

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

LIBRARY

O.A. 350/00969/ 2019

Order dated: 08.08.2019

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sudhir Mondal

..... Applicant.

Versus

Union of India & Ors.

..... Respondents.

For the applicant : Mr. K.Chakraborty, Counsel

For the respondents : Mr. H.Ghosh, Counsel

ORDER (ORAL)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal praying for the following relief:

"(A) Do issue mandate upon the respondents, their men and agents and each of them to forthwith rescind, recall and/or withdraw the purported letter/order dt. 1.4.2019 being Annexure-A8 hereto and not to give and or further effect or effects to the same;

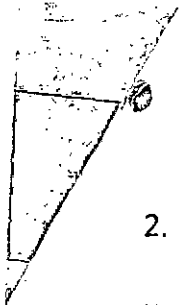
(B) Do issue mandate upon the respondents, their men and agents and each of them to forthwith grant and release all the settlement benefits and dues towards the settlement benefits and dues of the deceased elder brother of the applicant in favour of the applicant with 18% interest on the said total sum thereof;

(C) Do issue mandate upon the respondents, their men and agents to forthwith certify and transmit all the papers and documents in connection with the instant lis before this Ld. Tribunal for kind perusal and on such kind perusal do conscionable justice to the applicant;

(D) Grant cost of this proceeding in favour of the instant applicant;

(E) Pass such other or further order....."

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2. Heard both Ld. Counsel, examined documents on record. Matter is taken up at the admission stage for disposal.

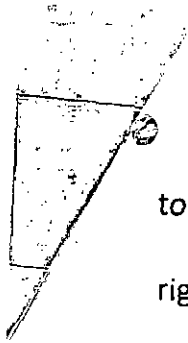
3. The applicant's submissions, as articulated through his Ld. Counsel, is that his elder brother, who was an ex-employee of the Respondent authorities, had got married on 05.02.2002 and one female child was born out of such wedlock. The ex-employee, however, obtained a decree of divorce, consequent to which, his wife left the matrimonial house with their only daughter, and, whereabouts of the divorcee wife and the daughter are not known to the applicant.

4. The applicant is the younger brother of the ex-employee, and had been declared as 100% nominee of the ex-employee's settlement dues and benefits. Upon the demise of the ex-employee, the applicant/younger brother of the ex-employee moved the Respondent authorities on 26.01.2018 seeking release of settlement dues in his favour, claiming his rights as a nominee to such benefits. The respondents, however, vide their communication dated 01.04.2009 (Annexure-a/8 to the OA), rejected his claim deciding in favour of the ex-employee's legal heir. Accordingly, being aggrieved, the applicant has approached the Tribunal claiming his right to the settlement benefits.

5. The short point for decision in this matter is the legal right of successors versus nominees in obtaining settlement dues of the deceased employee.

There is no general law of nomination unlike the case of succession where special laws exist based on religious affinity as well as on bequests under wills and testaments of the deceased. Therefore, the right of the nominee are determined in accordance with the laws governing the subject matter of nomination, whereas, succession rights are determined based on the personal law applicable

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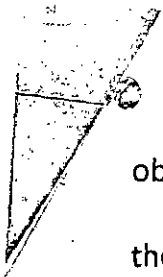
to the deceased. Nomination, hence, is only a means and not an end towards right to property of the deceased.

The holistic interpretation of judicial precedents over the years is now settled, namely, that nominees are to receive but legal heirs are to own. While there is no contest to the fact that it is the legal heir, who is the ultimate rightful owner of the property of a deceased individual (either through intestate or testamentary succession), for all practical purposes, the person named as the nominee will actually receive and hold such property till the matter of succession or inheritance is decided on the demise of the individual, which essentially means that the nominee will receive and hold the property of the deceased until he is legally bound to transfer or distribute it to the legal heirs of the deceased.

6. In 2006, while adjudicating in **Indrani Wahi Vs. Registrar of Cooperative Societies and Others (Civil Appeal No. 4646 of 2006)**, the Hon'ble Court had ruled that the flat in a co-operative housing society, would be transferred to the nominee but the actual ownership of the flat clearly lay with the legal heirs of the deceased.

Similarly, in the case of **Shakti Yezdani & Anr. Vs. Jayanand Jayant Salgaonkar & Ors. (Civil Appeal No. 313/2015 with 311/2015)**, the Hon'ble High Court of Bombay took into account the laws governing the nomination of shares under the Companies Act, 1956, and, resolved the contradictory decisions of the Single Bench in **Harsha Nitin Kokhate Vs the Saraswat Cooperative Bank Limited (Notice of Motion No. 2351 of 2008)**, which held that the rights of a nominee prevails over that of successors, and that of another Single Judge, who, finding this decision per incuriam, ruled in favour of successors. The Hon'ble Court

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observed that nomination is made with a view to ensuring that the property of the deceased is protected for such time till the legal representatives of the deceased can take appropriate steps to succeed in establishing their claims as legal heirs. The Hon'ble Court further observed that provisions relating to nomination have been consistently interpreted as only giving a temporary controlling right to the nominees for interim management of the affairs relating to such instruments.

