party to do that from which otherwise he would have abstained and which cannot properly be characterized as misrepresentation. In this context, reference may be made to the decisions of the High Court of Australia in the case of Craine v. Colonial Mutual Fire Insurance Co. Ltd., 1920 28 C.L.R. 305. Dixon, J. in his judgment in Grundt v. The Great Boulder Pty. Gold Mines Pty. Ltd., 1938 59 C.L.R. 641, stated that:
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> > "In measuring the detriment, or demonstrating its existence, one does not compare the position of the representee, before and after acting upon the representation, upon the assumption that the representation is to be regarded as true, the question of estoppel does not arise. It is only when the representor wished to disavow the assumption contained in his representation that an estoppel arises, and the question of detriment is considered, accordingly, in the light of the position which the representee would be in if the representor were allowed to disavow the truth of the representation."
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> (In this context see Spencer Bower and Turner: Estoppel by Representation, 3rd Ed.). Lord Denning also in the case of Central Newbury Car Auctions Ltd. v. Unity Finance Ltd., 1956 (3) All ER 905, appears to have subscribed to the view of Lord Dixon, J. pertaining to the test of 'detriment' to the effect as to whether it

appears unjust or unequitable that the representator should now be allowed to resile from his representation, having regard to what the representee has done or refrained from doing in reliance on the representation, in short, the party asserting the estoppel must have been induced to act to his detriment. So long as the assumption is adhered to, the party who altered the situation upon the faith of it cannot complain. His complaint is that when afterwards the other party makes a different state of affairs, the basis of an assertion of right against him then, if it is allowed, his own original change of position will operate as a detriment, (vide Grundts: High Court of Australia (supra)).

21. Phipson on Evidence (Fourteenth Edn.) has the following to state as regards estoppels by conduct.

> "Estoppels by conduct, or, as they are still sometimes called, estoppels by matter in pais, were anciently acts of notoriety not less solemn and formal than the execution of a deed, such as livery of seisin, entry, acceptance of an estate and the like, and whether a party had or had not concurred in an act of this sort was deemed a matter which there could be no difficulty in ascertaining, and then the legal consequences followed (Lyon v. Reed, (1844) 13 M & W 285 (at p. 309). The doctrine has, however, in modern times, been extended so as to embrace practically any act or statement by a party which it would be unconscionable to permit him to deny. The rule has been authoritatively stated as follows: 'Where one by his words or conduct willfully causes another to believe the existence of a certain state of things and induces him to act on that belief so as to alter this own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time.' (Pickard v. Sears (supra)). And whatever a man's real intention may be, he is deemed to act willfully 'if he so conducts himself that a reasonable man would take the representation to be true and believe that it was meant that he should act upon it.' (Freeman v. Cooke, 1848 (2) Exch. 654: at p. 663).
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> Where the conduct is negligent or consists wholly of omission, there must be a duty to the person misled (Mercantile Bank v. Central Bank, 1938 AC 287 at p. 304, and National Westminster Bank v. Barclays Bank International, 1975 Q.B. 654). This principle sits oddly with the rest of the law of estoppel, but it appears to have been reaffirmed, at least by implication, by the House of Lords comparatively recently (Moorgate Mercantile Co. Ltd. v. Twitchings, (1977) AC 890). The explanation is no doubt that this aspect of estoppel is properly to be considered a part of the law relating to negligent representations, rather than estoppel properly so-called. If two people with the same source of information assert the same truth or agree to assert the same falsehood at the same time, neither can be estopped as against the other from asserting differently at another time (Square v. Square, 1935 P. 120)."

22. A bare perusal of the same would go to show that the issue of an estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and on that score a further question arises as to whether there was any unequivocal assurance prompting the

assured to alter his position or status. The contextual facts however, depict otherwise. Annexure 2 to the application form for benefit of price protection contains an undertaking to the following effect:-

> "We hereby undertake to refund to EEPC Rs… the amount paid to us in full or part thereof against our application for price protection. In terms of our application dated against exports made during... In case any particular declaration/certificate furnished by us against our above referred to claims are found to be incorrect or any excess payment is determine to have been made due to oversight/wrong calculation etc. at any time. We also undertake to refund the amount within 10 days of receipt of the notice asking for the refund, failing which the amount erroneously paid or paid in excess shall be recovered from or adjusted against any other claim for export benefits by EEPC or by the licensing authorities of CCI & C."

and it is on this score it may be noted that in the event of there being a specific undertaking to refund for any amount erroneously paid or paid in excess (emphasis supplied), question of there being any estoppel in our view would not arise. In this context correspondence exchanged between the parties are rather significant. In particular letter dated 30.11.1990 from the Assistant Development Commissioner for Iron & Steel and the reply thereto dated 8.3.1991 which unmistakably record the factum of non-payment of JPC price."

