(2001) 11 GUJ CK 0027

In the Gujarat High Court

Case No : Special Civil Application No. 4633 of 1996

Narendrabhai Shankarlal Joshi — APPELLANT

Vs

Post Master General, Gujarat Circle and Another — RESPONDENT

Date of Decision : 08-11-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Government Savings Certificate Act, 1959 — Section 12
Indira Vikas Patra Rules, 1986 — Rule 8

Citation : AIR 2002 Guj 180 : (2002) 2 CivCC 373 : (2002) 43 GLH 22 : (2002) 22 GLH 43 : (2002) 4 RCR(Civil) 36

Hon'ble Judges : K.R. Vyas, J

Bench : Single Bench

Advocate : D.C. Dave, for the Appellant; Ketan A. Dave, D.N. Patel, P.J. Davawala and Jayant Patel, for the Respondent

Judgement

1. The petitioner, who is a retired primary teacher, has moved this Court by way of this petition under Article 226 of the Constitution of India, questioning the legality, validity and propriety of the action on the part of the Post Master General, Gujarat Circle, Ahmedabad whereby the repeated requests of the petitioner to effect the payment in respect of the Indira Vikas Patras (hereinafter referred to as ''the IVP certificates'' for short) purchased by the peitioner which were stolen from the custody of the petitioner was not accepted to even after the expiry of the maturity period of the same despite the fact that the petitioner was ready, willing and prepared to accept any reasonable terms and conditions which may be imposed by the respondents for the purpose of safeguarding the interest of the post office.

2. The petitioner retired as a primary teacher on or about 30th May 1990 and on his retirement, he thought of investing the amount which he received as retirement benefit in IVPs issued by the Government of India. The petitioner purchased the 1VP Certificates for a sum of Rs. 64,500/- from the Post Office situated at Ode Bazar. Umreth, the details of which are given hereunder :

"In all 25 Indira Vikas Patras, each for a sum of Rs. 2,500/- amounting in all to Rs. 62,500/-, bearing Registration No. 762 and distinctive Nos. 708371 to 708395 issued on 3rd August 1990 having the maturity date of 3rd August 1995 for maturity value of Rs. 1,25,000/-.

