
**The Peerless General Finance and Investment Company Ltd. and Another
Vs Canara Bank and Others**

Writ Petition No. 2087 of 1999

Court: Calcutta High Court

Date of Decision: Aug. 30, 2011

Acts Referred:

Constitution of India, 1950 – Article 226#Securities and Exchange Board of India Act, 1992 – Section 15

Hon'ble Judges: Debasish Kar Gupta, J

Bench: Single Bench

Advocate: Abhijit Chatterjee, Tapan Nag Choudhury and A. Basu, for the Appellant; Anindya Mitra and Saptangshu Basu, Aniruddha Roy, Debasri Dutta and S. Bagchi, for the Respondent

Final Decision: Dismissed

Judgement

Debasish Kar Gupta, J.

The subject matter of challenge in this writ application is the unilateral decision taken by the Respondent No. 2 to

convert Cantriples + Scheme from close ended Scheme to open ended Scheme.

2. The facts of this case in a nutshell are as follows:

The Respondent No. 1 was a banking company constituted under the provisions of the banking companies (Acquisition and Transfer of

Undertakings) Act, 1970. The Respondent No. 1 was the sponsor of the Respondent No. 2. The Respondent No. 2 was a trust set up the

Respondent No. 1 in October 1991.

3. In November 1991 the Respondent No. 2 introduced a close ended scheme known as "Cantriples + Scheme" (hereinafter referred to as the said

scheme). The board of trustees formulated the said scheme which was a close ended mutual fund. Under the said scheme the Respondent No. 2

issued units to the members of the public called as "Cantriples +", each of face value of Rs. 10/- in accordance with the scheme formulated by the

Respondent No. 2. The features of the said scheme are quoted below:

Features: The salient features of the CANTRIPLE + Scheme are set out here below:

1 CANTRIPLE + is redeemable non-debt security of face value of Rs. 10.00(Rupees Ten Only).

2 Under this Scheme, the investor has to subscribe for a minimum of 100 CANTRIPLE +

3 The object of the CANTRIPLE + Scheme is to cumulate the capital fund in such a way that at the end of 90th month from the date of allotment,

the CANTRIPLE + holders shall get an amount equivalent to THREE TIMES of their investment or more, which works out to a return of more

than 14.90% p.a.

4 CANTRIPLE + under this scheme would be repurchased by the Trustees upon completion of 3 years from the date of allotment at a notified

price from time to time. However, for more details on repurchase price of each CANTRIPLE + PLEASE REFER TO CLAUSE repurchase given

below.

5 CANTRIPLE + are transferable

6 CANTRIPLE + under this scheme would offer more liquidity in the event of listing with Stock Exchanges.

The plain for investment under the said scheme was as follows:

INVESTMENT: The funds are generally invested in equity/debt instruments, National Saving Certificates, Kisan Vikas Patras, Indira Vikas

Patras, GP Notes, Bonds & Equities issued by Public Sector Undertakings, Money Market Instruments such as call deposits, bills, short terms

deposits/loans, commercial papers and other instruments issued by companies having regard to the restrictions, if any, under any law. Income and

capital gains will be invested after making provisions for necessary expenses and in respect of the matters.

There was a provision for repurchasing the units under the said scheme as follows:

REPURCHASE: CANTRIPLE + is eligible for repurchase after expiry of 3 years from the date of allotment at a repurchase price to be

announced by the Trustees from time to time). In calculating the repurchase price, the Trustees shall take into account the unrealised appreciation in

the value of CANTRIPLE + Fund to the extent they deem fit provided that it shall not be less than 50% of such unrealised appreciation. While,

calculating their purchase price, the Trustees may deduct such sums as are appropriate to meet Management, Selling and other expenses including

realisation of Assets and such sums shall not exceed 5% p.a. of the average net asset value of the CANTRIPLE + Fund.

b) Repurchase of CANTRIPLE + will be at the repurchase price prevailing on the date of CANTRIPLE + are tendered for repurchase.

c) After a period of 3 years from the date of Allotment of CANTRIPLE + when the repurchase of the CANTRIPLE + is to commence, there

purchase price shall be announced every month or as frequently as decided by the Trustees.

The redemption clause under the said scheme was as follows:

REDEMPTION:

A) The CANTRIPLE + Scheme shall be terminated upon the expiry of the 90th month from the end of the month in which the allotment of

CANPRIPLE + is made.