(emphasis is ours)

Based on the aforesaid observations it was the emphatic contention of the learned counsel for the appellant, that the rule of estoppel would come to the aid of the appellant, inasmuch as, the appellant having been consciously permitted to purchase the NSC, could not be denied the benefit of the maturity amount by asserting, that there was some irregularity in the purchase of the NSC.

7. It is not possible for us to accept the applicability of the principle of estoppel in the facts and circumstances of this case. No representation is ever shown to have been made to the appellant. It was the appellant's individual decision to purchase the NSC. It is not shown, that a fraudulent representation was made to the appellant. It is also not shown, that a false statement was negligently made to the appellant. The rule of estoppel, in the present case, could have only been premised on some conduct of the respondent, which had willfully induced the appellant to invest in the

NSC. Unfortunately, for the appellant, no such willful conduct has been brought to our notice. Having given our thoughtful consideration to the instant aspect of the matter, we feel that this case would be governed by the proposition evolved in Moorgate Mercantile Co. Ltd. v. Twitchings, (1977) AC 890, namely, where two people with the same source of information assert the same truth or agree to assert the same falsehood at the same time, neither can be estopped against the other. Therefore, whilst it cannot be disputed, that the authorities issuing the NSC were required to ensure, that the same was issued to only such persons who were eligible in law to purchase the same, yet in terms of the mandate of rule 17 extracted hereinabove, the vires whereof is not subject matter of challenge, it is not possible for us to accept, that the rule of estoppel could be relied upon at the behest of the appellant, for any fruitful benefit.

8. To overcome the mandate of rule 17 extracted hereinabove, as also, the decision rendered by this Court in Raja Prameeelamma case (supra), and the proposition of law declared in Arulmighu Dhandayadhapaniswamy Thirukoil case (supra), learned counsel for the appellant placed emphatic reliance on the decision of this Court in Ashok Transport Agency v. Awadhesh Kumar & another., (1998) 5 SCC 567. He invited our attention to the following observations recorded therein:-

> "6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Indian Partnership Act, 1932. Though a partnership is not a juristic person but Order XXX Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 of Order XXX which make applicable the provisions of Order XXX to a proprietary concern,

> enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 of Order XXX have no application to such a suit as by virtue of Order XXX Rule 10 the other provisions of Order XXX are applicable to a suit against the proprietor of proprietary business "insofar as the nature of such case permits". This means that only those provisions of Order XXX can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."
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> (emphasis is ours)

Based on the observations recorded in the aforesaid judgment, the second contention advanced by the learned counsel for the appellant was, that in sum and substance, a sole proprietorship concern allows the fictional use of a trade name on behalf of an individual. It was contended, that truthfully only one individual is the owner of a sole proprietorship concern. As such, according to learned counsel, the name of the sole proprietorship concern, can again be substituted with the name of the sole proprietor. If that is allowed, the NSC purchased by the appellant would strictly conform to the mandate of law. According to learned counsel, it makes no difference whether the individual's name, or the proprietorship's name is recorded while purchasing an NSC. It was pointed out, that if the respondent was not agreeable in accepting the trade name, the respondent ought to have corrected the NSC by substituting the name of M/s. Bhagwati Vanaspati Traders with that of its sole proprietor, namely, B.K. Garg.

9. We find merit in the second contention advanced at the hands of the learned counsel for the appellant. It is indeed true, that the NSC was purchased in the name of M/s. Bhagwati Vanaspati Traders. It is also equally true, that M/s. Bhagwati Vanaspati Traders is a sole proprietorship concern of B.K. Garg, and as such, the irregularity committed while issuing the NSC in the name of M/s. Bhagwati Vanaspati Traders, could have easily been corrected by substituting the name of M/s. Bhagwati