In all, 4 Indira Vikas Patras, each for a sum of Rs. 500/- amounting in all to Rs. 2,000/-, bearing Registration No. 1547 and distinctive Nos. 793512 to 793515, issued on 3rd November 1990 having the maturity date of 3rd August 1995 for maturity value of Rs. 4,000/-." The petitioner noticed that the said IVP Certificates were missing and therefore, he immediately lodged a complaint before the Police Station at Umreth on 18th December 1991 which was registered as Crime Register No. 43 of 1991. Thereafter on 21st December 1991, the petitioner informed the Post Master of Ode Bazar Post Office in writing mentioning the details of the IVP Certificates, viz. registration number, distinctive number, face value, date of issue, date of maturity and the maturity value. On 25th/26th December 1991. the petitioner submitted an application to the Superintendent of Post Office, Anand Division, Anand for issuance of duplicate IVP Certificates and to inform all concerned post offices not to accept the aforesaid IVP Certificates for encashment if presented by any one. In reply to the said application, the Superintendent of Post Office, Anand Division, by his communication dated 29th January 1992 informed the petitioner that Post Offices have been informed about the IVPs, but there is no system of issuing duplicate IVPs. On 18-5-1995, the petitioner again informed the Superintendent of Post Office. Anand Division and requested him to Issue requisite instructions to all concerned post offices for not accepting the aforesaid IVPs if any one comes for encash-ment of the same as the maturity dates of the IVPs were fast approaching. On 15-6-1995, after getting the details of the IVPs. the Superintendent of Post Office. Anand Division, issued instructions to all concerned not to accept the aforesaid IVPs for encashment. The petitioner, through his letter dated 11-11-1995 addressed to the Post Master, Main Post Office, Umreth, requested that since even after the maturity date has expired long back, and as nobody has presented the IVPs for encashment, the payment thereof may be effected to him. Similar request was also made on 11-11-1995 to the Superintendent of Post Office, Anand Division mentioning that he is prepared to abide by any reasonable terms and conditions which may be imposed for effecting the payment in favour of the petitioner in respect of the aforesaid IVPs and also showed his willingness to give indemnity/security for effecting the payment to the petitioner. Again on 2nd March 1996, the petitioner addressed a letter to the respondent No. 1 wherein he mentioned that he is a retired primary teacher and he has no other means to maintain himself and his family, the amount of IVPs is urgently required. In response to the said letter, the Superintendent of Post Office, Anand Division by letter dated 4th June 1996 Informed the petitioner that as per the Postal Department Rules, all concerned have been Informed to prevent fraudulent encashment of the aforesaid IVPs and not to accept the same for encashment and it was not possible to do anything beyond what has been done and it would not be possible to accede to the request of the petitioner effecting payment. It may be stated that in the meantime, i.e. on 17-5-1996, the petitioner through his Advocate, got issued a notice to various authorities to do the needful in the matter falling which, the petitioner would be constrained to institute necessary legal action against the concerned. In response to the aforesaid notice, the Chief Post Master General, New Delhi by his communication dated 23rd May 1996 issued to the respondent No. 1 informed the respondent No. 1 to do the needful in the matter at the earliest. However, despite this, no action in the positive direction has been taken and as a result thereof, the petitioner has not received any payment in respect of the aforesaid IVPs and there-fore, he has filed the present petition for A direction to the respondents to effect the payment in favour of the petitioner in respect of the aforesaid IVPs together with interest at the rate of 15% per annum from the date when it became due.

3. This Court on 18-6-1997 issued Rule in the matter. By way of interim order, the respondents were restrained from making payment with respect to 29 IVPs described in paragraph 2 of the petition to anybody without the permission of this Court. The respondents were further directed to communicate that order to the concerned post offices in India.

4. Learned counsel Mr. D. C. Dave appearing for the petitioner invited my attention to the relevant provisions of law and correspondence produced in the petition. He submitted that there is nothing in the Scheme/Rules which prohibits the Department from encashing the concerned IVPs when sufficient proof is adduced with regard to its original purchase by the petitioner with full details about it and the subsequent misplacement of the same. In the submission of the learned counsel, the details given by the petitioner are not in dispute. It was submitted that before the maturity date, when the complaint was filed, the respondents reacted immediately by informing all post offices that on maturity of the IVPs in the year 1995, the IVPs should not be permitted to be encashed by any person. Even thereafter by interim order passed by this Court to the effect that the IVPs were not to be encashed without the permission of the Court. Thus, no one has encashed the IVPs at that time nor have been given credit to and even today, no one has claimed having encashed the IVPs. Learned counsel therefore, submitted that since no one has claimed or moved for encashment of the IPVs for more than ten years. I.e. from the date of issuance of the IVP Certificates and six years from the maturity date, the petitioner is entitled to get the amount. Finally learned counsel submitted that the petitioner would give such undertaking to return the amount in case the claim is made by any one in future.

5. Learned Additional Central Govt. Standing Counsel Ms. Davawala, after inviting my attention to the reply filed in the matter, submitted that no encashment is permissible unless the original IVP Certificates are produced. Elaborating the said submission it was pointed out that the instrument is issued

to any person whosoever demand and his name or address is not registered or a record is kept any where in any post office about the identification of the holder irrespective of the fact whether the holder is genuine or not for Department, he is the actual claimant. Learned Additional Standing Counsel justified the stand of the Department by contending that there is no provision to allow issuance of duplicate or encashment on indemnification. In the affidavit-in-reply filed to the petition by the Superintendent of Post Office. Anand Division, Anand, over and above the contentions raised by the Additional Standing Counsel, it is also contended that as many disputed questions and facts are involved in this petition, the petitioner maybe relegated to the Civil Court as the petitioner has no right to file this petition under Article 226 of the Constitution of India.

