

(1973) 01 CAL CK 0013

Calcutta High Court

Case No: None

Girdharilal Ganatra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: Jan. 30, 1973

Acts Referred:

- Income Tax Act, 1961 - Section 295
- Constitution of India, 1950 - Article 226, 299, 32, 53
- Evidence Act, 1872 - Section 115
- Imports and Exports (Control) Act, 1947 - Section 3

Hon'ble Judges: Salil Kumar Datta, J

Bench: Single Bench

Advocate: Puspamoy Dasgupta and Amalendu Mukherjee, for the Appellant; Balai Lal Pal and Manas Nath Roy, for the Respondent

Judgement

Mr. Justice Salil Kumar Datta

1. This is an application under Article 226 of the Constitution praying for a Writ in the nature of Mandamus commanding the respondents to pay the legitimate reward to the petitioner in pursuance of the announcement made and published in newspapers on 7/8.11.64 by the Chairman, Board of Direct Taxes in press conference in regard to the inducement to bring out black money. It was stated in that announcement that if there was voluntary declaration of concealed income, the Government would treat the people leniently and if the assessee co-operates with the income tax authorities, the levy of penalty and prosecution might be waived.

2. There was a further announcement that the rate of rewards to those furnishing information about concealed income was being stopped up from 2.5% to a minimum of 7.5% of the tax realized as a result of the information supplied and in suitable cases this figure could be increased to 10%. This announcement, it appears

was published in all reputed newspapers in Bombay, Calcutta, Delhi, Ambala and other places. The petitioner's case is that in pursuance of the said announcement he gave information in respect of evasion of taxes by several firms (in the gunny market of Calcutta who are the members of East India jute and Hessian Exchange Ltd., Calcutta) and requested the Commissioner to whom the information was supplied, to seize various books and papers in respect of the concealed income. The petitioner gave full co-operation with the assistance required of him by the department and explained the modus operandi of evasion of taxes. Though the authorities of the department did not take prompt action and there was delay caused, as a result of information some firms including Messers. Jailal Hargulal disclosed their concealed income to the extent of Rs.1.88 crores. The petitioner on coming to know of the disclosure wrote to the Director of Investigation and other Officers for reward and also contacted the Commissioner of Income Tax, West Bengal for the same purpose. The department made extensive raids on 31.1.1967 when again the petitioner gave full co-operation and as a result whereof the jewelers worth lakhs of rupees and cash worth rupees with many forged documents and stamps were seized. The department, however, did not make any arrangement for payment of their promised reward and representations in writing in person were made by the petitioner from time to time and on May 30, 1969 as also on August 18, 1969 the petitioner was informed that he and his colleague would not be eligible to any remuneration in respect of several firms including Messrs. Jailal Hargulal. The petitioner received a sum of Rs. 12,500/- on 18.11.69 as an interim payment and made further representations pressing for final settlements of his claim. After continued but ineffective representations the petitioner protested against the refusal of the department to pay the reward in respect of the firms, specially in regard to the firm of Jailal Hargulal who had disclosed the concealed income of Rs. 45 lakhs. But the department by their letter dated 1.8.70 again informed that nothing was payable in respect of the said firm. On 4.11.70 the Central Board of Direct Taxes informed the petitioner to contact the Commissioner of Income Tax, West Bengal regarding further reward sanctioned by the Board for information supplied about the jute cases. The petitioner met the Commissioner of Income Tax, West Bengal on 10.11.70 and on 18.11.70 and the Commissioner offered the petitioner a further sum of Rs. 12,500/- in full and final of his claim and further threatened that if no respect was issued by the petitioner in full and final settlement of his claim, the said sum of Rs. 12,500/- would not be paid to him. As the marriage of the petitioner's daughter was fixed on 30th December, 1970, the petitioner had no other alternative left but to accept the sum of Rs. 12,500/- under coercion, duress and undue influence on 20.11.70. The petitioner issued a letter on the same date to Shri B. K. Bagchi, Commissioner of Income Tax, West Bengal I, stating that the said officer had compelled him to sign a clean receipt of final settlement by paying only Rs. 12,500/- which he denied completely (Annexure "N" to the petition) as being in full settlement of his claim. This letter was followed by another letter on 21.11.70 addressed to Mr. H. A. Shah, Member, Central Board of Direct Taxes complaining

that while the petitioner was asked to receive interim payment of Rs. 12,500/- confidential instruction was issued to the Commissioner of Income Tax to take a clean receipt of final payment by paying the said amount, taking advantage of the acute financial difficulty the petitioner was suffering. The petitioner informed that this amount was not acceptable to him and he asked for justice.

