
(2003) 08 AP CK 0045
In the Andhra Pradesh High Court
Case No : WA No. 684 of 2003

Union of India (UOI) and Others

APPELLANT

Vs

Bijili Balaiah

RESPONDENT

Date of Decision : 12-08-2003

Acts Referred:

Indira Vikas Patra Rules, 1986 — Rule 10, 7

Citation : (2004) 4 ALD 48

Hon'ble Judges : P.S. Narayana, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : S. Srinivasa Varma, for the Appellant; P. Venugopal, for the Respondent

Final Decision : Allowed

Judgement

B. Sudershan Reddy, J.—The Union of India represented by its Secretary, Ministry of Communications, Department of Posts, New Delhi and two others are in appeal before us in this writ appeal preferred against the order passed by a learned Single Judge of this Court in W.P. No. 19381 of 2001, dated 28-12-2001, whereunder the learned Judge directed the appellants herein to take appropriate action in the matter in accordance with Clause 43 of the POSB Manual within a period of two months from the date of receipt of a copy of the said order.

2. In order to appreciate the question as to whether the impugned order passed by the learned Judge suffers from any infirmity requiring our interference in the matter, the relevant facts may have to be noticed:

3. The respondent-writ petitioner with his little savings purchased Indira Vikas Patras (IVP) on 18-12-1993 vide Receipt Nos. 5 IVP/45B 991953 for Rs. 1,000/-; 5 IVP/45B 991954 for Rs. 1,000/-; 5 IVP/45B 991955 for Rs. 1,000/-; 5 IVP/33C 336284 for Rs. 5,000/-; 5 IVP/33C 336285 for Rs. 5,000/- and 5 IVP/33C 336286 for Rs. 5,000/-and their date of maturity is 18-5-1999. In the affidavit filed in support of the writ petition, it is stated that the respondent-writ petitioner

lost the original Indira Vikas Patras and, therefore, he gave a complaint at Amberpet Police Station. Thereafter, the respondent-writ petitioner approached the third appellant herein with xerox copies of the said Indira Vikas Patras to redeem the value of the same as per the maturity value, followed by a legal notice dated 9-4-2001. The third appellant herein vide reply dated 16-4-2001 intimated the respondent-writ petitioner that as per Rule 10 of POSB Manual Vol.11 if an IVP is lost, stolen or destroyed it will not be replaced by issue of duplicate certificate and there is no provision for issuing duplicate IVPs or to pay the maturity amount in the absence of original IVPs. The respondent-writ petitioner has challenged the same in the writ petition seeking a writ of mandamus as against the appellants herein to pay the maturity value of said six Indira Vikas Patras and to pass such further appropriate orders in the circumstances of the case.

4. The learned Single Judge held that in case of loss, theft or destruction of the Indira Vikas Patras the remedy is available under Clause 43 of the POSB Manual and Rule 10 has no application to the case on hand. The learned Judge accordingly declared the impugned proceedings dated 16-4-2001 as illegal and contrary to law. The learned Judge in the circumstances, directed the appellants herein to take appropriate action in accordance with Clause 43 of POSB Manual within a period of two months.

5. In this appeal, the learned Central Government Standing Counsel contended that there is no provision under which duplicate Indira Vikas Patras could be issued in case of loss or theft of original Indira Vikas Patras. The learned Standing Counsel further contended that Clause 43 of POSB Manual has no application whatsoever since the issue of Indira Vikas Patras is regulated by the Indira Vikas Patra Rules, 1986, which is a self-contained code by itself.

6. The learned Counsel for the respondent-writ petitioner contended that the writ petitioner being a poor person could not be deprived of his legitimate right to encash the certificates after expiry of the period mentioned therein and the impugned order of the third appellant herein has resulted in virtually expropriating his amounts without any justification whatsoever. The learned Counsel further contended that the appellants herein can always take appropriate security from the respondent-writ petitioner and permit him to encash the certificates and such a course would not result in any loss or prejudice to any of the appellants herein.