6. For the purpose of deciding the question involved in the matter, it is necessary to refer to certain provisions of law. The Central Government, in exercise of the powers conferred by Section 12 of the Government Savings Certificates Act. 1959 has framed Indira Vikas Patra Rules, 1986 (hereinafter referred to as ''the Rules'' for short). It further appears that the Director General of Posts, India and the Secretary to the Government of India, Department of Posts, Ministry of Communication have issued necessary Instructions in respect of sale and procedure to be followed pursuant to issuance of Indira Vikas Patras. Those instructions are contained in Post Office Savings Bank Manual. Vol. II. Rule 5 of the Rules prescribes procedure for purchase of a certificate. Rule 6 provides for issue of a Certificate and states that on payment being made under Rule 5, a certificate shall be issued immediately and the date of issue of such certificate shall be the date of payment. As per Sub-rule (2) of Rule 6, if for any reason a certificate cannot be Issued immediately, a provisional receipt shall be given to the purchaser, which may later be exchanged for a certificate by the person holding the provisional receipt. Sub-rule (3) of Rule 6 provides that a certificae issued under this rule is transferable. Rule 7 deals with replacement of certificate. Under Sub-rule (1) of Rule 7, if a certificate is mutilated or defaced, the bearer is entitled for replacement from the Post Office of issue on payment of fee of rupee one. However, under Sub-rule (2) of Rule 7, a certificate lost, stolen, mutilated defaced or destroyed beyond recognition, will not be replaced by any Post Office. Rule 8 provides for encashment of certificate and states that a certificate of any denomination may be encashed at any time after the expiry of a period of five years from the date of issue by presenting it before the Post Office of issue, provided that a certificate may be encashed at any other Post Office if the Officer-in-charge of that Post Office is satisfied on verification from the Post Office of issued that such certificate was Issued by the said Post Office. Under Rule 9, the person presenting a certificate for encashment shall sign in the space provided on the back thereof in token of having received the payment and indicate thereon the name and address. Rule 10 provides that the Post Office shall not be responsible for any loss caused to a holder by any person obtaining possession of a certificate and fraudulently encashing it. Rule 11 deals with the power to relax and provides that whereas the Central Government is satisfied

that the operation of any of the provisions in these rules causes undue hardship to the holder of a certificate, it may, by order, for reasons to be recorded in writing relax the requirements of that provision in a manner not inconsistent with the provisions of the Act.

7. On a conjoint reading of the aforesaid Rules, the following position emerges :

A certificate is transferable and can be replaced if it is mutilated or defaced, however, it is not replaced by any Post Office. A certificate lost, stolen, mutilated, defaced or destroyed beyond recognition will not be replaced by any Post Office. A certificate can be encashed any time after the expiry of a period of five years from the date of issue by presenting it before the Post Office of issue. In other words, a certificate is required to be presented for encashment and can be encashed at any other Post Office other than the Post Office which has Issued the certificate and the Post Office shall not be responsible for any loss caused to a holder by any person obtaining possession of a certificate and fraudulently encashing it. In view of the aforesaid provisions of Rules, the petitioner who lost the IVP Certificates cannot claim replacement even though he has given the details about the IVP Certificates. Since the IVP Certificates are lost/stolen, naturally the petitioner is not in a position to present it before the concerned Post Office which issued the certificate. In that view of the matter, the question arises for consideration is whether the petitioner is entitled to get the amount without presenting the IVP certificates from the concerned Post Office?