3. It appears that no steps were taken and the respondents who are the Union of India, Chairman, Central Board of Direct Taxes, the Commissioner of Income Tax, No. 1, West Bengal and one D. N. Malhotra, Income Tax Officer, Head Quarter, Haryana, Himachal Pradesh and Delhi, had been refusing the legitimate rewards as per announcement made by the Chairman, Board of Direct Taxes on 7/8.11.64 and thereby they acted mala fide and in violation of fair play, equity and justice and contrary to the commitments made in the announcement as also in violation of the provisions of Articles 53 and 299 of the Constitution Of India. In the circumstances, the petitioner by the said application prayed for a Writ of Mandamus directing the respondents to pay the legitimate rewards to the petitioner in terms of the announcement of 8.11.64 also to rescind the order dated 27.8.70 whereby the petitioner was informed that no amount was payable on account of the firm of Jailal Hargulal. On this application the present Rule was issued on 24.8.71. It may be mentioned here that the paragraph 15 in substitution of the earlier paragraph of the writ petition about second payment was inserted by amendment application filed 2.1.73.

4. The Rule was opposed by the respondents who filed an affidavit-in-opposition through C. R. Krishnamurthi, Commissioner of Income Tax, West Bengal II having jurisdiction over the relevant cases. It was stated in the affidavit that the application was not maintainable in law, bad for non-joinder of necessary parties and suppression of material facts. It was stated that the question relating to reward in the case of Jailal Hargulal was finalised as early as in 1969 and the petitioner having waited for such a long time was guilty of serious laches and delay which entailed the dismissal of the application. It is further stated that the writ petition involved complicated questions of fact which should be tried in Civil Court. It was also stated that there was no violation of any fundamental right of the petitioner as guaranteed by the constitution nor there was any breach of statutory duty on the part of the respondents and as such, the application was not maintainable. It was further stated the adequacy of rewards ordered to be given by the respondents is not justiciable. Further, the petitioner accepted the sum of Rs. 12,500/- in full and final settlement of his claim and executed a receipt for the said amount and he could not be allowed to reopen the issue by way of writ petition on the ground that the receipt was executed under duress. Further, section 295 of the Income Tax Act, 1961 provides a bar of suit or other proceedings against the Government or Officer for anything done in good faith. The material allegations in the petition were denied except to correspondence which went on between the parties and the version about the search and seizure as given by the petitioner, was also denied while the actual

position, according to the respondents, was set out in the said affidavit. About allegations made in paragraph 15 it was stated that on receipt of the board's instructions the petitioner was paid 12,500/- on his agreeing to receive the said sum in full and final settlement of his claim regarding the jute cases and after receipt of the amount he also gave a clean receipt of final settlement. It may be mentioned here that at the time of hearing the respondents had produced letter dated 20.11.70 issued by the petitioner agreeing to accept the said sum in full and final settlement of his claim. The respondents have also produced a carbon copy of a receipt of the said amount in full and final settlement of the petitioner's claim and it was stated that the original receipt was with the Accounts Section. It was stated that there is nothing on record to indicate that the petitioner was made to sign the receipt under duress or coercion and the allegations made in respect thereof in the petition were denied. It was further stated that the petitioner having received the said amount should not be allowed to turn back and to claim further amounts to which he is not entitled. It was stated that the system of cash reward to the informer was particularly an administrative measure based on administrative instructions which does not confer any legal enforceable right on the informer and does not impose any legal obligation on the Income Tax Department. The petitioner accordingly is not entitled to any relief under Article 226 of the Constitution.

5. The petitioner has filed his affidavit in reply in which all allegations made in the main petition were reiterated and those made in the affidavit-in-opposition contrary were denied.

