

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1529 OF 2021

Jayashree Chandrakant Dhavre
W/o. Late Shri Chandrakant Shivaram Dhavre
Aged : 57 Years, Occ: Private Service
R/o. Gokul Nagar, New Shivsena Branch
Pawar Chawl, Thane (W),
Maharashtra – 400 601 ... Petitioner

Versus

1. Union of India
Through the Secretary of Finance,
Ministry of Finance,
Dedicated Legal Cell,
New Custom House,
Ballard Estate, Mumbai -400 001
2. The Commissioner of Customs (Preventive)
New Customs House,
Ballard Estate, Mumbai – 400 001
3. The Additional Commissioner of Customs (P)
Marine & Preventive Wing, 2nd Floor,
100, Everest House, Marine Drive,
Mumbai – 400 002
4. The Assistant Commissioner of Customs
(Reward), Marine & Preventive Wing,
2nd Floor, 100, Everest House,
Marine Drive, Mumbai – 400 002 ... Respondents

.....

Mr. Ashok Singh for the Petitioner.

Mr. Dhananjay Deshmukh for the Respondents.

.....

**CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.**

DATE : 5 JANUARY 2023

ORAL JUDGMENT *(Per Nitin Jamdar, J.)*

Rule. Rule made returnable forthwith. The Respondents waive service. Taken up for disposal.

2. The Petitioner is the wife of deceased Informer who provided specific information to the office of the Marine and Preventive Wing of the Mumbai Commissionerate of Customs which led to seizure of smuggled goods. The Petitioner is before us with a grievance that the reward which is given to the Informers as per the policy is unjustifiably withheld.

3. The Central Board of Excise and Customs (Anti-Smuggling Unit) issued Circular No. 20/2015 on 31 July 2015 titled "*Guidelines for grant of reward to Informers and Government Servants, 2015*". At the title suggests these guidelines are applicable to the grant of reward to Informers and Government Servants in

respect of cases of seizure made out/or infringements/ evasion of duty/ service tax etc., detected under the Customs Act, 1962 and others. Part-I of the Circular deals with the principles governing the grant of reward. The reward to be given under this policy is an ex-gratia payment, subject to conditions and it is not to be claimed as a matter of right. We will refer to the clauses as applicable to the Informers.

4. Clause 3.3 of the Circular of 2015 lays down criteria for the grant of reward. Under clause 3.3.1, it is stated that in cases of collection of information/ intelligence in respect of seizure made out/or infringements/ evasion of duty/service tax etc., various factors have to be considered, such as the specificity and accuracy of the information, the risk and trouble undertaken by the Informer, and the extent and nature of the help rendered by the Informer. Clause 5 deals with the quantum and ceiling of rewards. As per clause 5.1.1, the Informers are eligible to reward up to 20% of the net sale proceeds of the contraband seized. Clause 6 contemplates payment of advance/ interim reward. Under clause 6.1, advance/ interim reward may be paid to the Informers up to 50% of the total admissible reward immediately on seizure in respect of the gold/ silver bullion, arms and ammunition, and explosives. The payment of the final reward is referred to under clause 7 of the Circular. The final reward is to be sanctioned and disbursed after the conclusion of

adjudication/ appeal/ revision proceedings and closure of proceedings. Clause 7.2 incorporates the time limit to sanction the final reward, stating that as an incentive to improve compliance, it is desirable that the procedure should be followed to release the final reward immediately after the conclusion of the proceedings. As regards the identity of the Informer, additional information is to be kept as per clause 11.2 with a left thumb impression to reduce delay in disbursement of reward. Additional information is not considered mandatory for the grant of reward to the Informer, and no reward shall be withheld for non-furnishing of additional information. As per clause 3.4, in the event of the death of the Informer, the authority competent may grant a reward to legal heirs or nominees of an Informer of an amount not exceeding the amount that would have been paid to the Informer if he was alive. These in short are the relevant clauses of the Circular No. 20/2015 governing the grant of rewards to the Informers.

5. It is the Petitioner's case that her husband – Chandrakant, furnished a specific information in writing regarding the import and storage of the smuggled diamonds in respect of Business entity (referred to as the Jewellers) in 1991. Though generally name of the Informer is not disclosed, we have referred to the Petitioner's husband by name as he is now no more and the information was given almost 32 years ago, and the dispute raised is about the identity.

6. An information was delivered in writing to Mr. Daya Shankar, the then Assistant Commissioner of Customs (P), Marine and Preventive Wing of the Custom Commissionerate, on 21 March 1991. The information was kept in a sealed cover with the Additional Commissioner of Customs. Based on information supplied regarding the storage of the smuggled goods, the premises of the Jewellers were searched in March 1991 and rough diamonds worth Rs. 3.21 lakhs and polished diamonds worth Rs. 84.47 lakhs were recovered. The Jewellers could not offer a satisfactory explanation regarding the legality of the import and storage of the diamonds. Statements of the witnesses were recorded and a show cause notice was issued to the Jewellers and the others proposing confiscation of the diamonds under section 111 (d) of the Act of 1962 and for the imposition of duty, penalty and redemption fine.

