

CASE NO.:
Appeal (civil) 2769 of 1999

PETITIONER:
Union of India

RESPONDENT:
Vs.
R. Padmanabhan

DATE OF JUDGMENT: 13/08/2003

BENCH:
S. RAJENDRA BABU & DORAISWAMY RAJU.

JUDGMENT:
J U D G M E N T

RAJENDRA BABU, J.:

The appellant, Union of India, which lost before the learned Single Judge in O.P. No.12775 of 1991 and before the Division Bench of the Kerala High Court in W.A. No.1077 of 1994, has filed this appeal.

The respondent, an IPS Officer, who, at the relevant point of time, was serving as the DIG of Police, Northern Range, Kozhikode, which comprised in his area of operation Revenue Districts of Kasargode, Cannanore, Kozhikode, Palakkad, Wayanad and Malappuram. The appellant-Government not only authorized the State Police authorities to effect seizure and investigation of cases under the Central Excise & Salt Act, Customs Act, Gold Control Order and Foreign Exchange Regulation Act, to prevent smuggling of gold and other articles through the coastal areas of Kerala, as well as in other parts of the country but with a view to create an incentive generally in the matter of detection of such violations, proposed to grant awards to those responsible to assist the Government in the same by being informants as well as Government servants and issued Guidelines therefor in the Notification dated 30.3.1985; this was said to have been followed by certain amendments in the matter of ceiling imposed, as to the quantum, by Notification dated 13.4.1989. The respondent, claimed to have an informant in the matter in question, worked out the information, supervised and executed an operation, which resulted in the seizure of 900 gold biscuits valued approximately at Rs.3.5 crores, which were concealed in an House. He also was said to have monitored the operation after seizure and on the basis of the action taken by the authorities of the Customs Department thereon it was possible for the said authorities to seize another 1600 gold biscuits from Irikkur in Cannanore District. A reward of Rs.11.28 lakhs was said to have been sanctioned to 163 Officers of Customs as well as Police Department.

While so, though the claim of the respondent was also considered as one responsible for the subject seizure, no sanction was made in his favour for the reason that he was holding a rank considered higher than that of Assistant Collector/Assistant Director and consequently held not eligible for the reward in terms of clause 7.1. of the Notification dated 30.3.1985. After finding not successful in his representation to the higher authorities, as well in the Government of India, O.P. No.12775 of 1991 was filed in the High Court, under Article 226 of the Constitution of India, to quash the proceedings rejecting his claim and consequently direct the appellant to sanction and pay the reward to the respondent herein, in accordance with the scales mentioned and declare that he was entitled to the reward on the basis of the Guidelines indicated. Overruling the objections of the appellant arrayed as respondent before the High Court, the learned Single Judge, by his Order dated 19.7.1994, directed the Department to consider the claims of the respondent

herein on merits and fix the quantum of reward taking into account the role played in the operations. The learned Judge was of the view that the exclusionary rule in clause 7.2. of the Guidelines was intended to exclude, if at all, only the officers above the level mentioned in the Departments specified, from being rewarded on the basis of the value of the seizure and not others. As for the amendment issued in April 1989, limiting the total reward to Rs.1 lakh per seizure and a total limit of Rs.10 lakhs in ones career, the High Court was of the view that the seizure in the case having been made on 24.12.1989, cannot have retrospective effect and, therefore, not relevant.

Aggrieved, the appellant pursued the matter on appeal in W.A. No.1077 of 1994 and the Division Bench also confirmed the order of the learned Single Judge and directed the appellant to grant the reward to the respondent after fixing the quantum in accordance with Ex.P.1 within two months from the date of receipt of the copy of the order and that on failing to do so or paying the same within a month from the date of its order, the amount shall carry interest at 15% from the date of its due till payment. Hence, this appeal.

The learned Additional Solicitor General appearing for the appellant contended that being a pure ex gratia payment, it should be strictly in accordance with the stipulations contained in the order itself and if the claimant, in any case, does not satisfy the stipulations therein, the Department not only can, in appropriate cases, consider such claims for any lump sum reward but not at the rates specified to the eligible class or category of claimants, on the basis of the value of seized goods. It was also urged that departmental officers of other departments such as Police, B.S.F. and Coast Guards etc. are envisaged under the Guidelines for being granted such rewards subject to the restrictions in Clause 7-1 and the directions issued to the contrary cannot be justified in law and being a matter pertaining to the sphere of policy, it cannot be modulated, modified or restructured so as to affect the very basis of the orders of the Government. The provisions contained in the amendment made on 13.4.89 was also urged to apply to the case. The learned Senior Counsel for the respondent, while adopting the reasoning of the High Court, reiterated that the construction placed by the High Court and the reasons assigned therefor are not only reasonable but constitute just and reasonable method of implementation keeping into account the avowed purpose and object underlying the very Scheme and consequently, no interference is called for.

