

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.1098 of 2012**

% Reserved on: February 24, 2012
Pronounced on: April 20, 2012

NIVEDITA SHARMA . . . PETITIONER

Through: Petitioner-in-person.

VERSUS

MINISTRY OF CORPORATE AFFAIRS & ORS. . . .RESPONDENTS

Through: Mr. A.S. Chandhiok, ASG with
Ms. Maneesha Dhir, Mr. Ritesh
Kumar, Mr. Siddharth Tyagi,
Ms. Mithu Jain and Mr. Piyush
Sanghi, Advocates.

CORAM :-

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

A.K. SIKRI (ACTING CHIEF JUSTICE)

1. The respondent No.2 herein, i.e., the Industrial Credit and Investment Corporation of India (ICICI) issued unsecured redeemable bonds with validity of 25 years and each with a surrender value of ₹2 lacs. These bonds were issued in the year, 1996. The petitioner also applied for these bonds and was allocated five ICICI bonds 1996 on 15.7.1996 for ₹5200 each being the face value of ₹2,00,000/- each and with surrender date of 15.7.2021. Though the validity period of bonds was of 25 years, within five years of issuance of these bonds, ICICI issued public notice on 12.1.2001 in leading newspaper in Delhi exercising its earlier redemption option for 15.7.2001. This was in line with Clause 4 of the bond certificates, which is to the following effect:

“(4) Procedure for Early Redemption by the Company

In case the company decides for an Early Redemption of Bonds, it will announce its intention to do so at least six months prior to the relevant date by giving a notice in the manner stated in Clause (5) below."

2. The manner in which notice can be given is stipulated in given Clause (5) reads as under:

"(5) Notice

All notices to the Bondholder(s) required to be given by the company of the Trustees shall be deemed to have been given if published in one English and one regional languages daily newspaper in Mumbai, Madras, Delhi , Calcutta, Bangalore and Baroda and may at the sole discretion of the company of the Trustees, but without any obligation, be sent by ordinary post to the original sole/first allottee of the Bonds. Individual notices to Bondholders will not be given."

3. It is not in dispute that notice in the aforesaid term was given which was published in the leading newspapers, as mentioned above. The petitioner did not respond to the aforesaid notice as according to her, she could not come to know of this option of earlier redemption exercised by the ICICI. Therefore, she did not claim the amount payable under the aforesaid five ICICI Bonds, 1996 allotted to her.
4. The Companies (Amendment) Ordinance, 1998 (No.19 of 1998) sub-section (5) of Section 205A of the Companies Act (hereinafter referred to as the 'Act'), 1956 was amended as regards transfer of unpaid dividend account of a company to the fund established under Section 205C. The Investor Education and protection Fund (IEPF) was established under Section 2005C which was introduced by Companies Amendment Act, 1999 with effect from 31.10.1998. Circular was issued by the Department of Company Affairs, now under

the respondent No.1, which stated that all amounts which have remained unpaid/unclaimed for a period of seven years from the date of their transfer to the 'unpaid dividend account' are required to be transferred to IEPF fund by 31.10.2001.

5. As per the aforesaid provision and Circular, ICICI transferred unclaimed principal amount to the IEPF vide redemption payment of ICICI Bonds 1996 vide Ministry of Corporate Affairs Challan.
6. It is only on 02.3.2009, the petitioner for the first time wrote to the respondent No.2 for the redemption of the bonds. She was given reply dated 09.3.2009 vide which she was informed the petitioner that as she had not claimed the amount after the issuance of notice by the ICICI, and amount remained unclaimed for seven years for the date it became first due, the ICICI has transferred the same to IEPF. The petitioner filed W.P.(C) No.10517/2009 claiming the amount. In the said petition, she also challenged the vires of Section 205A of the Act. This writ petition was dismissed and the challenge to the vires in Section 205A and 205C was repelled. The purport and object behind Section 205C noted as salutary and virtuous and the vires were upheld as under:

"8. Section 205 C is a salutary and virtuous provision. It has been enacted to ensure that a company does not unjustifiably and unduly enrich themselves, as the depositors have failed to stake claim and have not been paid for a period of seven years from the date the amount became due. The word "unclaimed" used in the proviso to Section 205 C (2) clarifies that in case a claim is made within a period of seven years from the date amount became due and payable; the money shall not be transferred to the said fund. Thus, if a person makes a claim within a period of seven years, Section 205 C will not apply. Period of seven years is substantially long. A depositor or a person dealing with a company, therefore, should make a claim within a period of seven years. In case he makes a claim,

provisions of Section 205 C of the Act are not applicable and money cannot be transferred to the fund. We do not see any reason to hold that the said provisions are unconstitutional or they violate Article 14 or any other provisions of the Constitution. It cannot be said that the aforesaid provisions are faulty and violate the fundamental rights guaranteed in the Constitution.

9. To strike down Section 205 C will amount to negating and striking down a worthy and meritorious legislation which is on the whole beneficial and advantageous and in public interest. The petitioner is aggrieved because she did not stake her claim for refund within seven years. She did not inform change of address and, therefore, could not be communicated and informed about the premature redemption. The petitioner also did not bother to read the terms and conditions of allotment including the early redemption clause. These are serious lapses on the part of the petitioner. It is because of these lapses that the petitioner is in the present infelicitous situation. However, these cannot be a ground to strike down Section 205 C, which has been enacted in public interest and has a public purpose. Another contention during the course of arguments raised was that forfeiture clause should be struck down as unreasonable. It is not possible to agree with the said contention. The investors or public when they deposit the amount must make a claim within seven years otherwise they will lose their right to make the claim. Rules of limitation are founded on consideration of public policy. The law of limitation affords a guarantee and ensures that cause of action is not raised after a lapse of particular period. Limitation is preventive and not curative and seeks to give quietus to claims which have not been enforced. It ensures that litigants are diligent in seeking remedies in court and prohibits stale claims. It ensures promptitude and assist vigilant persons who do not sleep over their rights. Laws prescribing reasonable period of limitation have been upheld, though whenever the period prescribed expires a claimant suffers, but this invariably happens as the said litigant has been grossly negligent and has failed to take steps. This has happened in the present case."