Vanaspati Traders with that of B.K. Garg. For, in a sole proprietorship concern an individual uses a fictional trade name, in place of his own name. The rigidity adopted by the authorities is clearly ununderstandable. The postal authorities having permitted M/s. Bhagwati Vanaspati Traders to purchase the NSC in the year 1995, could not have legitimately raised a challenge of irregularity after the maturity thereof in the year 2001, specially when the irregularity was curable. Legally, rule 17 of the Post Office Savings Bank General Rules, 1981, would apply only when an applicant is irreregularly allowed something more, than what is contemplated under a scheme. As for instance, if the scheme contemplates an interest of Y% and the certificate issued records the interest of Y+2% as payable on maturity, the certificate holder cannot be deprived of the interest as a whole, on account of the above irregularity. He can only be deprived of 2%, i.e., the excess amount, beyond the permissible interest, contemplated under the scheme. A certificate holder, would have an absolute right, in the above illustration, to claim interest at Y%, i.e., in consonance with the scheme, despite rule 17. Ordinarily, when the authorities have issued a certificate which they could not have issued, they cannot be allowed to enrich themselves, by retaining the deposit made. This may well be possible if the transaction is a sham or wholly illegal. Not so, if the irregularity is curable. In such circumstances, the postal authorities should devise means to regularize the irregularity, if possible.

10. It is not possible for us to deny relief to the appellant, based on the judgments rendered by this Court in Raja Prameeelamma case (supra) and Arulmighu Dhandayadhapaniswamy Thirukoil case (supra), in view of the fact that, the matter was never examined in the perspective determined by us hereinabove. In neither of the two judgments, the amendment of the NSC was sought. The instant proposition

of law, was also not projected on behalf of the certificate holders, in the manner expressed above.

11. There was seriously no difficulty at all in the facts and circumstances of the present case, to regularize the defect pointed out, because M/s. Bhagwati Vanaspati Traders, is admittedly the sole proprietorship concern of B.K. Garg. The postal authorities should have solicited the change of the name in the NSC, through a representation by B.K. Garg himself. On receipt of such a representation, the alleged irregularity would have been cured, and the beneficiary of the deposit, would have legitimately reaped the fruits thereof. Rather than adopting the above simple course, the postal authorities chose to strictly and rigidly interpret the terms of the scheme. This resulted in the denial of the legitimate claims of the sole proprietor of the appellant concern, i.e., B.K. Garg, of the investment made by him. In the above view of the matter, we consider it just and appropriate, in exercise of our jurisdiction under Article 142 of the Constitution of India, to direct the Senior Superintendent of Post Offices, Meerut, to correct the NSC issued in the name of M/s. Bhagwati Vanaspati Traders, by substituting the appellant's name, with that of B.K. Garg.

12. The irregularity having been cured, we hope that B.K. Garg will now be released all the payments due to him, in terms of the order passed by the District Forum. The respondent is accordingly directed to pay to B.K. Garg, the maturity amount of Rs.10,075/- with 12% interest, from the date of maturity, till the date of payment. He would be entitled to Rs.5,000/- towards compensation, as was awarded to him by the District Forum. In addition, we consider it just and appropriate to award him litigation costs of Rs.10,000/-. The entire amount aforementioned, should be

released to B.K. Garg, the sole proprietor of M/s. Bhagwati Vanaspati Traders, within one month from the date of receipt of a certified copy of this judgment.

13. The instant appeal is allowed in the aforesaid terms.

…….J.
(Jagdish Singh Khehar)

…….J.
(C. Nagappan)

New Delhi;
October 10, 2014.

ITEM NO.1A COURT NO.6 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 4854/2009

M/S.BHAGWATI VANASPATI TRADERS Appellant(s)

VERSUS

SR.SUPERIN.OF POST OFFICE,MEERUT Respondent(s)

[HEARD BY HON'BLE JAGDISH SINGH KHEHAR AND HON'BLE C.NAGAPPAN, JJ.]

Date : 10/10/2014 This appeal was called on for Judgment today.

For Appellant(s) Mr. V. K. Monga,Adv.(Not present)

For Respondent(s) Mr. Kamal Mohan Gupta,Adv.(Not present)

Hon'ble Mr. Justice Jagdish Singh Khehar pronounced the judgment of the Bench comprising his Lordship and Hon'ble Mr. Justice C. Nagappan.

For the reasons recorded in the Reportable judgment, which is placed on the file, the appeal is allowed.

(Parveen Kr. Chawla)
Court Master

(Phoolan Wati Arora)
Assistant Registrar