We have carefully considered the submissions of the learned counsel appearing on either side. It is not only useful but necessary to advert to the relevant portions of the Notification dated 30.3.1985 laying down the Guidelines for the reward, since the High Court, learned Single Judge and the Division Bench, seem to have dealt with the claims of parties purely on the basis of clause 7 without noticing the other relevant and essential provisions, apparently and may be on account of the fact that their attention was not properly drawn by the appellant-Government, at that point of time. The relevant portions of the Guidelines, necessary for appreciating the contentions on either side, are as hereunder:-

"The Government have reviewed the existing policy, procedure and orders in respect of grant of rewards to informers and Government servants in case of seizures made, infringement or evasion on duty, etc., detected under the provisions of the following Acts:-

- i) The Customs Act, 1962
- ii) The Central Excise & Salt Act, 1944
- iii) The Gold Control Act, 1968
- iv) The Foreign Exchange Regulation Act, 1973

2. As a result, the revised guidelines are laid down in the succeeding paras, All provisions/guidelines issued on the subject may be deemed to be

modified to the extent indicated therein.

1.1 QUANTUM OF REWARDS

Seizures of contraband under the Customs Act

3.1.1 Informers and government servants will be eligible for rewards upto 20% of the estimated market value of the contraband goods seized. In respect of gold silver, opium and other narcotic drugs etc., the overall ceilings for rewards (based on broadly 20% of the value of these items, as reckoned by the Government for the present) are shown in the Annex. These would be subject to periodically revision in the light of price fluctuations about which timely intimations should be sent to DGRI every quarter to enable him to recommend appropriate revision as and when warranted, to the Ministry.

3.2 â\200|â\200|â\200|â\200|â\200|â\200|â\200|â\200|â\200|â\200|â\200|â\200|â\200|â\200|â\200|
 â\200|â\200|â\200|â\200|â\200|â\200|â\200|â\200|

3.2.1 Informers and Government servants will be eligible for reward upto 20% of the duty, if any, sought to be evaded plus 20% of the fine and penalty levied/imposed and realized, provided the amount does not exceed 20% of the market value of the goods involved.

3.3. Seizures made, evasion of duty and other

infringement detected under the Central Excise & Salt Act.

[illegible]

3.4 Seizures under the Gold Control Act and cases of other violations detected under the Gold Control Act.

3.4.1 In case of seizures of gold bullion, the over all ceiling for rewards to informers and Government servants will be as indicated in serial No.1 of the Annex.

3.4.2 In other cases, whether of seizure of articles of gold/ornaments, or of detection of "shortages", informers and Government servants will be eligible for reward upto 20% of the redemption fined and/or penalty imposed and realized, provided the amount does not exceed 20% of the market price of the goods involved.

3.5 Cases of seizures/violations detected under FERA

[illegible]

4. REWARD SHOULD NOT BE GRANTED AS A MATTER OF ROUTINE.

4.1 Reward is purely an ex-gratia payment which, subject to guidelines may be granted on the absolute discretion of the authority competent to grant rewards and cannot be claimed by anyone as a matter of right. In determining the rewards which may be granted, the authority competent to grant reward will keep specificity and accuracy of the information, the risk and trouble undertaken, the extent and nature of the help rendered by the

informer, whether information gives clues to persons involved in smuggling, or their association, etc; the risk involved for the Government servants in working out the case, the difficulty in accruing the information, the extent to which the vigilance on the staff led to the seizures, special initiative, efforts and ingenuity displayed, etc. and whether, besides the seizure of contraband goods, the owners/organizers/financiers/racketeers as well as the carriers have been apprehended or not.

4.2 To Government servants, rewards may ordinarily be paid upto 10% of the estimated market value of the goods involved (half of the maximum rewards indicated in respect of gold, opium and other narcotic drugs, etc. in the Annex.). Rewards in excess of this limit, but not exceeding 20% (or as in Annex., in respect of gold, silver, narcotics, etc.) of the said value, maybe considered in cases where the Government servant has exposed himself to a great personal hazard or displayed exemplary courage, commendable initiative, ingenuity or his personal efforts have been mainly responsible for the detection of the goods.

