

(2005) 12 KL CK 0039
In the High Court Of Kerala
Case No : W.A. No. 1925 of 2004

Union of India (UOI)

APPELLANT

Vs

John

RESPONDENT

Date of Decision : 20-12-2005

Acts Referred:

Indira Vikas Patra Rules, 1986 — Rule 10

Citation : AIR 2006 Ker 108 : (2006) 4 BC 86 : (2006) 1 KLT 593

Hon'ble Judges : Rajeev Gupta, C.J;S. Siri Jagan, J

Bench : Division Bench

Advocate : S. Krishnamoorthy, A.C.G.S.C, for the Appellant; Grashious Kuriakose, for the Respondent

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—This writ appeal is filed by the Union of India, the Post Master General, Thiruvananthapuram and the Post Master General, Calicut, against the judgment of the learned Single Judge in O.P.No. 28568 of 2002 whereby they were directed to pay the maturity value of Indira Vikas Patras which were stated to be lost from the possession of the respondent herein, after obtaining a simple bond with sureties from him, undertaking to the Government to make good any loss in the event of any claim being made by anybody under the very same Indira Vikas Patras.

2. The main contention of the appellants is that as per the Indira Vikas Patra Rules, since name and other details of the person purchasing the Indira Vikas Patras are not recorded at the Post Office, they are transferable and lost certificates are not replaced, amounts in respect of lost Indira Vikas Patras cannot be paid on the strength of a bond. They particularly rely on Rule 10 of the Indira Vikas Patra Rules, which 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.

3. The learned Single Judge allowed the Original Petition on the basis of his own decision in O.P.No. 28568/2002 in which he proceeded on the basis of the following facts.

(a) Indira Vikas Patras are issued through Post Office and the Post Office maintains record as to the person to whom Indira Vikas Patras with specified number and values are issued.

(b) It is conceded by the standing counsel appearing for the appellants that without confirmation from the Post Office which issued the Indira Vikas Patra, payment will not be made by any other Post Office where it may be presented for payment.

(c) The petitioner submitted that Indira Vikas Patras were issued from the particular Post Office and so far nobody has claimed any amount under the lost Indira Vikas Patras.

(d) The amount is still with the Government for payment and the loss of originals from the respondent should not lead to deprivation of the amount to him and gain to the Government.

(e) Even though the date of maturity is long over, so far nobody has claimed the amount against surrender of the originals of India Vikas Patras which were lost by the petitioner.

(f) There is no likelihood of the amount being claimed by another person, after 8 years since the maturity date was 8 years ago.

4. The standing counsel appearing for the appellants submits that the first presumption is not correct as the details of the purchaser are not actually maintained by the Post Office. According to him, the Post Office is bound to pay the maturity value to whoever presents the original certificates and therefore amount cannot be paid to the petitioner since, admittedly he has lost the Indira Vikas Patras. He submits that the scheme of the Indira Vikas Patras is such that payment cannot be made unless the original certificate is presented before the Post Office and the holder signs in discharge, in the space provided on the back of the certificate. According to him, even if a bond is taken, recovery from the respondent would be difficult if another person claims the amount producing the original certificate.

5. On the other hand, counsel for the respondent submits that there is no prohibition in the rules against payment of maturity value in respect of lost Indira Vikas Patras. He submits that it would be unjust to deny the respondent of his hard earned money on such technicalities, especially in view of the fact that immediately on loss of the certificates, he had taken all precautions against claims from persons, who may have obtained the certificates and even after 8 years nobody has come forward to claim the amount. He also relies on the decision of a learned Judge of the Gujarat High Court in Narendrabhai Shankarlal Joshi Vs. Post Master General, Gujarat Circle and Another, , rendered on identical

facts.

6. We have considered the rival arguments. It is true that the Post Office does not maintain names of purchasers of Indira Vikas Patras and Post Offices are bound to pay maturity value of the Indira Vikas Patras to the person who presents the same after the date of maturity. However, we do not find any absolute prohibition against payment of the value in respect of lost Indira Vikas Patras. Loss of certificates are not exactly unknown or even rare events. Every law should give some margin for human errors, if possibly can, to advance the cause of justice, of course, with sufficient safeguards. Simply because the respondent has lost his Indira Vikas Patras, it should not lead to depriving him of his money, if an alternate way can be found which is not prohibited by Rules, at the same time, making sufficient safeguards for the possible event of a future claim. Such a course can certainly be adopted within the framework of the Rules. In the decision cited by the learned Counsel for the respondent, a learned Judge of the Gujarat High Court found that such a course is feasible within the framework of the Rules. It would be advantageous to quote here the relevant paragraphs of the said decision. In paragraph 7, the Court framed the issue for consideration before it thus:

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?

After analysing the provisions of the Indira Vikas Patra Rules, 1986, the Court came to the following decision at paragraphs 9 to 11.

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 submission 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 anybody other than the petitioner has presented the IVPs either to the Post Office which issued the certificate or any other 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 respondents. 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 the 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 party 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 are 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 be 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 specially 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.

Ordered accordingly.

On going through the reasoning given therein, we are in respectful agreement with the said decision in all respects.

7. In the present case, the maturity date of the Indira Vikas Patras in question was 7-12-1999. According to the respondent, he had taken the certificates to the Post Office for encashment on 11-12-1999, but had to return since he was late and on his way back home, he lost the same. This fact was informed to the Post Master on 14-12-1999 by Ext.P1. These facts are admitted by the appellants. Standing counsel also admits that so far nobody has claimed payment in respect of the Indira Vikas Patras in question even after six years. In the above circumstances, we are unable to hold that that the course adopted by the learned Single Judge is in any way opposed to the India Vikas Patra Rules, 1986. On the other hand, we are satisfied that the same is the just and legal solution for the problem at hand in the circumstances of the case.

Accordingly, we do not find any merit in the Writ Appeal and hence the same is dismissed, but, without costs.