B) If 90% or more of the CANTRIPLE + are repurchased before completion of 90th month, the Trustees may, at their discretion, terminate the

CANTRIPLE + Scheme even before the stipulated period of 90th month and redeem the outstanding CANTRIPLE + at the final repurchase price

to be fixed by the Trustees. C). The trustees may liquidate the CANTRIPLE + Scheme in one or more instalments. The Trustees shall sell and/or

release all realisable assets, securities, instruments and other properties forming part of the CANTRIPLE + Scheme in the hands of the

Trustees. Out of the realisations so made, the Trustees shall pay out or provide for payment of all liabilities, existing or contingent, allocable or

apportionable in respect of that Scheme and unpaid dividend, if any. Net realisations of the Fund will be distribution shall be made by the Trustees

to such holders in proportion to their respective holdings.

There were miscellaneous provisions under the said scheme as follows:

MISCELLANEOUS: The Trustees may from time to time, add to or otherwise amend or alter all or any of the terms of this Scheme. The terms of

CANTRIPLE + Scheme, 1991 including any amendments thereof from time to time shall be binding on each holder of CANTRIPLE + and any

person claiming through or under him/her/them, as if he/she/they had expressly agreed that they should be so binding.

In the offer memorandum of the said scheme there was an important declaration on the top of it as under:

Please read this Offer Memorandum together with the instructions on the enclosed CANTRIPLE + Application Form carefully before taking any

action. It is intended solely for the use of the person/organization to whom it is introduced or distributed to any other person (except to the

professional advisors of prospective investors for professional advice).

Any information or representation concerning Canbank Mutual Fund CANTRIPLE + inconsistent with what is set out herein is unauthorised.

perceived by Trustees: investing of CANTRIPLE + funds in securities like equity shares etc. is prone to volatility, potential or other wise and

limited liquidity of securities market and also political and economic considerations. However, these risks may be averaged out in view of the large

portfolio of investment"s. As with any investment in stocks and shares, the NET ASSET VALUE (NAV) of units of CANTRIPLE + and income,

if any, can go down as well as up and it is possible that the value may fall below that of original investment.

4. Petitioner No. 1 purchased 2.50 crore units worth Rs. 25 crore under the said scheme on December 14, 1991. On June 2, 1999, the Petitioner

noticed in the "Business Times", which was an economic supplement of Times of India, Bombay, a news item under the title "CANTRIPLE +

Scheme"" wherein it was reported that it had been decided to make the said scheme open ended scheme. It was also stated therein that the

Respondent No. 2 was not liable to pay Rs. 30 per unit under the said scheme when the units would come up for redemption in June 1999.

5. On June 28, 1999 the Petitioner company received a communication/notice from the Respondent No. 3 to the effect that the trustees had

approved the proposal to convert the said scheme into open ended, effective from July 1, 1999, in their meeting held on May 27, 1999. The unit

holders who were not in favour of the proposed conversion, and would opt for redemption of their holdings, were requested to send

repurchase/redemption request in prescribed re-purchase form (enclosed therein) and to send to the RT agents on or before June 30, 1999. By

virtue of communication dated June 30, 1999 the Petitioner company requested the Respondent No. 2 for discharging resumption of its holdings.

The Petitioner company received a sum of Rs. 40,00,00,000/- crores from the Respondent No. 2 in the month of July 1999 on the basis of the

above application. During the pendency of this writ application the Petitioner company received a further sum of Rs. 12,96,66,935/- from the

Respondent No. 2 under the said scheme. Thus the Petitioner company got a total sum of Rs. 53,05,16,547/- from the Respondent No. 2 under

the said scheme.

6. Mr. Abhijit Chatterjee, learned Senior Advocate appearing on behalf of the Petitioners submitted at the very outset that it is a settled principle

of law that a writ petition is maintainable even in the event of pure commercial concluded contract because the state authorities cannot act

arbitrarily even in the event of a contract. According to him, in the instant case, the contract was a statutory contract. It was not a transaction

between the parties depending upon violation of the parties alone but the field was totally covered by a statutory Regulation contained in the

Securities and Exchange Board of India (Mutual Fund) Regulation, 1996 which contained provision regarding the contents and requirements of an

offer document.