5. STAGE OF PAYMENT OF REWARD

Payment of advance rewards

5.1 Advance reward may be paid to informers and Government servants upto 50% of the expected final reward immediately on seizure in respect of the following categories of goods, namely:-

- a) gold/silver bullion and goods which are notified or specified under the Customs Act, 1962;
- b) arms and ammunition, explosives;
- c) opium and other narcotic drugs;
- d) goods not declared which are seized in the Customs area or Customs waters; and
- e) freely convertible foreign exchange in the form of currency notes.

5.2 In other ("Smuggling") cases of seizures of contraband goods, advance reward upto 25% of the expected final reward may be paid immediately after seizure, if the authority competent to sanction reward is satisfied that the goods seized are reasonably expected to be confiscated on adjudication and the order is likely to be sustained in appeal/revision proceedings.

5.3 In all other cases, whether of seizure of evasion/infringement detected on the basis of documents, 25% of the expected final reward may be paid after the issue of a show cause notice provided the authority competent to sanction reward is satisfied that there is reasonable chance of confiscability/infringement/evasion, as the case may be, being established in adjudication and sustained in appeal/revisionary proceedings.

5.4 In exceptional cases, the Heads of Departments may, having regard to the value of the seizures effected and magnitude of the evasion or infringement detected and magnitude of the evasion or infringement detected and special efforts or ingenuity displayed by the officers concerned, sanction and announce the grant of suitable rewards on the spot to be adjusted against the advance reward that may be sanctioned.

6. Final rewards will be paid after adjusting the advance rewards, if any, paid in the mentioned/indicated in proceeding paras.

6.2 In respect of the goods described in para 5.1, the remaining 50% of the reward will be sanctioned both to the informers and Government servants on adjudication of the case resulting in confiscation of the goods. If, however, the party concerned delays adjudication proceedings by contesting the imposition of penalty only but the confiscation of the goods, the final reward may be sanctioned even prior to the conclusion of the adjudication proceedings.

6.3 In all other cases, 25% of the expected final reward may be paid after adjudication resulting in confiscation and/or confirmation of the demand, infringement and the remaining 50% may be paid after the conclusion of the appeal/revision proceedings by the appropriate authorities (such as Tribunal, FERA Board, etc.) resulting in the upholding of confiscation, demand, fine penalties, etc. imposed under the respective Acts.

7. TO WHOM REWARD MAY BE PAID

7.1 Ordinarily, informers and Government servants (upto the level of Group 'A' Superintendents/Assistant Collectors of Customs and Central Excise/Assistant Directors will be eligible for reward depending on the contribution made by them as a team as well as individually with regard to the collection of intelligence, surveillance, effecting of seizure etc. Due credit should be given to the staff employed on investigation.

7.2 Group 'A' officers above the level of Assistant Collector/Assistant Director will not be eligible for reward on the basis of value of the seizures, etc. However, in appropriate cases, government may consider, in consultation with CCA/DGRI Director, Anti Evasion, the grant of lump-sum payment/advance increments and/or recognitions, in any other manner of the services rendered by them for which purpose the Heads of Department should forward their recommendation to the aforementioned officers with a copy to the Ministry.

[illegible][illegible]

8.1.2 â\200!â\200!â\200!â\200!â\200!â\200!â\200!â\200!â\200!â\200!â\200!â\200!â\200!

8.1.3 All case of grant of reward to Government servants in excess of the limits specified above should be examined and approved by a Committee consisting of the following :-

Amount of reward for
Govt. Servants

Constitution of the
Committee

1. Rewards in excess of Rs.10,000/- but not exceeding Rs. One lac and
3. Senior most Deputy Collector/ Dy. Collector all the Hqrs.

1. Head of Department
2. Additional Collector

2. Rewards in excess of Rs.1 Lac and upto Rs.5 Lacs

1. Head of Department
2. Director, Preventive Operations and
3. Additional Collector/ Special Director in charge of the Hqrs.

3. Reward in excess of Rs.5 Lacs the C.B.E.C. or G.C.A. as the Case may and

1. Concerned Member of

2. DGRI/Director, Enforcement/ Director, Anti-Evasion as the case may be, and

3. the Head of Department concerned."

It is not in controversy that an amendment came to be issued vide P.No.R-13011/5/89.Ad.v. of the Department of Revenue in April 1989 limiting the total reward to Rs.1 lakh for seizure and to a total limit of Rs.10 lakhs in ones career, though there was dispute about its relevance and applicability to the claim of the respondent on the ground that it had no retrospective application to the seizure effected on 24.2.1989, in this case.