7. The case was adjudicated by the Commissioner of Customs (Preventive) and by order dated 3 December 1992, confiscation of the diamonds was directed with an option to redeem on payment of a fine of Rs. 60 lakhs. A penalty of Rs. 25 lakhs was imposed on the persons involved under section 112 of the Act of 1962. Thereafter, the Jewellers filed an appeal in the Customs Excise and Service Tax Appellate Tribunal, and a writ petition in the High Court. The proceedings reached the Hon'ble Supreme Court and were remanded back to the Tribunal, which disposed of the same on 25 October 2011.

8. Meanwhile, on 9 April 1993 and thereafter in 1999, the Respondents disbursed an advance reward of Rs. 1 lakh and Rs. 2 lakhs, respectively, to the Informer.

9. The Petitioner's husband Chandrakant made a series of representations from 26 June 2006, 17 July 2006, 17 November 2006 and 28 March 2007 for release of final reward in respect of the information given on 21 March 1991. He also appealed to the Commissioner to do the needful at the earliest as he had lost his eye sight due to an accident in 1992. Chandrakant expired on 25 August 2010.

10. After the death of Chandrakant, the Petitioner, a widow, continued to send requests to release the final reward for her husband- Chandrakant in light of the policy. Requests were sent on 15 September 2010, 24 December 2010 and 29 September 2011. On 30 November 2011, the Joint Commissioner, R & I, Mumbai, referred the request for final reward to the Joint Commissioner of Customs (P), Reward Cell. The Assistant Commissioner of Customs (Rewards) informed the Petitioner by communication dated 5 December 2011 that the proceedings filed by the Jewellers have been remanded back by the Hon'ble Supreme Court to the Customs Excise and Service Tax Appellate Tribunal. The Petitioner wrote to the Commissioner of Customs (Preventive) annexing a copy of the order dated 25 October 2011 passed by the Customs Excise and

Service Tax Appellate Tribunal, pointing out that the Customs Excise and Service Tax Appellate Tribunal has already disposed of the proceedings upon remand and again requested for release of the final reward.

11. After that, on further correspondence with the Respondents, the Petitioner did not receive any satisfactory reply except that the matter was under process. With the last communication of 31 January 2019 receiving yielding no result, the Petitioner filed the present petition praying for a direction to the Respondents to release the final reward which was due to her husband-Chandrakant under the policy.

12. We have heard Mr. Ashok Singh, the learned Counsel for the Petitioner and Mr.Dhananjay Deshmukh, the learned Counsel for the Respondents. Reply affidavit is filed by the Principal Commissioner of Customs (Preventive).

13. It is also undisputed before us that an information was received by the Assistant Commissioner of Customs in 1991 which led to substantiate seizure of the smuggled goods. That the Informer was granted interim reward on two occasions is also not in dispute. The marital status of the Petitioner with Chandrakant is also not in dispute. The Petitioner applied for and is granted a succession certificate as a heir of Chandrakant by the Joint Civil Judge Junior Division, Thane. The Petitioner has also executed an affidavit for the

declaration of the legal heir. Various representations made by the Petitioner and Chandrakant claiming the reward are on record.

14. The Petitioner has also placed on record emails exchanged between two officers of the Customs Department. It shows that these officers have discussed Chandrakant's issue and his representations to the Finance Minister and the Chief Commissioner of Customs. Mr. Daya Shankar, who, according to the Petitioner, had recorded the statement given by Chandrakant and released the interim reward has replied he finds Chandrakant's case very sad and that he could not do anything about it since he was no longer part of the organization. There is no denial of these emails in the reply. Reply mentions that Mr. Daya Shankar is now no more.

15. Now we turn to the case of the Respondents in the reply affidavit filed by the Respondents. It is for the first time in the reply filed on 10 June 2022 the Petitioner is made aware of the reasons for not releasing the final reward. In the reply affidavit, a reference is made to discussion in the committees, and doubt is expressed as to whether Petitioner's husband- Chandrakant was the Informer. A reference is made to the Reward Committee Meeting of 11 June 2014, wherein it is discussed that the Informer has expired and, therefore, it is necessary to verify whether Chandrakant was the Informer. After that, the Respondents have stated that the signature on the information note and the signature on the ration card and pan

card provided by the Petitioner do not match. Then it refers that the representations made by the Informer on 26 June 2006, 17 November 2006, 15 June 2007 and 5 March 2010 were sent for signature verification, and Scientist B (Documents), CFSL, Pune, in his examination report dated 28 February 2018 has stated that it is not possible to express an opinion on the authorship. The gist of the reply is that it is not possible to conclude that it is the Petitioner's husband was the Informer, and the signatures do not tally, and therefore, the final reward cannot be issued as it is subject to the establishment of identity.

