



IN THE HIGH COURT OF ORISSA AT CUTTACK

**A.F.R.**

**W.P.(C) No. 19648 of 2025**

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

*Bharat Chandra Mallick* .... *Petitioner(s)*  
-versus-

*Branch Manager, State Bank of India* .... *Opposite Party (s)*

Advocates appeared in the case through Hybrid Mode:

*For Petitioner(s)* : *Mr. Braja Mohan Sarangi, Adv.*

*For Opposite Party (s)* : *Mr. Manoj Kumar Mohapatra-1, Adv.*

**CORAM:**

**DR. JUSTICE SANJEEB K PANIGRAHI**

**DATE OF HEARING:-02.09.2025**

**DATE OF JUDGMENT:-17.10.2025**

**Dr. Sanjeeb K Panigrahi, J.**

1. In this Writ Petition, the Petitioner seeks a direction from this Court to declare the Bank's unilateral debit of ₹5,00,000/- from his pension account as illegal and arbitrary, and to direct refund of the said amount with consequential reliefs and protection of his pensionary dues.

**I. FACTUAL MATRIX OF THE CASE:**

2. The brief facts of the case are as follows:

- (i) The petitioner, Bharat Chandra Mallick, is a retired employee of the Rail Coach Factory, Mancheswar, and presently a pension holder maintaining Account No. 10368202110 with the State Bank of India



(SBI). His monthly pension is approximately ₹35,000, which constitutes his primary source of livelihood.

- (ii) The petitioner's wife, Smt. Susila Mallick, had availed several loan facilities from the Opposite Party-Bank. These included two transport vehicle loans, Loan Account No. 61275175315 for ₹5,90,000 sanctioned on 12.06.2015, and Loan Account No. 61299626102 for ₹8,00,000 sanctioned on 07.12.2015, amounting to ₹13,90,000 in total, as well as a car loan of ₹7,45,000 under Loan Account No. 37268579099 sanctioned on 31.10.2017.
- (iii) The petitioner stood as guarantor for the transport vehicle loans taken by his wife and executed Guarantee Agreements to that effect. Both borrower and guarantor were jointly and severally liable for repayment.
- (iv) Due to default in repayment of the said loans, the two transport vehicle loan accounts were classified as Non-Performing Assets (NPA) on 07.11.2018. The Bank states that, despite repeated demands, neither the borrower nor the guarantor cleared the dues.
- (v) On 17.02.2024, a sum of ₹2,30,000, and on 19.02.2024, a further sum of ₹2,70,000 were debited from Account No. 10368202110 held jointly by the petitioner and his wife, totalling ₹5,00,000. The Bank claims this amount was utilized to close the two transport vehicle loan accounts.
- (vi) The petitioner contends that he is not a borrower, only a guarantor, and that the said loans were already closed under the CGTMSE scheme in 2023. He alleges that the Bank's deduction of ₹5,00,000 from his account, without notice or due process, is illegal, arbitrary, and violative of Article 21 of the Constitution of India.



- (vii) The Bank, on the other hand, asserts that the car loan account (No. 37268579099) still remains outstanding and continues as an NPA with dues of ₹6,02,650.50 as of 01.07.2024, along with further interest.
- (viii) The petitioner made a representation dated 07.01.2025 to the Bank seeking release of the withheld amount, stating that it was required for his daughter's marriage, but no response was received from the Bank.
- (ix) The petitioner relies upon judicial precedents, *D.S. Nakara v. Union of India*<sup>1</sup> wherein Karnataka High Court has observed that even if a pensioner is indebted, at least 50% of pension must remain untouched, and in his case, being a guarantor, the entire recovery is impermissible.
- (x) The Bank maintains that the joint account from which recovery was made is not an exclusive pension account, and that the petitioner continues to withdraw his monthly pension regularly since March 2024, implying that his pension has not been attached or withheld.
- (xi) The Bank further submits that the debit transactions were made lawfully from a jointly operated account between husband and wife, both being liable for the loan, and that the petitioner was aware of the recovery since February 2024.
- (xii) The Bank contends that the writ petition was filed after more than a year of the said debit transactions and hence suffers from delay, laches, and suppression of material facts, whereas the petitioner maintains that the recovery was arbitrary and violative of his fundamental right to livelihood.