7. We have carefully considered the rival submissions.

8. The Rules known as "Indira Vikas Patra Rules, 1986" (for short "the Rules") were made and issued by the Government of India in exercise of the powers conferred by Section 12 of the Government Savings Certificates Act, 1959.

9. Rule 5 of the Rules prescribes the procedure for purchase of certificates. It says that a certificate may be purchased at a Post Office on payment of any one of the following modes, namely:

(i) by cash; or

(ii) by locally executed cheque, pay order or demand draft drawn in favour of the Postmaster; or

(iii) by presenting a duly signed withdrawal form or cheque with the Pass Book for withdrawal from Post Office Savings Account standing in the credit of the purchaser at the same Post Office.

Sub-rule (2) of Rule 5 makes it clear that no formal application is necessary for purchase of a certificate.

10. Rule 6 provides that on payment being made by cash, a certificate shall be issued immediately and date of such certificate shall be the date of payment and where payment for purchase of a certificate is made by locally executed cheque, pay order or demand draft, the certificate shall not be issued before the proceeds of the cheque, pay order or demand draft, as the case may be, are realised and the date of such certificate shall be the date of encashment of the cheque, pay order or demand draft, as the case may be.

11. Rule 7 is important for our consideration and it reads as follows:

7. Replacement of certificate :--(1) 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.

(2) A certificate lost, stolen, mutilated, defaced or destroyed beyond recognition, will not be replaced by any Post Office.

12. Rule 8 deals with encashment of certificate. Rule 9 provides that 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 his name and address. Rule 10 says 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.

13. That a bare reading of the rules referred to hereinabove makes it abundantly clear that the certificate for encashment need not be presented by the same person who purchased it. The certificate does not bear the name of the person who purchased it. Mere presentation of certificate at any time after expiry of the period mentioned therein is sufficient for encashment of the same. The authorities concerned are not entitled to make any further enquiry into the matter as to whether the certificate has been presented for encashment by the person who purchased it. The rules categorically make it clear that the certificate lost, stolen, mutilated, defaced or destroyed beyond recognition will not be replaced by any Post Office. The certificate holder is entitled for replacement if the certificate is mutilated or defaced, but not beyond recognition. The rules do not provide for any contingency for encashment of the certificate on the basis of xerox copy of original certificate issued under the rules.

14. The comprehensive rules, which are special in their nature, by themselves constitute into a self-contained code excluding the operation of any other rule including POSB manual, upon which reliance has been placed by the learned Judge for issuing appropriate directions as against the appellants herein. The said manual has no application whatsoever either for purchase or encashment of Indira Vikas Patras. Hence a writ of mandamus does not lie compelling the appellants herein to act in accordance with manual which has no application whatsoever for encashment of Indira Vikas Patras.

15. In the circumstances, we are of the opinion that Rule 43 of POSB Manual has no application whatsoever either for purchase or encashment of Indira Vikas Patras.

16. The Karnataka High Court in W.P. No. 9730 of 1999, dated 9-4-1999 on interpretation of the scheme relating to Indira Vikas Patra has held that the purchaser of Indira Vikas Patras is not entitled to payment if the originals are lost. "This is in view of the fact that Indira Vikas Patras are not issued showing the name of the purchaser and can be transferred to anyone merely by delivery. Having regard to the terms of the scheme and the decision of this Court, petitioner is not entitled to the relief sought....."

17. We are in complete agreement with the view taken by the Karnataka High Court in the above decision.

18. However, we are constrained to observe that the rule making authority did not make any provision specifying any remedy in case of lost of the certificate for whatever reasons. It is not uncommon that such valuable certificates may be misplaced or lost or may get even mutilated or defaced. No remedy is provided for under the Rules to meet such contingency even in genuine cases.

19. In our considered opinion, some provision must be made in the Rules in order to do justice to the person who may have genuinely lost the certificates for whatever reasons. We hope and trust that the issue shall be considered by the rule making authority for making an appropriate rule in this regard.

20. In the circumstances, the impugned order is set aside. The writ appeal is allowed with the observations as above. No order as to costs.

21. The Registry is directed to mark a copy of this judgment to the Ministry of Law and Justice, New Delhi.