6. Mr. Puspamoy Dasgupta, learned Advocate appearing for the petitioner has submitted that the petitioner is entitled to his legitimate dues payable to him on the basis of the announcement of 11.8.64 and the extra taxes realized on the basis of such information. He submitted that the respondents made representation for acceptance by interested members of the public and such representation was duly accepted by the petitioner and acted upon. Accordingly, there is no legal impediment in his getting the dues on the basis of the said announcement. It was further stated that the receipt for the second payment of Rs. 12,500/- was obtained under duress, coercion and undue influence and he should not be prevented him from getting his relief in accordance with the said announcement. The petitioner referred to several decisions in support of his case of undue influence being exerted on the petitioner in view of his acute distress and the daughter's marriage. Reference was made to the decision in the case of (1) [Ladli Prasad Jaiswal Vs. Karnal Distillery Co. Ltd. and Others](#), in which it was observed that a transaction may be vitiated on account of undue influence where the relations between the parties are such that one of them is in a position to dominate the will of the other and he uses his position to obtained an unfair advantage over the other. Where it is proved that a person is in a position to dominate the will of another and enters into a transactions with that other person which on the face of it or on the evidence adduced, appears to be unconscionable the burden of proving that the transaction

was not induced by undue influence lies upon the person in a position to dominate the will of the other. In (2) [Subhas Chandra Das Mushib Vs. Ganga Prosad Das Mushib and Others](#), it was held that if the transaction appears to be unconscionable, then the burden of proving that the contract was not induced by undue influence lies upon the person who was in a position to dominate the will of the other. On the above authorities Mr. Dasgupta submits that the onus lays on the respondents to show that there was no undue influence in obtaining the receipt from him. It was further stated, that in on the decision in (3) [Workmen of Subong Tea Estate Vs. The Outgoing Management of Subong Tea Estate and Another](#), it was held that acceptance of retrenchment compensation under force and protest cannot operate as a bar to challenge validity of retrenchment. Mr. Dasgupta contended that acceptance of the amount in question would be no bar to move for appropriate relief and as such acceptance was by force of circumstances referred to above Mr. Dasgupta has also referred to the decision in (4) [Union of India \(UOI\) and Others Vs. Indo-Afghan Agencies Ltd.](#), in which the Court observed that the Courts have power in appropriate cases to compel performances of the obligations imposed by Schemes upon departmental authorities. It was further observed that it could not be said that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Even if the a relevant trade notices were in character executive, the Union Government and its officers were not entitled at their mere him to ignore the promises made by the Government. As the terms of the Scheme were not carried out, the persons aggrieved were entitled to seek resort to the Court and claim that the obligation imposed upon the Textile Commissioner by the Scheme be ordered to be carried out. It was further held that even though the case did not fall within the terms of section 115 of the Evidence Act, it was still open a party who had acted on a representation made by the Government to claim that he Government shall be bound to carry out the promises made by it, even though the promise was not recorded in the form of a formal contract as required under Article 299 of the Constitution. Mr. Dasgupta also referred to the case of (5) [Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another](#), in which it written statement held that public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. It was further held that the obligation arising against an individual out of his representation amounting to a promise may be enforced ex contractu by a person who acts upon the promise; when the law requires that a contract enforceable at law against public body shall be in certain form or be executed in the against a public body shall be in certain form or be executed in the manner prescribed by statute the obligation may be enforced against it in appropriate cases in equity. The Court further held that the petitioner should not be relegated to the alternative remedy of suit merely because question of facts is raised. In this case Supreme Court set aside the order passed by the High Court rejecting the

application under Article 226 in limine and sent the case back to the High Court for disposal according to law. It again observed that a party claiming to aggrieve by the action of a public body or authority on the plea that the action is unlawful, high-handed arbitrary or unjust is entitled to a hearing of its petition on the merits. On these two authorities Mr. Dasgupta submitted that the petitioner is entitled to the relief claimed in the petition and issued of the receipt purporting to be in full and final discharge of his claim is no impediment against him for obtaining such relief.