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<sup>1</sup> judgment dated 04.03.2025 passed in W.P.(C) No. 35266/2024



## II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:
- (i) The petitioner submits that the impugned withholding of ₹5,00,000 from his pension account is wholly illegal, arbitrary, and unconstitutional, being in violation of Article 21 and settled judicial precedents. The action amounts to deprivation of livelihood without authority of law.
  - (ii) The petitioner relies on D.S. Nakara (Supra) to assert that pension is not a bounty but a right to livelihood and social security. Any unauthorized deduction defeats the constitutional protection extended to pensioners.
  - (iii) The Karnataka High Court in W.P.(C) No. 35266/2024 categorically held that even if a pensioner is a borrower, the Bank cannot deduct more than 50% of the pension amount. Since the petitioner herein is only a guarantor and not a borrower, the Bank's act of withholding 100% of his pension savings is per se arbitrary.
  - (iv) The Bank's conduct amounts to unilateral recovery without due process, as no notice, opportunity of hearing, or lawful order preceded the debit transactions of 17.02.2024 and 19.02.2024. This violates principles of natural justice and the Reserve Bank of India's guidelines on recovery from pension accounts.
  - (v) The petitioner contends that since the underlying loan has already been closed under the CGTMSE scheme in 2023, there is no subsisting liability. Hence, the impugned recovery has no legal foundation and constitutes unjust enrichment by the Bank.



- (vi) The action of withholding pension deposits has caused grave financial hardship, depriving the petitioner of means for subsistence and his daughter's marriage expenses, amounting to a violation of the right to dignity under Article 21.

### **III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY:**

4. The Learned Counsel for the Opposite Party earnestly made the following submissions in support of his contentions:

- (i) The Opposite Party-Bank submits that the petitioner, as guarantor, is equally liable with the borrower under the principle of joint and several liability recognized in contract law and banking practice. Therefore, the recovery of dues from the joint account is fully lawful and within the contractual rights of the Bank.
- (ii) The debit of ₹5,00,000 from the joint account was carried out to close the NPA transport vehicle loan accounts, for which both borrower and guarantor were jointly responsible. There was no illegality or violation of rights since the account belonged to both and was used for recovery of public money due to default.
- (iii) The Bank emphasizes that the loans were sanctioned without collateral security. In such a situation, the Bank was compelled to debit funds from the joint account to mitigate loss to public money. Hence, its actions were consistent with prudential banking norms and lawful contractual obligations.
- (iv) The claim of the petitioner that his pension was withheld is factually incorrect. The Bank has demonstrated through the account statement (Annexure R/5) that the petitioner has been regularly withdrawing his



monthly pension since March 2024 without any obstruction. Thus, no violation of his right to pension or Article 21 arises.

- (v) The Bank argues that the cause of action is stale, as the transactions occurred in February 2024 and the writ petition was filed more than a year later. The petitioner's delay indicates an afterthought attempt to misuse the writ jurisdiction and interfere with legitimate recovery of dues.
- (vi) The Bank maintains that the doctrine of limitation and the principle against suppression of material facts should apply. The petitioner knowingly concealed the existence of his guarantee obligations and the fact of joint account operations with his wife, thereby misleading the Court. Such suppression warrants dismissal with exemplary cost.
- (vii) It is further submitted that loan dues constitute public money, and recovery actions taken by the Bank to safeguard such funds cannot be equated with arbitrary deprivation. The petitioner's plea of violation of Article 21 is misplaced, as the debit was from a joint account lawfully held and used for loan transactions.
- (viii) The Bank thus prays that the writ petition be dismissed at the threshold, as it is devoid of merit, filed with suppression of material facts, barred by limitation, and aimed solely at obstructing lawful recovery of public money.