In **Smt. Lili Biswas @ Das & ors. Vs. The Chief Manager (WP. 7975 (W) of 2010)**, the Hon'ble High Court of Calcutta had ruled on 17.4.2019, that, in law, a nominee is entitled to receive the proceeds of an account subject to entitlement of the heirs and legal representatives of the deceased. The nominee is entitled to receive the proceeds but is obligated to distribute the proceeds to the heirs and legal representatives in accordance with their respective shares.

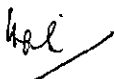
7. In the instant matter, we refer to the decision of the Respondent authorities dated 01.04.2019 (Annexure-A/8 to the O.A.) and which is reproduced as under:

"No. S/A/129/2018/PN

Liluah the: 01-04-2019

Shri Sudhir Mondal,
Brother of Late Prabir Chandra Mondal,
Ex. Tech-I/Turner, Ex-G-328,
Vill-Gumgarh, P.O.- Chitrasenpur,
P.S.-Udaynarayanpur,
Dist- Howrah,
PIN- 711412

Sub: Payment of Settlement dues of late Prabir Chandra Mondal,
Ex-Tech-I/Turner, Ex-G-328, died on 26.01.2018.
Ref: Your application dated 03.12.2018.



Reference above, you are hereby informed that, as per our enquiry report, Late Prabir Chandra Mondal left behind one unmarried daughter, named Isita Mondal, born out of the wedlock with Atasi Mondal.

As per Railway extant rules, Isita Mondal is the only claimant of settlement dues of her father Late Prabir Chandra Mondal but at present she did not claim for any settlement dues.

Payment for settlement dues will be processed in favour Isita Mondal according to rules, when applied for.

As such your appeal for payment of settlement dues of late Prabir Chandra Mondal, in your favour cannot be considered.

-Sd-

(N. Majumdar)

Workshop Personnel Officer
For Chief Works Manager
Eastern Railway / Liluah"

The aforesaid observation were based on the fact that the daughter of deceased was a class-I heir under Hindu Succession Act, 1956 as opposed to the brother of the deceased, who was a class-II heir in terms of the said Schedule, and, accordingly, the respondents concluded that the class-I legal heir, viz. Isita Mondal, the daughter of the ex-employee, can be the only claimant for settlement dues of her late father, the ex-employee.

8. From the documents brought before us by the respondents it transpires that the deceased employee had nominated his wife as 100% nominee on 23.5.2002. He obtained his decree of divorce on 25.1.2017, and, thereafter, on 29.11.2017, amended his nomination in favour of his younger brother as 100% nominee and, in the event that the applicant /younger brother pre-deceased the ex-employee, the nomination would pass on to his niece, who is the daughter of the applicant.

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9. The applicant admits in his pleadings that nomination only indicates as to who is authorised to receive the payment on account of the settlement dues of the deceased employee and that the nominee would be the sole custodian of the Estate of the deceased employee to be disbursed to the unmarried daughter of the deceased employee, if demanded or claimed by her.

10. We notice, however, that the applicant has averred that the whereabouts of the only daughter/legal heir of the deceased employee, namely, Isita Mondal, is not known to the applicant. Hence, it is difficult to comprehend that in the event the settlement dues are disbursed to the applicant/nominee, how the only daughter/legal heir of the deceased employee would be able to demand/retrieve the dues from the nominee. The applicant avers in para 'I' of his pleadings as follows:-

"..... And the applicant would be the Custodian and Caretaker of such money and would disburse the said amount to the unmarried daughter of the deceased employee, if demanded or claimed by her."

The applicant undertakes to disburse the entrusted amount to the legal heir of the deceased employee, if demanded or claimed by her. This averment raises the following questions to which no satisfactory explanation have been brought before us:-

- (a) Why the applicant/nominee did not take proactive steps to ascertain the whereabouts of the legal heir/his niece in last few years?
- (b) How will the legal heir/unmarried daughter of the deceased ever come to know that the settlement dues have been received by her uncle/applicant nominee on her behalf?

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(c) What will happen to the settlement dues, if the legal heir of the deceased employee fails to claim the same from the applicant's nominee?

(d) In case of the applicant/nominee's demise, how will the legal heir retrieve her settlement dues to which she is rightfully entitled?

11. As the above issues remain to be clarified, the applicant's claim for disbursement of dues to him subject to future claim of the legal heir is not sustainable as he had not disclosed his actions to ascertain the whereabouts of the legal heir after the demise of the ex-employee. In the interest of justice, therefore, we are of the considered view that it is the respondent authorities, who are in the best position to ascertain the whereabouts of the only daughter and legal heir of the deceased employee. We, therefore, direct the respondent authorities to take steps to notify and inform (if required through notice placed in public domain) the legal heir and the only daughter of the deceased employee of her inheritance and thereafter settle and disburse the dues to the legal heir in accordance with law.

12. The O.A. is disposed of with the above directions. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)