7. Mr. Balai Pal, learned Advocate for the respondents has firstly contended that there was no representation made by the said announcement. The representation, if any, was only to the persons to come out with the disclosure of their concealed income giving them some protection against voluntary disclosures and for their co-operation in the matter of assessment of their income. The question of reward was only for the purpose of implementing a basic policy of the Government which was to collect revenue. It was submitted that there was no representation thereby made to the persons who would give information of such concealed income, and it was further contended that there was no representation on basis of any legal or statutory right under any Act or Rules under statute. It is further contended by Mr. Pal that the application is not maintainable under Article 226 inasmuch as the petitioner has no legal or statutory right which has been violated nor the respondents have any statutory or legal obligation which would warrant issue of writ under the said Article. It was submitted, and about this there is no dispute that the Income Tax Act, 1961 by itself does not make any provision for payment of any reward to informer giving information about the concealed income leading to realization of extra taxes. Accordingly, the announcement of 8.11.64 has got no statutory basis and confers no legal right on the petitioner for compelling or commanding the respondents to pay the reward referred to above by issuance of writs. It was further contended that the petitioner is guilty of unreasonable delay and laches and for that reason, the petitioner should not be entitled to any relief. Mr. pal lastly contended that the question whether the receipt was obtained under duress or coercion was a complicated question of fact to be decided on examination of witnesses which is beyond the ambit of the proceeding under Article 226 of the Constitution. Further, the same would be the case also in regard to the assessment of the claimants dues in respect of the concealed income as contended by the petitioner. In support of his contention that there is no statutory or legal right that the petitioner could invoke in this proceeding, Mr. Pal has relied on the decision in the case of (6) [State of Tamil Nadu and Others, etc. Vs. S.K. Krishnamurthi, etc. etc.,](#) in which it was observed that the selection of any text-books by the Committee does not confer any rights on the publishers that their text-books will be prescribed. The relevant rules are also not designed to safeguard the interests of the publishers but are conceived in public interest, and the Government is at change those text-books or to delete from or add to the list or even prescribe books which are not in the list.

Mr. Pal has also referred to the decision in (7) [State of Orissa and Others Vs. Rajasaheb Chandanmull Indrakumar \(P\) Ltd. and Others](#), in which it was held that where the petitioner claimed to be the assignee of the licensee the claim for renewal of the licence in his favour has to be established when such licence is cancelled by proving that he has a legal right to continue in possession of the mines. Unless the legal right is established the High Court exercising writ jurisdiction cannot grant him any relief. Mr. Dasgupta in reply disputed the above contentions and distinguished the cases referred to by Mr. Pal. In the Tamil Nadu case, according to him, there was no question of any representation while in the other case the Court also held that by acceptance of rent there was no mining lease after 30th September, 1947 and mining operation without a mining lease was forbidden in law. Mr. Dasgupta contended that the petitioner had at least in equity a right on the basis of the announcement and such right is enforceable obligation under Article 226.

8. There can be no dispute that the constitutional writ jurisdiction of the High Court under Art. 226 cannot be invoked for enforcement of contractual right. It can be enforced only when the petitioner has a legal and statutory right and the corresponding legal and statutory obligation on the part of the authorities or public bodies to perform such act. In the Anglo Afghan-Agencies, case it was noticed that the purpose of the relevant scheme was to increase the export of woolen textiles and as an incentive it was provided that exporters will be granted certificate to import raw materials for a total amount equal to 100 per cent of the F. O. B. value of the exports. This scheme was under Imports (Control) Order, 1955 and made pursuant to section 3 of the Imports & Exports (Control) Act, 1947. It was held that it could not be assumed merely because the import Trade Policy was general in terms and dealt with the grant of licences for import of goods and related matters that it was statutory in character but even if it is only executive or administrative in character, the Courts have power in appropriate cases to compel performance of the obligations imposed by the upon the departmental authorities. If the scheme had statutory force, the Court was competent to compel the Government to act according to the scheme. If on the other hand, the Scheme contained mere administrative instructions, then the Government having made representation referred to earlier on the basis of which exporters had exported certain goods, the Government was stopped from going back on the representation made by it. Mr. Dasgupta has strongly relied on these observations and submitted that even if declaration is not statutory it can be taken as administrative instructions and as such enforceable in this jurisdiction as in the said case the Court granted relief under Art. 226. Mr. Dasgupta has also relied on the decision in Century Spinning's case, in which the company prayed for appropriate relief against levy of octroi duty under the law. In this case, as I have already noticed, the Court observed that a public body is not exempt from liability to carry out its arising out of representation made by it relying upon which the citizens have altered their position to their prejudice. This appeal before the Supreme Court arose out of dismissal of

application under Art. 226 of the Constitution in limine and the Supreme Court with these observations directed the High Court to deal and dispose of the application.