7. It is also submitted that according to the offer memorandum of the said scheme it was a close ended scheme with the provisions under the

heading ""redemption"" and that the said scheme should be terminated upon the expiry of 90 months from the end of the month in which the allotment

of CANTRIPLE + was made. According to him, under Clause 3 of the above offer memorandum, there was a promise for a return of more than

14.90% per annum and there was a promise for a return equivalent to three times of investment at the end of 90 months. According to him, the

offer memorandum had a statutory element in it. Because the entire business of mutual fund was governed by Regulations framed by Securities

and Exchange Board of India Act, 1972. The relevant Regulations in this case were Securities and Exchange Board of India (Mutual Funds)

Regulations, 1996 (hereinafter referred to as the SEBI Regulations). According to him, under the provisions of Regulations 29 of SEBI

Regulations the offer document should contain disclosures which were adequate in order to enable the investors to make informed investment

decision including the disclosures of maximum investments proposed to be made by the scheme in the listed securities of the group of companies of

sponsoror. According to him, Clause (4) of Regulations 33 of SEBI Regulations provided that a close ended scheme should be fully re-deemed at

the end of maturity period.

8. It is submitted by him communication/notice dated June 28, 1999 issued by the Respondent No. 3 did not fulfil the requirements of the

provisions of first proviso to Clause(4) of Regulations 33 of SEBI Regulation. According to him, the conversation was, therefore, unlawful and

illegal and the Respondent No. 2 should be directed to pay returns to the Petitioner company at the end of three years with returns of 14.90% per

annum.

9. It is also submitted by him that the offer memorandum under reference contained a clear, categorical and unequivocal promise. The Petitioner

company took a decision to invest into CANTRIPLE + Scheme due to the reason that the Petitioner company would get the returns at his promise

at the end of three years which would enable them to discharge their contractual obligation in providing returns to the certificate holders. Acting on

such representation and/or promise the Petitioners altered their position. By reason of conversation of the said scheme from a close ended scheme

to an open ended scheme the returns got diminished and the Petitioners were prejudicially affected. According to him, the Respondents were

precluded by doctrine of promissory estoppel and/or other equitable estoppel from giving back on their promise and or representations regarding

the rate of return which the same would fetch at the end of three years.

10. It is also submitted by Mr. Chatterjee that a Single Bench of this Court dismissed an application filed under article 226 of the constitution of

India on the self-same cause of action. According to him, the said decision proceeded not on the basis that the Fund Managers were acting as

agents of investors and that an agency of necessity could not cloth the agent with any authority to take any step without informing the principal

about the proposed act and the agent and obtaining his consent, unless circumstances were such that asking for consent was in fact himself.

11. Mr. Chatterjee relies upon the decisions of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, S.G. Jaisinghani Vs. Union of India

(UOI) and Others, , L. Hirday Narain Vs. Income Tax Officer, Bareilly, Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and

Another, Union of India (UOI) and Another Vs. International Trading Co. and Another, ABL International Ltd. and Another Vs. Export Credit

Guarantee Corporation of India Ltd. and Others, , Bharat Petroleum Corpn. Ltd. Vs. Maddula Ratnavalli and Others, Food Corporation of India

and Another Vs. SEIL Ltd. and Others, , Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Others, , The Gujarat State Financial Corporation

Vs. Lotus Hotels Pvt. Ltd., , Reliance Energy Limited and Another Vs. Maharashtra State Road Development Corporation Ltd. and Others,

L.M.L. Ltd. Vs. State of U.P. and Others, , Punjab Communications Ltd. Vs. Union of India and Others, Springer v. G.W.R. reported in 1920

ALL ER 361, Prager v. Blatspiel, Stamp and Heacock Ltd, reported in 1924 All ER 524, Dayton Price and Co. Ltd. Vs. S. Rohomotollah and

Co., and Superintending Engineer, Public Health, U.T. Chandigarh and others Vs. Kuldeep Singh and others, in support of his submission.

12. It is submitted by Mr. Anindya Mitra, learned Senior Advocate appearing on behalf of the Respondents that Section 15 of the Securities and

Exchange Board of Act, 1972 provides for an alternative remedy in the matter. That apart this writ application is filed by the Petitioners for

redressal of their grievance with regard to a non-statutory commercial contract in between the parties. According to him, this writ application is not

maintainable for the aforesaid reasons.