#### **IV. COURT'S REASONING AND ANALYSIS:**

- 5. Heard Learned Counsel for parties and perused the documents placed before this Court.



6. This case raises a narrow but important question: whether a bank can, on its own, deduct money from a pensioner's account to recover dues arising from a borrower's default. What appears at first glance to be a routine banking dispute, in fact, cuts to the core of a larger issue: the protection of pension as a lifeline for survival in old age, and the limits of contractual power when weighed against the constitutional right to livelihood.
7. It is evident from the legal framework that pensionary benefits are accorded special protection. Section 60(1)(g) of the Code of Civil Procedure, 1908 exempts government pensions from attachment in execution of a decree. In fact, the Supreme Court in the case of *Radhey Shyam Gupta v. Punjab National Bank*<sup>2</sup> underscored that even after a pension or gratuity amount is credited to a bank, it does not lose its character as a protected sum. The Court held that such retiral benefits could not be attached under the provisions of the Code of Civil Procedure despite being in the bank's possession. The relevant excerpts are produced below:

*“However, we are also of the view that having regard to proviso (g) to Section 60 (1) of the Code, the High court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank. The High Court also erred in placing the onus on the appellant to produce the Matador in question for being auctioned for recovery of the decretal dues. In other words, the High Court erred in altering the decree of the Trial Court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into Fixed Deposits, could not be attached under the provisions of the Code of Civil Procedure.*

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<sup>2</sup> (2009) 1 SCC 376.



*The decision in the Jyoti Chit Fund case (supra) has been considerably watered down by later decisions which have been indicated in paragraphs 15 and 16 hereinbefore and it has been held that gratuity payable would not be liable to attachment for satisfaction of a Court decree in view of proviso (g) to Section 60(1) of the Code."*

8. In other words, what the law forbids by way of formal attachment cannot be indirectly accomplished by the bank unilaterally adjusting or debiting pension funds.
9. The petitioner's reliance on ***D.S. Nakara (Supra)*** is apt. Pension is not a matter of charity or a bounty from the State, but rather a hard-earned benefit which accrues to an employee, reflecting the right to live with dignity in old age. In ***State of Jharkhand v. Jitendra Kumar Srivastava***<sup>3</sup> the Supreme Court took a similar stance and held that a person cannot be deprived of pension without the authority of law, as pension is considered "property" under Article 300A of the Constitution. Any executive or contractual action that takes away a pensioner's money without explicit legal sanction is ultra vires. The relevant excerpts are produced below:

*"It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold - even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different"*

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<sup>3</sup> (2013) 12 SCC 210.



10. Here, the Bank's debit of ₹5,00,000 from the petitioner's account, which contained his pension, was done without any court order or prior notice, and thus prima facie violates the principle that pension cannot be taken except by due process.
11. The Bank contends that because the petitioner stood as a guarantor and the account was held jointly with the borrower (his wife), it was within its rights to debit the joint account for loan recovery. However, this argument cannot override the statutory safeguards on pension funds. The High Court of Jammu and Kashmir in the case of *J&K Bank Ltd. v. Chander Udey Singh*<sup>4</sup> was faced with a strikingly similar matter, wherein it held that pension retains its exempt status even after being deposited in a bank account and such funds cannot be attached or deducted unilaterally, even under contractual agreements like deeds of guarantee. The relevant excerpts are produced below:

*"...pension amounts are statutorily insulated from any coercive recovery measures, including unilateral deduction by banks.*

...

*Pensionary benefits, being the sole means of sustenance for most retired individuals, acquire heightened significance in such circumstances. The withholding or deduction of pension funds, particularly when such funds are statutorily protected, would not only cause financial distress but also amount to a violation of the respondent's right to live with dignity... Thus, when weighed against the irreparable inconvenience to the bank if any does not tilt the balance of convenience in its favour."*

12. In the present case, although the petitioner's liability as a guarantor is co-extensive with the borrower, the mode of recovery chosen by the

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<sup>4</sup> CM (M) No. 156/2022, Jammu & Kashmir High Court



Bank, a unilateral withdrawal from an account fed by pension, runs afoul of this public policy.