9. Before I advert to the respective contentions it will be better to consider if there was any representation made by the Chairman of Direct Taxes which was acted upon by the petitioner as alleged. Even though the main object of the announcement was to bring out the concealed income it cannot be overlooked that in implementing the scheme the authorities were seeking the assistance of informer to unearth the black money from the tax evaders on promise of reward. That being the position, in my opinion, there is no escape from the conclusion that there was in fact representation made to the interested persons and if such representation was acted upon the party acting upon it may come to Court for appropriate relief asking for payment of the reward on the basis of such announcement. I am, therefore, unable to accept the contention of Mr. Pal that there written statement no representation by the authorities is making an announcement on 8.11.64, as at present advised and for the purpose of this application.

10. The next point that comes in for consideration is whether the petitioner is entitled to relief under Article 226 of the Constitution. The scheme in the Anglo-Afghan Agencies case, was based on Control Order as we have seen and if they are statutory there will be no difficulty for issuance of a writ. Even if they are department instructions the Court can compel performance if any breach takes place of the terms of the scheme. In the other case it would appear that their also, on the representation by the municipality that no octroi duty would be charged by the municipality in respect of a particular area, the said area was included by the Government within the municipality and but for such representation the Government would not have included the area within the municipal limit of Ulhasnagar Municipality. Subsequently the municipality went back on its own resolution and imposed octroi duty for the area also. The petitioner company prayed for appropriate writ in the petition under Article 226 of the Constitution against such imposition. In both these cases it appears to me that there was a violation of the fundamental rights of the petitioner involved by the impugned actions. The petitioner in both the cases had a right to carry on their which was a fundamental right was hedged with the restrictions on the basis of some representations that they would be granted some concessions. Such concessions being sought to be withdrawn there was obviously infringement of the fundamental right of the petitioners to carry on their trade. For this reason though in none of the judgments there is no express mention of the fundamental right, its violation was implicit in the said proceedings and accordingly there was no specific mention about the same in pleadings or in the judgments. In may be mentioned further that in the Anglo-Afghan Agencies case, there is reference in the judgment to three earlier decisions. In (8) [Ramchand Jagadish Chand Vs. Union of India \(UOI\) and Others](#), it was held that on an application under Article 32 the order of the Controller granting licence only for 45% of the value of the goods exported did not infringe the

fundamental right of the petitioners u/s (19) (1) (g) by imposing unreasonable restrictions nor was a case for discrimination denying equal protection of law between persons similarly circumstances was made out. Again in (9) [Probhudas Morarjee Rajkotia and Others Vs. Union of India \(UOI\) and Others](#), on an application under Article 32 it was held that even though there was no absolute right to the grant of an import licence for the maximum amount prescribed, the Controller could impose restrictions if foreign exchange position or other matters which have a bearing on general interest of the State warranted so but the discretion to be exercise by him was to be reason and not arbitrary. In (10) [Joint Chief Controller of Imports and Exports, Madras Vs. Aminchand Mutha Etc.](#), the Court enforced compliance with these provisions relating to grant of license under Government licensing instructions for division of import quota between partners of dissolved partnership which thus had a vital relation with the fundamental right of the partners to carry on their export and import trade. The petitioners in both the above case referred to by Mr. Dasgupta were entitled to move the Court for issuance of writs under Article 226 of the Constitution against infringement of fundamental rights as indicated above.

11. The claims in those cases therefore cannot be equated with the claim we have to consider in the present application. In this case also there can be no dispute that no one has any fundamental right to receive any reward as informer from the income tax department and no such right is also guaranteed by any statute or its rules. That being the position the petitioner on his own case accepted the representation and acted upon it which as the highest can lead to contractual relation between the parties. Such contractual relation, in my opinion, may find adequate reliefs to the aggrieved party by proceedings in suit, but the claims there under cannot be invoked or enforced by proceedings under Article 226 of the Constitution. For this reason I am of opinion that the petition is not maintainable in this jurisdiction.