8. As stated above, the Director General of Posts. India and the Secretary to the Government of India, Department of Posts. Ministry of Communication have issued necessary instructions in respect of sale and procedure to be followed pursuant to issuance of IVPs which are pertaining to the Post Office Savings Bank Manual, Vol. II which provides that an IVP lost, stolen or destroyed will not be replaced by issue of duplicate. Para 6 of the instructions provides that an issue and discharge register in the following form will be maintained in the post offices separately for each denomination and this Register will be kept by the Post Master in his personal custody after the office hours.

Form of Register

Date of Issue

RegistrationNo.

Serial No. of Certificate

Signature of Post-Master /SPM

Dateof payment

I

2

3

4

5

Office of payment

Signature of

Remarks

6

7

8

The entries in this Register will be made as and when the IVP is Issued and each entry will be checked by the Postmaster/SPM at the time of signing of the IVP and an individual entry of each certificate will be made in the register strictly in the serial order of their numbers. If more than one IVP are purchased at a time, a single registration number will be given at the beginning of the entry in the issue and discharge register. Paragraph 12 deals with encashment. Sub-paragraph (1) of the said paragraph provides that a certificate of any denomination may be presented for encashment at an post office in India doing Savings Certificates work. This may be encashed at any time after expiry of maturity period of specified in the rules by presenting it before the post office of issue. It may be encashed at any other post office if the officer in charge of the post office is satisfied on verification from the office of issue that such certificate was issued by the said post office and is not yet discharged. Sub-paragraph (2) of Paragraph 12 provides that when IVPs are presented for encashment at the Post Office of Issue. It should be examined to see that :

(i) Registration Number and Date of Maturity are correct and the period of non-encashment has expired.

(ii) The certificate is not the one which has been reported lost or stolen before issue of mutilated beyond recognition.

(iii) Verify oblong stamp impressed at the time of Issue of the certificate.

After above checks, if the Counter Clerk is satisfied, he will ask the holder of the certificate to sign on the back of the Patra as "received payment in full" giving his name and address as provided in Rule 9 of the IVPs Rules. 1986. The counter clerk will then make an entry of the dale of discharge against the concerned certificate in the Issue and Discharge Register. He will also prepare the journal of the certificate discharged as prescribed in Rule 20 of this Manual showing therein the purchase value and interest thereon (which will be in the ratio of 50 : 50) separately. Sub-paragraph (3) provides that the certificate along with the register of Issue and Discharge and the journal of the certificatefs) discharged will then be put up to the Postmaster, who will satisfy himself about the above checks and the correctness of the amount shown in the paid journals as well as in the issue and Discharge register. He will then sign in Column 7 of the register and return the certificate and other documents to the Counter Clerk for payment. After Patra is encashed, it would be impressed with "cash paid" stamp and oblong money order stamp of the office of payment. The payment will be made in any of the modes specified for NSCs. The IVP will then be sent to the HO/ Postal Accounts Office along with the journal of certificate discharged as provided in Rule 20 ibid as due return as prescribed for NSCs. Sub-paragraph (4) provides that when the Patras are presented for encashment at any post office other than the office of issue, the holder may be requested to make an application expressing his desire to encash the Patra(s) at that office giving therein the name of the post office at which it stands registered. Full particulars of the certificate viz. serial number, with prefix letters, date of issue, registration number and address of the holder should be indicated in the application. The application thus date stamped will be sent to the office of registration for verification and return within three days. The office of issue will exercise the check as specified in para 1(i) & (ii) above and the Postmaster shall endorse on the application "verified, Pay to the holder" under his full signature and date stamp. They will also keep a note in the Issue & Discharge Register as "verified payment claimed at ..... Post Office (No.....dated .....)". The verified application will then be returned by registered post to the office from which it was received. The office at which the payment is desired by the holder should telegraphically remind the office of registration, if no reply is received within a week. On receipt of application, back from the office of registration, holder will be informed and requested to present Patras for encashment. In all cases, when patras are presented the office of payment will verify the oblong stamp and in case of any doubt, the encashment must be allowed from the office of issue only. The discharged certificate along with verified application will be sent to the Postal Accounts Office as per normal procedure for NSCs.