13. The fact that the amount was taken from a joint account, held by the petitioner and his wife, does not legalize the recovery. If a debt is owed by one person, the bank cannot simply seize money from a joint account held with another person who is not a co-debtor. In this case, while the petitioner (guarantor) and his wife (borrower) are both liable for the loan, the joint account was effectively being treated as a convenient source without distinguishing whose funds were being taken. The petitioner is a retiree whose contribution to that account was his pension, which is protected. Simply because the account was joint does not strip the funds of their pensionary nature in his hands. The Chander Udey Singh (Supra) ruling is instructive: pension funds do not lose their statutory protection merely by being in a joint account, and contractual consent in a guarantee cannot waive the exemption given to pension under law. Thus, the Bank's resort to the joint account in this manner was legally improper.
14. The manner in which the recovery was effected also fails basic norms of natural justice. It is undisputed that the Bank did not issue any prior notice or obtain consent from the petitioner before debiting the amounts on 17.02.2024 and 19.02.2024. A unilateral debit from a customer's account, especially when it consists of pension money, is an extreme step. The petitioner was entitled to at least a notice or demand, and an opportunity to be heard on why the sum was being taken. He could have, for instance, pointed out his contention that the loans had been settled under a credit guarantee scheme, or offered an alternate



repayment plan. By bypassing any dialog or process, the Bank's action was arbitrary. The proper course for a bank in case of loan default is to resort to lawful recovery channels, such as invoking security, filing a suit or approaching a tribunal, rather than self-help by dipping into a pension account.

15. The Bank contends that the petition is vitiated by delay and laches, having been filed more than a year after the recovery, and further alleges suppression of material facts such as the petitioner's guarantor role and joint account details. The Court, however, is not convinced that these technical objections foreclose relief. The petitioner has shown that he made a representation to the Bank in January 2025, within eleven months of the disputed debit, seeking restitution of the amount, yet received no response. He approached this Court only after realizing that the Bank would not rectify the matter.
16. Given the continuing impact on his livelihood and the fundamental rights violation alleged, a marginal delay cannot defeat substantive justice. There is no indication that the petitioner ever acquiesced in the recovery; merely continuing to use the same account for pension credits cannot be construed as consent to the ₹5,00,000 deduction. As for the existence of alternative remedies, while monetary disputes ordinarily fall within the realm of civil courts or tribunals, that does not curtail writ jurisdiction where a public sector bank acts with manifest illegality infringing constitutional guarantees.
17. The writ jurisdiction of this Court is designed to check arbitrary executive action and to uphold the rule of law without being constrained by procedural formalities. Where a citizen's basic means of



sustenance is imperilled by an unlawful act of the State or its instrumentalities, the Court's duty is to intervene. Accordingly, the matter deserves adjudication on its merits.

**V. CONCLUSION:**

18. In view of the foregoing discussion, the impugned action of the Opposite Party-Bank in debiting a sum of ₹5,00,000 from the petitioner's joint account (Account No. 10368202110) is held to be illegal and unsustainable in law. It violated the statutory protections afforded to pension funds as well as the petitioner's fundamental right to livelihood under Article 21.
19. Consequently, the Bank is directed to reverse the sum of ₹5,00,000/- to the petitioner's account within four weeks from the date of publication this judgment. The petitioner shall be permitted to operate his account freely, and the Bank shall not *de futuro* recover any amount from his pension without adhering to due process of law.
20. It is clarified that this judgment does not extinguish the underlying loan obligations; the Bank remains at liberty to recover any outstanding dues by lawful means, for instance by enforcing security or pressing its claim before the appropriate forum. However, under no circumstances can the Bank directly appropriate a pensioner's entire pension or savings in violation of the guidelines discussed above.
21. The Writ Petition is **allowed** with the above directions.
22. Interim order, if any, passed earlier stands vacated.

*(Dr. Sanjeeb K Panigrahi)*  
*Judge*