12. As we have seen there is no dispute that the announcement of 8.11.64 made by the Chairman of the Board of Direct Taxes is not under any provision of the Income Tax Act and as such, such announcement cannot be said to have any statutory basis. Further, it has also no basis on any administrative instructions on the basis of any statute or rule. Even so Mr. Dasgupta contended that his client has a right in equity to claim payment of reward. But he right in equity simpliciter unconnected with the statutory, legal and constitutional right cannot be enforced in this writ jurisdiction of this Court for the reasons indicated above.

13. It would further appear that the question as to whether the petitioner is still entitled to move this application even after receipt of Rs. 12,500/-, involves, in my opinion, question of facts to be tried out at length on evidence. The petitioner did not implead the officers of the Government who according to him responsible for obtaining a clean receipt from the petitioner. In that sense, the petition again suffers from that defect and though Mr. Dasgupta has submitted that if the petition

suffers from defect of parties, his client should be given an opportunity to implead them. After hearing at his stage, I am not inclined to grant that prayer. In any event in view of the question of facts which are to be decided in this case after detailed examination of the witnesses. I do not think that this application for reason also should be heard in this jurisdiction. As to delay, though there has been no explanation for the delay that has occurred in presenting the petition, I do not think that it would be fatal for the petitioner for such laches. The impugned payment was obtained some time in November, 1970 and the instant application was moved in August, 1971. For this, it cannot be said that there has been such inordinate delay as to disentitle him from the relief if he was otherwise entitled to it.

14. Before I conclude I must mention that the petitioner was informed by the Department that his prayer for reward in respect of the firm M/s. Jailal Hargulal was disallowed as early as 18th August, 1969. The petitioner cannot re-agitate this question along with the impugned payment as, such payment was received long after the petitioner was informed that his claim in respect of the said firm was not accepted to the authorities and there was thus no undue influence in respect thereof. For all these reasons I am of opinion that this application is not maintainable in law.

15. The Rule is accordingly discharged. There will be no order as to costs.

16. I may add that the findings on the merits of the petitioner's claim made above are the findings for the purpose of this application and they are neither binding on parties otherwise nor will prevent the Court of competent jurisdiction, if such proceedings are instituted before it to consider same questions on evidence and in accordance with law.

Re: Application dated 19.5.72 for production of documents.

17. At the time of hearing the respondents have produced the original letter dated 20.11.70 agreeing to accept Rs. 12,500/- in full and final settlement of his claim. The respondents have also produced a carbon copy of the receipt for payment of Rs. 12,500/- and it is stated the original receipt is lying with the Accounts Section. In view of the order passed in the main Rule no order need be passed on this application. The application is accordingly disposed of.

Re: Application dated 27.7.72 for hearing in camera.

18. The petitioner has filed another application for hearing of the proceedings in camera. That application may also be deemed as disposed and no order need be passed on that application as the hearing was held in camera as desired.

19. Mr. Roy appearing for the respondents states that due to shortness of time his client could not file affidavit-in-opposition to the supplementary affidavit dated 16.11.72. He has prayed for the Court to record that the allegations made are not admitted. Let it be so recorded.

Re: Application dated 28.6.72 by respondents for addition of party.

20. This application is by the respondents for addition of the Commissioner of Income Tax, West Bengal II which has been currently invested with the jurisdiction over the matter in dispute and Mr. Roy learned Advocate for the respondents has also filed a Vakalatnama on behalf of the said official. Through inadvertence no order was passed on this petition earlier. It is obvious that the said officer is a necessary party and should have been added as Respondent No. 5 in the rule. As all the respondents are represented by the same learned Advocate there is no question of any prejudice being caused to any party. The application which is not and cannot be opposed accordingly is allowed and let the Commissioner of Income Tax, West Bengal II be added as Respondent No. 5 and be deemed always to be a party to the proceeding.

Re: Application dated 19.4.72 by petitioner for interim relief.

21. In view of the order in the main rule no order need be passed on this application which is treated as disposed.

There will be no order for costs in all the applications.