9. Perusing the scheme along with the Rules, it is clear that the Post Office is required to maintain an Issue and Discharge register in respect of the IVPs. which contains the details regarding date of issue, registration number, serial number of certificate, signature of Postmaster/SPM, date of payment, office of payment, signature of and remarks. True it is, when the certificates are issued the details of the purchaser are not obtained, but the details of the person presenting the IVPs are required to be taken when the certificates are presented for encashment at any Post Office in India and the concerned Post Office is required to take many precautions as per paragraph 12 of the scheme. Therefore, whosoever who presents the certificate for encashment either before the Post Office which issued the certificate or in other Post Office, he is required to disclose his identity before the concerned Post Office and on the satisfaction about the genuineness of the claim and if encashment is permissible, necessary entries are made in the register maintained by the Post Office. Thus, agreeing with the sub-mission of the learned Additional Standing Counsel that encashment is permissible provided the certificates are presented before the Post Office the

question still to be decided is as to whether any body other than the petitioner has presented the IVPs either to the Post Office which issued the certificate or any oher Post Office? There is no dispute to the fact that all the Post Offices are informed regarding the misplaced or stole IVPs of the petitioner at the instance of the petitioner or in pursuance of the interim order passed by this Court. The petitioner being a genuine claimant already filed criminal complaint on 18th Dec. 1991 no sooner the IVPs are lost. The petitioner has given all the details of the IVPs including the registration number, date of issuance of the IVPs and date of maturity to the respond-ents. Moreover, from the date of issue of the IVPs and even on and after the date of maturity of the same, no one has presented any certificate before any Post Office. In other words, the IVP certificates in question have not been encashed. Considering the aforesaid undisputed fact-situation, can be respondents refuse the encashment of the IVP certificates on the ground that the petitioner is required to present the original certificates? in my opinion, a broad meaning is required to be given to the word, ''presenting'' the certificates. Many a times, the certificate is lost and in that event, it would be impossible for the party to present the same like the present case. In the event of the certificate being lost or stolen, the concerned party may put forward his claim for encashment on the basis of the relevant material pertaining to the lost/stolen certificates provided the certificates are not encashed by any other party. If the concerned parly is in a position to satisfy the authority with necessary material and if the concerned certificates are not encashed, the right of the party to claim encashment cannot be denied. As and when such a request is made, the authorities are expected to take into consideration such material without insisting to present the original certificates. The submission advanced on behalf of the respondents, in the instant case, is highly rigid and technical. Hyper-technicalities cannot deny substantial justice to the party and it cannot and should not come in the way of the party for its just cause. In view of the above, even if the IVP certificates ae in the nature of bearer cheques, so long as they are not encashed by anybody other than the person who purchased the same and if such person comes forward to encash the same with valid claim with proper materials, it cannot be denied. However genuineness of such claim is open to scrutiny by the authorities, considering the facts and circumstances of the case. Thus, in absence of presentations of Certificates, the party does not lose right to claim encashment, however, he will have to give all particulars of Certificates, and other relevant circumstances and to satisfy the authorities, provided in the meantime no encashment having been taken place.

10. In view of the above discussion, the petitioner a retired teacher having invested entire retirement benefits in IVPs cannot denied his rightful claims in the name of technicalities -- the petition succeeds and is accordingly allowed. The respondents are directed to encash the IVP certificates, the details whereof are given in this judgment, provided the same are not encashed by anybody till date. The entire amount shall be paid as per the respective maturity dates of the IVP certificates within two weeks from the date of receipt of the writ of this order.

11. As the petition has remained pending for all these years, the respondents cannot be saddled with the liability to pay interest, especially when technically they are justified in withholding the payment. Therefore, in my opinion, the claim of interest at the rate of 15% per annum as made by the petitioner is not justifiable. Hence, the said prayer is rejected. Rule is made absolute with costs.