The decision of the Division Bench rendered in affirmance of the one rendered by the Single Bench suffer from a serious infirmity in not adverting properly to the basics and fundamentals of the Scheme for Rewards and in assuming to the contra that when an informer could be given liberally, the Government servant also, must be shown the same consideration, whereas a careful scanning through may go to show that an Informant is placed on a different pedestal than a Government servant. The rewards are also to be and can be "upto 20%" or as the case may be and not that invariably it must be as a rule 20% of the estimated market value. Reward is purely an ex gratia payment, subject to the Guidelines on the discretion of the competent authority, though it cannot arbitrarily be denied or refused at whim or fancy and it should specifically conform to and must be shown to fall or claimed within the four corners of the Scheme and not by any deviation or modulation of the Scheme, as the Courts think it should be and if it cannot come strictly within the four corners of it, such claim may have to be dealt with only under the residuary powers enabling the grant of reward. That apart, being ex gratia, no right accrues to any sum as such till it is determined and awarded and, in such cases, normally it should not only be in terms of the Guidelines and Policy, in force, as on the date of consideration and actual grant but has to be necessarily with reference to any indications contained in this regard in the Scheme itself. The line of decisions relation to vested rights accrued being protected from any subsequent amendments may not be relevant for

such a situation and it would be apposite to advert to the decision of this Court reported in State of Tamil Nadu Vs. M/s Hind Stone & Ors. [(1981) 2 SCC 205]. That was a case wherein this Court had to consider the claims of lessees for renewal of their leases or for grant of fresh leases under the Tamil Nadu Minor Mineral Concession Rules, 1959. The High Court was of the view that it was not open to the State Government to keep the applications filed for lease or renewal for a long time and then dispose them of on the basis of a rule which had come into force later. This Court, while reversing such view taken by the High Court, held that in the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application, despite the delay, if any, involved although it is desirable to dispose of the applications, expeditiously. Therefore, the reward could not have been allowed in this case completely ignoring the amendments, which came into force in April 1989, merely because the seizure was in February 1989. That apart, under the Scheme final reward is postulated only on adjudication of the case resulting in confiscation of the goods as found stated in clause 6 of the Guidelines and that should, therefore, be crucial and relevant date for consideration of award and, therefore, the Guidelines, as are in force on that date, will be really applicable and would be relevant. Consequently, the exclusion of the amendment, which was made in April 1989, from consideration in this case, may not be proper, and the conclusion to the contrary by the High Court, cannot be sustained.

The interpretation placed as though the restrictions in clause 7 will have no relevance to the officers other than the officers specified of the Department of Central Excise/Customs cannot be justified, either on the language of the Guidelines or on the conspectus of the Scheme for rewards. The classification made is between informers on the one hand and Government servants on the other and not with reference to any particular class or category of Government servants alone. The specification of certain officers are meant to illustrate the level and standard of their category/class with particular reference to the gradation of offices they hold and the granting authority or courts, if need be, have to necessarily arrive at the equivalence in other Departments as well from among the other class of Government servants, as a whole, serving either under the State or Central Government and the Scheme cannot be mutilated otherwise or moulded to suit the consideration of a particular or given case, favourably. Clause 8.1.3 provides the necessary clue in this regard and the consideration, if at all, has to be with reference to the provisions contained in clause 4 and the various Guidelines contained therein.

For all the reasons stated above, we are unable to accord approval to the decision of the High Court. The judgment under challenge is, therefore, set aside. On the facts of the case, it is found that on 4.7.1995, after the decision of the learned Single Judge, a High Level Committee seems to have considered the claims of the respondent for reward and recommended a sum of Rs.1.25 lakhs, subject to the final decision of the High Court, and kept in abeyance the actual disbursal of the sum. In the light of all these and instead of relegating the matter for fresh review, by the authorities in the Government, involving further delay also, we would instead direct the payment of a reward of Rs.2.50 lakhs, treating the same as a special case and the delay already involved and the decision said to have been taken in order to give a quietus to the problem. The sum directed by this order may be disbursed within a period of sixty days from this date without fail. The appeal shall stand allowed to the extent indicated above and subject to the payment ordered above. The respondent has been driven to unnecessary litigation by completely denying anything initially for all his efforts and had to face proceedings in this Court also. The appellant will pay Rs.15,000/- for the costs of the respondent, while bearing their own costs.