

PLD 2013 Supreme Court 174

Present: Tassaduq Hussain Jilani, Mian Saqib Nisar and Sarmad Jalal Osmany, JJ

DIRECTOR GENERAL, NATIONAL SAVINGS, ISLAMABAD---Appellant

Versus

BALQEES BEGUM and others---Respondents

Civil Appeal No.1060 of 2010, decided on 27th September, 2012.

(On appeal from the order dated 27-7-2010 of Lahore High Court Multan Bench, Multan in I.-C.A. No.263 of 2010).

(a) Prize Bonds Rules, 1999---

---R. 15---Public Debt Act, (XVIII of 1944), S. 24---Constitution of Pakistan, Art. 199---Prize bond---Time period of six years allowed for presenting prize bond for attaining prize---Relaxation in such time period---Scope---"Compassion" as a ground for providing relief under Art. 199 of the Constitution---Scope---Prize bond was presented by respondent after the expiry of period of six years provided under R. 15 of Prize Bonds Rules, 1999, but High Court in its constitutional jurisdiction allowed her claim on compassionate grounds by observing that she was a simple village folk residing in a remote village having no means to check whether she had won the prize, and that her claim was only barred by four months---Legality---High Court had admitted that claim of respondent was unenforceable under law and only compassion prevailed with the judge in the peculiar circumstances of the case---Compassion, which could be said to have the shade, overtone and nexus to the rules of equity could not be given precedence and over-riding effect over clear mandate of law---Concepts of "compassion" and "hardship" should be considered by courts for providing relief to an aggrieved party in terms of Art. 199 of the Constitution, only when there was room in the relevant law to do so, but undoubtedly not by breach of law---Rule 15 of Prize Bonds Rules, 1999 unambiguously contemplated that not only the liability of Federal Government to pay the prize would come to an end by the flux of time, but also that the right of a person/holder of prize bond would stand extinguished---Said rule was a double check/ bar on the right of the prize bond holder to receive the money and was a clear mandate of law---No provision in the Prize Bond Rules, 1999 catered for situations of "hardship" or "compassion" and no power was vested under the said Rules with any authority to enlarge/relax the period of six years on such grounds---Appeal was allowed, impugned judgments were set-aside and consequently writ petition filed by respondent stood dismissed.

Messrs Pfizer Laboratories Limited v. Federation of Pakistan and others PLD 1998 SC 64 distinguished.

(b) Equity---

---Principles---Relief---Scope---Equity had to give way to law and its principles could only be resorted to and invoked when the resolution of a proposition was not provided and available by or under the law; it was equity then which came into play to fill up the vacuum, where the law provided no answer for doing justice---Rules of equity could not be taken into account to frustrate and defeat the law.

(c) Constitution of Pakistan---

---Art. 199---Constitutional petition---"Compassion"/ "hardship" as a ground for awarding relief---Scope---Concepts of compassion and hardship should be considered by Courts for providing relief to an aggrieved party in terms of Art. 199 of the Constitution, only when there was room in the relevant law to do so, but undoubtedly not by breach of law and moreso not by stultifying the right accrued to the opposite side and /or by enforcing a right which the aggrieved party under the law had lost.

Raja Aleem Khan Abbasi, D.A,G. for Appellant.

Kh. Muhammad Farooq, Sr. Advocate Supreme Court for Respondent.

Date of hearing: 27th September, 2012.

ORDER

MIAN SAQIB NISAR, J.---This appeal, with leave of the Court dated 9-12-2010, arises out of a constitution petition initiated by respondent No.1 against the appellant, which was allowed by a learned Single Judge in Chambers of Lahore High Court vide judgment dated 5-7-2010 and the said verdict when assailed by the appellant in Intra Court Appeal was upheld through the judgment dated 27-7-2010.

2. Briefly, the facts of the case are that respondent No.1 instituted the noted petition with the factual statement, that her husband had purchased/possessed a prize bond worth Rs.1500, which on account of the draw held on 15-2-2000 had fetched the prize of rupees one million. Her husband could not present the said prize bond for attaining the prize when he died in the year 2003, whereafter the respondent discovered the noted fact and being a poor lady residing in a far-flung area of Punjab, she could not seek the prize by presentation of the bond within a period of six years as prescribed by the relevant rules, but when she did present the prize bond for the above purpose, it had been declined on the ground, that the time for the said purpose had lapsed. Learned Single Judge in Chambers of Lahore High Court while allowing the writ held "the learned counsel for the petitioner has not been able to persuade me in arriving at a conclusion that the petitioner could lawfully enforce her claim" (emphasis supplied by us). However, on compassionate grounds it appears that the petitioner is entitled to the prize money for the reason being that she is resident of remote village having no means to check whether she had won any prize on her prize bonds; secondly; her claim is barred only by four months which does show that she was vigilant but due to the

remote area, poor means of communication and herself being simple village folk could not come to know about her good luck; and thirdly; it does not appear to be justified by the Government to hold money of simple village folk on a mere technicality that the claim of the petitioner is barred by four months." To support the above, learned Judge relied upon a judgment of this Court reported as Messrs PFIZER LABORATORIES LIMITED v. FEDERATION OF PAKISTAN AND OTHERS (PLD 1998 SC 64).