13. Drawing the attention of this Court towards the provisions of SEBI Regulations it is submitted by him that the beginning the said scheme was a

close ended scheme. According to him, the units under the said scheme could be converted into open ended scheme upon compliance of the

provisions of Clauses (a) and (b) of sub-Regulation(3) of Regulation 33 of the SEBI Regulations. Drawing the attention of this Court towards

Clauses (4) of the offer memorandum it is submitted by him that there was adequate disclosure with regard to re-purchase of the units under

CANTRIPLE + by the trustees upon completion of three years from the date of allotment at a notified price from time to time. It is submitted by

him on apart from disclosure of provision for re-purchasing the units under the said scheme, the offer memorandum contained miscellaneous

provision enabling the Respondent authority to opt or otherwise amend or alter or any of the terms of the said scheme. It is also submitted by him

that the unit holders were provided with an option to redeem their units in full. Drawing further attention of this Court towards the communications

dated June 30, 1999 of the Petitioners, it is submitted by Mr. Mitra that the Respondent acted on the request of the Petitioners to pay the

redemption proceeds to the Petitioners upon due compliance of the provision of Regulation 33 of the SEBI Regulations. According to him the

provisions of sub-Regulation(4) of Regulation 33 of the SEBI Regulations cannot be read in isolation.

14. Mr. Mitra disputed the submissions made with regard to alleged promise made in the offer memorandum under the said scheme. Drawing the

attention of this Court towards Clause (3) of the features of the said scheme it is submitted by Mr. Mitra that the same was an object but not a

promise and desired object of the scheme was absolutely tentative as would be evident from the terms and conditions mentioned in the offer

memorandum. According to him, the offer memorandum itself contained the risk factors which provided that investing of CANTRIPLE funds in the

securities like equity shares etc. was always prone to volatility potential or otherwise and limited liquidity of securities market as also political and

economic conditions. The offer document further contained that any investment in stocks and shares, the net asset value of units of CANTRIPLE +

and income, if any, could go down as well as go up and it was possible that the value might fall below that of original investment. According to him,

the said scheme provided for re-purchase of units at net asset value best price, after a long period of three years and such re-purchase price would

be increased by the trustees through newspaper from time to time on a weekly basis. According to him, there was no element of promise in the

offer memorandum as alleged. According to him, the Respondent authority adopted a resolution in its meeting dated May 27, 1999 to convert the

scheme into open ended scheme with an option to the unit holders to redeem the units in full as framed under SEBI Regulations. The Petitioners

opted to act upon such decision sending request to the Respondent authority for discharge of CANTRIPLE + units.

15. It is further submitted by Mr. Maitra that the conversion of the said scheme into open ended scheme from a close ended scheme was under

challenge in the matter of Sanjiv Kumar Tulsian v. Canara Bank and Ors., (in re W.P. 1718 of 1999) and the issue under reference was decided in

the above case.

16. I have heard the learned Counsel appearing for the respective parties as also I have given my anxious consideration to the facts and

circumstances of this case.

17. At the very outset, the point of maintainability raised by the Respondents is taken up for consideration. Though the parties to this proceeding

entered into a non-statutory commercial contract under the said scheme, the entire business of mutual fund was governed by the SEBI Regulations.

Regulation 29 of Regulations provided the essential requirements of the offer documents/memorandum by which investments could be invited in

mutual fund. Sub-Regulation(1) of Regulation 29 prescribed the conditions of disclosures which should be contained in offer

documents/memorandums to enable the investments to make informed investment decision. Regulation 33 of the SEBI Regulations provided

conditions of re-purchase of close ended submissions. There fore, the Respondents were under obligation to act in accordance with the above

provisions while dealing with the said scheme. The issue involved in this case relates to allege violations of the provisions of SEBI Regulations.

Therefore, an application under Article 226 of the constitution of India is maintainable in case of examining the decision making process in the

touch stone of the provisions of SEBI Regulations. Therefore, this writ application is maintainable.

18. In order to examine the actions on the reports in converting the said scheme into open ended scheme from close ended scheme, the provisions

of Regulation 33 of SEBI Regulations are quoted below:

33. Repurchase of close ended schemes.-(1) The asset management company may at its option repurchase or reissue there purchased units of a

close ended scheme.

(2) The units of close ended schemes referred to in the proviso to Regulation 32 may be open for sale or redemption at fixed pre-determined

intervals if the maximum and minimum amount of sale or redemption of the units and the periodicity of such sale or redemption have been disclosed

in the offer document.

(3) The units of close ended scheme may be converted into open ended scheme,-

(a) if the offer document of such scheme discloses the option and the period of such conversion; or

(b) the unit holders are provided with an option to redeem their units in full].