7. The petitioner even preferred Special Leave Petition against the judgment of this Court which was, however, dismissed as withdrawn vide orders dated 02.1.2012 granting the liberty to

challenge the amendment in the appropriate forum. The precise order passed in the said SLP reads as under:

“Petitioner-in-person seeks to withdraw this Special Leave Petition with liberty to approach the appropriate Forum challenging the vires of the amendment incorporated in the Companies Act. Permission granted.

Thus, Special Leave Petition is dismissed as withdrawn.”

8. Thereafter, the present writ petition is filed and the prayers in this writ petition are as under:

I. Declare that 205B and C along with the proviso/explanation respectively as ultra vires.

II. Direct the respondent No.1 MCA render full and complete and complete accounts of amounts transferred to the Consolidated Fund on account of the IEPF.

III. Direct respondent No.1 Union of India to take steps to transfer the entire amount collected under the IPEF fund and subsequently transferred to Consolidated Fund of India to a separate account and refunds it to the claimants.

IV. Direct respondent no.1 to release the amounts along with interest till date as per the rates in the original agreement or in the alternative interest @ of lending rate charged by the Reserve Bank of India.

V. Any other or further order or direction in the facts and circumstances of the present petition.”

9. This matter was listed for admission on 24.2.2012. Counsel for the respondent appeared on advance notice and apart from raising the plea of delay and laches, it was also submitted that the petition was barred by the principles *res judicata/constructive res judicata*. Accordingly, both the sides were heard at length on these pure question of law. Parties were also given permission to file written submissions. Though the respondent Nos.1 & 3 filed written submission on

14.3.2012, no written submission has been filed by the petitioner even when substantial time has lapsed. We, therefore, proceed to decide this case having regard to the oral submissions as well as written submissions of the respondent Nos. 1 & 3 filed by Ms. Maneesha Dhir, learned counsel for these respondents.

10. The petitioner who argued the matter in person submitted that the principle of *res judicata* would not apply as in the earlier round of litigation, the petitioner had challenged the vires of these provisions on different grounds. This time, the validity of the provision challenged on the ground that the Parliament had no legislative power to enact/insert Section 205C of the Act which is expropriatory legislative power. It was argued that the power to legislate for acquisition of property is exercisable only under Entry 42 of List III of 7th Schedule of the Constitution and not as an inherent power to the Legislator relating to the Companies Act, viz., Entry 43 of List I.
11. We are afraid, we cannot accept the submission of the petitioner and agree with the contention of the respondent that the petition is hit by *res judicata*/constructive *res judicata*. It is not in dispute that the petitioner is challenging the same provisions of law on which the earlier writ petition was dismissed. It is not open to the petitioner now to challenge that very provision on different grounds. The grounds on which the provision is sought to be challenged was available even at that time when the first petition was filed and therefore, the petitioner would be precluded from raising this plea, which would be barred by the principle of constructive *res judicata*. The comparison of relief sought in the earlier writ

petition and in the present writ petition would reveal the similarity of the prayers:

“Prayers in Present Writ

Declare S.205B and S.205C alongwith proviso as ultra vires

Direct R No.1 to take steps to transfer the entire amount collected under IPEF Fund to a separate account and refund it to claimants.

Direct R no.1 to release the amounts alongwith interest till date as per rates in the original agreement or in the alternative interest @ of lending rate charged by RBI.

Prayers in W.P.(C) 10517/2009

Declare that section 205A and Section 205C as ultra vires and is not applicable to the unclaimed money under the bond

Direct respondent no.1 to redeem the bonds of the petitioner and any other claimants who may apply for redemption.

Direct respondent no.1 to release the amount along with interest till date as per the rates in the original agreement or in the alternative interest at rate of lending rate charged by RBI.”

12. The principle of *res judicata* is based on the need of giving finality to judicial decisions. In the case of **Satyadhan Ghosal and Ors. Vs. Sm. Deorajin Debi & Ors.**, AIR 1960 SC 941, the Supreme Court held that when a matter whether on a question of fact or on a question of law has been decided between two parties in one proceeding and the decision is final either because no appeal was taken to a higher Court or because the appeal was dismissed, neither party will be allowed in a future proceedings between the same parties to canvas the matter again. This principle is clearly embodied in relation to suits in Section 11 of CPC, but even where Section

- 11 does not apply, the principle of *res-judicata* has been applied by Courts for the purpose of achieving finality in litigation. In the instant case, the petitioner has urged issues which were directly and substantially a subject matter of the earlier writ petition filed by the petitioner herself and hence this petition is barred by *res judicata*.
13. Reading of the judgment dated 07.7.2011 rendered in the earlier writ petition, it becomes clear that the petitioner had challenged the vires of Section 205A and 205C on the ground that these provisions were arbitrary and violative of Article 14 of the Constitution. It was also argued that these provisions could not be given retrospective effect. The petitioner had also submitted that huge corpus had accumulated in IEPF as unclaimed amount. All these contentions were taken note of and specifically rejected.
14. We, thus, do not find any merit. This writ petition is accordingly dismissed.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

APRIL 20, 2012

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