As mentioned earlier, this decision has been upheld by the learned Division Bench and again primarily on compassionate grounds. Leave was granted in the matter in the following terms:--

"Admittedly the respondent's husband was holder of prize bond No.456766 of the denomination of Rs.1500 which won case prize of rupees one million in the draw held on 15-2-2000. According to Rule 15 of the Prize Bonds Rules 1999 and section 24 of the Public Debt Act, 1944, the prize money was to be claimed within a period of six years from the date of the said draw and that no claim could be made after the expiry of six years. There is no dispute that respondent set up her claim four months after the period of limitation as such she was not entitled to the claim of the prize money merely on compassionate grounds.

(2) In view of the above, we allow this petition and grant leave to appeal."

Learned counsel for the appellant by relying upon some judgments of various High Courts has argued, that compassion cannot be a ground to grant relief to a person to which he is otherwise not entitled under the law. As per Rule 15 of the Prize Bond Rules, 1999 enforced on 22-9-1999, it is unequivocally postulated as under:--

"The Prize Bond (sick)(sic) by the holder of a Prize Bond at any time within a period of six years from the date of the relative draw and after the expiry of the period the liability of the Federal Government to pay the prize money shall terminate and no such claim shall be entertained unless any other period of limitation is fixed by any law to the time be (sick)(sic)."

Therefore, not only the right and claim of the respondent was barred under the law, rather the liability of the Federal Government to pay the prize was terminated on account of the lapse of time prescribed in the noted rule. Conversely, learned counsel for the respondents has reiterated the reasons mentioned in the two decisions and has also relied upon the judgment (supra) of this Court. We have examined the aforesaid judgment and find that it is distinguishable on its own facts and the ratio of the said decision is quite apart from the proposition involved in the matter. It is admitted by learned Single Judge in the impugned judgment, that the claim of the respondent is unenforceable in law (emphasis supplied). Only compassion has prevailed with the learned Single Judge in the peculiar circumstances of the case, that the respondent is the resident of a remote area and is a simple village folk etc. It is settled law that compassion, which can be said to have the shade, overtone and nexus to the rules of equity cannot be given precedence and over riding effect over the clear mandate of law. Equity has to give way to the law and its principles can only be resorted to and invoked when the resolution of a proposition is not provided and available by or under the law;

it is equity then which comes into play to fill up the vacuum where the law has no answer to provide for doing justice. In any case, the rules of equity cannot be taken into account to frustrate and defeat the law. Like equity, the concepts of compassion and hardship shall also be considered by the Courts for providing relief to an aggrieved party in terms of Article 199 of the Constitution, only when there is room in the relevant law to do so, but undoubtedly not by the breach of law and moreso by stultifying the right accrued to the opposite side or/and to enforce a right which the aggrieved party under the law has lost. The rule reproduced above unambiguously contemplates that not only the liability of the Federal Government to pay the prize shall come to an end by the flux of time, rather the right of a person/holder of the prize bond shall stand extinguished. This is a double check/bar on the right of the prize holder to receive the money and is a clear mandate of law. There is no provision in the Prize Bond Rules 1999 which caters for a situation of hardship or compassion and no power is vested under the said rule with any authority to enlarge/relax the period of six years on such grounds. There seems a wisdom for such a cut off period, as the Government cannot be left in a state of limbo, oblivion and conundrum awaiting for such claims for an indefinite period to satisfy hundreds and thousands of prize holders who were delinquent in coming forward within the prescribed period. Besides, under Article 199, direction can only be issued by the learned High Court on an application of an aggrieved party directing a person; to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do, or declare any act done or proceedings taken by Federation, Province etc., or having been done or taken without lawful authority and of no legal effect. We hardly find the compassion and hardship cases to qualify the noted test simplicitor on the basis of the above two factors (compassion/hardship).

3. In the light of above, we do not find that the judgments impugned herein are in consonance with the power vested in the High Court in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and cannot sustain. Resultantly, by allowing this appeal, the impugned decisions are set aside with the consequence that the writ petition filed by the respondents stands dismissed.

MWA/D-4/SC Appeal allowed.

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