(4) A close ended scheme shall be fully redeemed at the end of the maturity period:

[Provided that a close ended scheme may be allowed to be rolled over if the purpose, period and other terms of the roll over and all other

material details of the scheme including the likely composition of assets immediately before the rollover, the net assets and net asset value of the

scheme, are disclosed to the unit holders and a copy of the same has been filed with the Board:

Provided further, that such rollover will be permitted only in case of those unit holders who express their consent in writing and the unit holders who

do not opt for the rollover or have not given written consent shall be allowed to redeem their holdings in full at net asset value based price].

19. Upon scrutiny of the communication issued by the Respondent authority (at page 48 of this writ application) received by the Petitioner

company at the verge end of three years from the date of allotment of units under the said scheme, I find that the offer of conversation of the said

scheme from open ended scheme to close ended scheme was made in terms of the disclosures in the offer memorandum of the said scheme. In

particular in terms of the disclosure made in Clause (4) of the feature read with re-purchasing the units as also offering the price of re-

purchase/redemption of units in the method prescribed therein. Therefore, there was no bar and/or impediment on the part of the Respondent

authority to convert the said close ended scheme to open ended scheme. That apart this Court cannot ignore the admitted fact that the Petitioners

made communications dated June 30, 1999 requesting the Respondent authority to arrange payment of redemption proceeds in terms of the

decision of the Respondent authority.

20. Upon a close scrutiny of the provisions of sub-Regulation(4) of Regulation 33 of SEBI Regulation I find that the same relates to the provisions

of redemption of a close ended scheme at the end of maturity period. First proviso to the above provision deals with the probability of rolling over

of the scheme subject to prior disclosure of the period and other terms of the roll over as also other material details of the scheme including the net

asset value (NAV) and open expressed consent of unit holders. Admittedly, the Petitioner company communicated its decision to accept the

payment of redemption proceeds by communications dated June 30, 1999. Therefore, the above provision could not stand in the way of

converting the said scheme from close ended scheme to open ended one. Further, the decision of the Respondent authority to convert the

aforesaid scheme to open ended one was an option.

21. With regard to the question of promissory estoppel and legitimate expectation on the part of the Petitioners, upon scrutiny of the offer

memorandum under reference, I find that there was an important declaration on the top of it. The risk factors of investment of the said fund in

securities like equity share etc. which was always prone to volatility, potential or otherwise and limited liquidity of securities market as also political

economic conditions were sufficiently disclosed. The probability of going up or going down of net asset value (NAV) of units of CANTRIPLE +

and its income consequent upon investment of the same in stocks and share was disclosed therein. The offer memorandum contained features

showing object which cannot be equated with any promise. A harmonious reading of the object with important declaration on top of it removed

confusing of treating the object as a promise. Clause (4) of the above feature made a provision for re-purchasing the units under the said scheme

upon completion of three years from the date of allotment at a notified price shown in the clause relating to re-purchase. The above provisions

empowered the Respondent authority to convert the said scheme from close ended scheme to open ended one upon fulfillment of the aforesaid

clauses. There is no allegation in this writ application with regard to violation of any of those clauses. Therefore, there was no element of

promissory estoppel leading the Petitioner company to suffer prejudice upon the alteration of their position.

22. In the decisions of Gujarat State Financial Corporation (supra), Reliance Energy Ltd. (supra) and LML Ltd. (supra) the statutory principles of

law with regard to the doctrine of promissory estoppel has been laid down. Since, it has been held hereinabove that there was no promise in the

instant case. Through no relief can be granted to the Petitioners applying the ratio laid down in the above cases. For the same reason the decision

of Punjab Communications Ltd. (supra) has no manner of application in this case with regard to the question of legitimate expectation on the part of

the Petitioners in absence of any promise made by the Respondents to them in the matter of investments made by the Petitioners under

CANTRIPLE + Scheme. Since, the submissions made on behalf of the Petitioners on the issue of promissory estoppel and legitimate expectation

have been considered by this Court independently and without any reference to the un-reported decision of a Single Bench of this Court in the

matter of Sanjiv Kumar Tulsian (supra) to come to a conclusion that there was no promise and that there could not be any question of legitimate

expectation in absence of any promise. The decision of Prager (supra) or Dayton Price(supra) do not help the Petitioners in this case in any way.

23. In view of the distinguishable facts and circumstances stated herein above the decision of Kuldip Singh (supra) has no manner of application in

this case.

24. In view of the discussion and observation made hereinabove this writ application is dismissed.

25. There will be, however, no order as to costs.

26. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the

necessary formalities in this regard.