16. Reply affidavit filed by the Respondents does not deny receipt of the various representations. We do not find any communication addressed to Chandrakant or the Petitioner from 2006 till 2019 questioning the identity or the right of Chandrakant to claim the reward. The Petitioner has placed on record the interim certificate issued by one Mr. S.N.Thapa, the then Additional Commissioner of Customs, certifying that a cash reward of Rs. 1 lakh in Indian currency for giving information in customs case. The recipient's signature of the amount is to be seen on the receipt, which is on record. We have seen the signature. By bare perusal, the signature corresponds to the name of Chandrakant. A communication issued to Chandrakant by the Assistant Commissioner (Vigilance) is also on record. It refers to the request for the final reward and states that since the case is pending for finalization of the appeal, it is not the

correct stage to consider grant of final reward. No question is raised as to who Chandrakant was to seek the reward.

17. It is not in dispute that the information was received which led to the successful seizure of the smuggled goods. The Informer for this seizure was therefore entitled to final reward. It is not the case of the Respondents that there is some other person entitled to final reward. Most importantly, two interim rewards have been released. They are obviously released after establishing the identity of the Informer. No explanation is being offered on this count. Except for disputing the Informer's identity, the Respondents have not positively stated that the interim reward was released to some other person and not the Petitioner's husband- Chandrakant. The Petitioner has given a reasonable explanation for variances in the signature of her husband on the receipt and subsequent signature that her husband had lost his eyesight due to an accident. These facts mentioned in the representation of the Petitioner's husband as far back as 2006, and it is not story created now. As stated earlier, from 2006 onwards, no doubt has ever been raised that the Petitioner's husband was never an Informer. There was either no response or a categorical assertion regarding Chandrakant's identity as the Informer.

18. Pertinently, in the affidavit in reply, Mr. Rajesh Sanan, Principal Commissioner of Customs (Preventive) in para 9 and 10 of the same while referring para 5 and 6, has stated as under :

“9. With reference to paragraph No. 5, I state that an advance reward of Rs. 1,00,000/- was given on 23.02.1993 by the Collector of Customs (P) and the same was disbursed to Chandrakant Dhavre on 09.04.1993.

10. With reference to paragraph No.6, I state that an additional amount of Rs. 2 Lakhs was sanctioned by the Commissioner of Customs (P) as the second stage reward on 16.08.1999 and paid to Chandrakant Dhavre on 20.08.1999”.

Once the deponent has accepted that reward at the interim stage was paid to Chandrakant and that the Petitioner has established that she is the legal heir of Chandrakant, then withholding the final reward is entirely arbitrary. Even keeping aside the above two statements made in the affidavit, considering the totality of the circumstances and that nothing is placed before us that there was some other Informer and not Chandrakant who received the interim reward in respect of the concerned case, we find that the claim of the Petitioner could not have been rejected on the ground of identity. We have noted that the signature on the receipt of interim reward tallies with the name- Chandrakant. The handwriting expert has expressed no opinion.

19. The policy under the Circular of 2015, postulates rewards for information. Clause 7.2, which postulates the time limit to sanction the final reward, emphasizes that it is desirable that immediately upon conclusion of the adjudication, the final reward be released as an incentive to improve compliance. Though there is no legal right to demand a reward, as stated in the policy, the rejection must not be arbitrary, and the approach should not be such that it discourages the Informers from coming forward. Ultimately, the objective of offering a reward to the Informer is to aid the department in taking measures to safeguard the public exchequer. The Informers take enormous risks in providing information. Unfortunately, in this case the Respondents have taken a rigid stand, when the correct approach would have been to go by broad probabilities of the case, the peculiar circumstances of the case and the hardship of the Petitioner and should have handled this case with sensitivity. Having concluded that the Petitioner's claim is meritorious, we find that this is a fit case where the interference of the Court is necessary. In the facts of this case, non-intervention by us in the writ jurisdiction would amount to a failure of justice.

20. Accordingly, we direct that the Respondents will treat the claim of the Petitioner's husband – Chandrakant as eligible for the grant of final reward in respect of the concerned case and process the Petitioner's claim as his legal heir. As regards the exact amount to be

paid, we leave the quantification to the Respondents-Authorities to be made as per the Policy. This exercise be carried out within ten weeks from today and the amount so determined be paid to the Petitioner within twelve weeks from today.

21. Rule is made absolute in the above terms. No order as to costs.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)

TRUPTI
SADANAND
BAMNE

Digitally signed by
TRUPTI SADANAND
BAMNE

Date: 2023.01.25
18:30:46 +0530