

CASE NO.:
Appeal (civil) 4819 of 2000

PETITIONER:
Central Government of India & Ors

RESPONDENT:
Krishnaji Parvetesh Kulkarni

DATE OF JUDGMENT: 05/04/2006

BENCH:
ARIJIT PASAYAT & R.V. RAVEENDRAN

JUDGMENT:

[With C.A. No\0051934 \005\005\005./2006 (Arising out of S.L.P. (C) No.11387 of 2003)]

J U D G M E N T

ARIJIT PASAYAT, J.

Leave granted in SLP (C) No.11387 of 2003.

These two appeals involve identical questions and are, therefore, taken up for disposal together.

Challenge is to the direction given in the suit as affirmed in the order passed in the Civil Revision directing payment of maturity value in respect of Indira Vikas Patras (for short 'IVPs').

Undisputed position is that the respondent in each case had purchased IVPs from post offices. Respondent in each case was entitled to receive maturity value on presentation of the certificate. In each case respondent lost IVPs. In Civil Appeal No.4819 of 2000 the respondent claimed to have lodged a complaint at the police station about the loss of IVPs. He also informed about the loss of IVPs to the Postal Superintendent with the request to look into the matter. The Postal Superintendent informed the respondent that there is no provision for replacement of any IVP lost, stolen, mutilated, defaced or destroyed. Therefore, the claim for duplicate IVPs was turned down. The respondent filed petition before the District Consumer Disputes Redressal Forum taking the stand that post office was not justified in its action. Since the IVPs are transferable from one person to another like currency notes without involving the postal agency duplicated should be issued. The Consumer Forum dismissed the application. Thereafter the respondent filed a suit before the Civil Court which decreed the suit in favour of the respondent. Revision petition was filed before the High Court which was dismissed. The High Court held that since the loss of the IVPs is bona fide and there is no attempt to defeat the interest of the postal authorities and as none else had made a claim on the basis of the said IVPs., the original holder of the IVPs was entitled to payment of the IVPs on the maturity value.

In the other appeal position is somewhat similar except that the respondent had not approached the Consumer Forum. The respondent filed a suit for declaration that he was owner of the IVPs which were lost and was entitled to get payment of the maturity value. The suit was decreed. Civil revision petition was also dismissed on the ground that if the loss of the IVP is genuine and bona fide, the Central Government has a commitment to refund the amount of security.

Learned counsel for the appellant submitted that the approach of the Trial Court and the High Court is clearly contrary to law. He submitted that High Court had failed to notice its earlier decision in *J. Kemparayappa v. Union of India* (W.P. No. 43361/1995 decided on 18.7.1996) that IVPs are bearer bonds which are freely transferable and payment will have to be made to the person producing them and therefore question of issuing duplicates does not arise in the event of loss.

The transactions relating to IVPs are governed by the Indira Vikas Patra Rules, 1986 (in short the 'Rules'). The Rules have been framed in exercise of power conferred under the Government Savings Certificates Act, 1959 (in short 'the Act'). The relevant Rule 7(2) reads as follows:

"7(2): A certificate lost, stolen, mutilated, defaced or destroyed beyond recognition, will not be replaced by any Post Office."

Some of the other provisions which are relevant are Rules 6, 8 and 9. They read as follows:

"6. Issue of Certificate:-

(1) On payment being made by cash, a certificate shall be issued immediately and date of such certificate shall be the date of payment.

(2) 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 realized and the date of such certificates shall be date of encashment of the cheque, pay order or demand draft, as the case may be.

8. Encashment of Certificate:-

(1) A certificate of any denomination may 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.

(2) Where a certificate of any denomination has been purchased on or after the 1st April, 1987, it may be encashed at any time after the expiry of a period of five and half years from the date of issue by presenting it before the Post Office of issue.

(2.A) Where a Certificate of any denomination has been purchased on or after the 1st March, 1988 it 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 office-in-charge of that Post Office is satisfied on verification from the Post Office of issue that such certificate was issued by the said Post Office.

9. Discharge of Certificate:-

The person presenting a certificate for encashment shall sign in the space provided on the back thereof in token of having received payment and indicate thereon."

According to learned counsel for appellants sub-rule (2) of Rule 7 has clear application to the facts of the case. Reliance was placed on a decision of the Delhi High Court where an identical issue was adjudicated in Civil Writ Petition No.1848 of 1992. In that case reliance was placed on Rule 57(10) of the Post Office Savings Bank Manual Volume - II. It was held that lost, stolen, mutilated, defaced or destroyed IVPs cannot be replaced. It was pointed out that Rule 7(2) of the Rules was not taken note of, yet the decision is an authority for the proposition that the lost, stolen, mutilated, defaced or destroyed IVPs cannot be replaced.

There is no appearance on behalf of the respondents in either of the appeals.

An IVP is akin to an ordinary currency note. It bears no name of the holder. Just as a lost currency note cannot be replaced, similarly the question of replacing a lost IVP does not arise. Rule 7(2) makes the position clear that a certificate lost, stolen, mutilated, defaced or destroyed beyond recognition will not be replaced by any post office. Similar is the position as regards the certificate which is either lost or stolen. Undisputedly there was no challenge to the legality of the Rule 7(2). In the absence of a challenge to the provision, any direction should not really have been given. It is fundamental that no direction which is contrary to law can be given.

Therefore, the impugned order in each appeal cannot be sustained. It is, however, evident from the record in Civil Appeal No.4819 of 2000 the respondent has been paid the amount pursuant to the direction given in the suit as affirmed by the High Court. In the peculiar circumstances, the respondent shall not be liable to refund the amount in the peculiar circumstances of the case. So far as other appeal is concerned, if the appellants have not made the payment, they shall not be liable to make payment. But if the payment has already been made as in the case of Civil Appeal No. 4819 of 2000 then no recovery shall be made.

This direction is being given in view of the statement made by learned counsel for the appellants that considering the small amount involved the appellant will not claim refund, but the position in law has to be set at rest as large number of such claims are being made.

The appeals are allowed to the aforesaid extent but without any order as to costs.

JUDIS