2025:DHC:3273-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 08.04.2025
% Judgment delivered on: 05.05.2025

\+ **W.P.(C) 4462/2025 & CM APPL. 20619/2025**

S C GUPTA ..... Petitioner

Through: Mr. Manish Raghav and Mr. Shivaansh Dixit, Advocates.

versus

UNION OF INDIA AND ANR ..... Respondent

Through: Mr. Chetan Sharma, ASG with Mr. Rakesh Kumar, CGSC, Mr. Amit Gupta, Mr. Saurabh Tripathi, Mr. Shubham Sharma and Ms. Urja Pandey, Advocates for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

1. By instituting these proceedings under Article 226 of the Constitution of India, the petitioner seeks a prayer for declaring Clause 3.3 of the Guidelines for Grant of Reward to Informers and Government Servants,

2015 (hereinafter referred to as the Guidelines) as unconstitutional and ultra vires in violation of Articles 14 and 21 of the Constitution of India to the extent it provides for determination of rewards for informers.

2. The impugned clause of the Guidelines has been challenged primarily on the alleged ground that the same is arbitrary, unguided, unreviewable and discriminatory in nature.

FACTS:-

3. The facts necessary and relevant for appropriate adjudication of the issue raised in this petition which can be gathered from the pleadings available on the record, are as under:

3.1. The Central Board of Excise and Customs (Anti-Smuggling Unit), Department of Revenue, Ministry of Finance, Government of India has issued revised guidelines *vide* its circular dated 31.07.2015 which are known as "Grant of reward to informers and Government Servants - Review of Policy, Procedure and issue of revised Guidelines" which are applicable for grant of rewards to informers and Government Servants in respect of cases of seizure or infringements/ evasion of duty/ service tax etc which are detected under certain enactments, namely the Customs Act, 1962, Central Excise Act, 1944, Narcotic Drugs & Psychotropic Substances (NDPS) Act. 1985 and the Finance Act, 1994. The guidelines are applicable for reward in respect of cases of detection of drawback fraud or abuse of duty exemption schemes under various export promotion schemes, which are unearthed on

the basis of specific prior information provided by the informer or prior intelligence developed by the Government Servants. The guidelines are applicable from the date of issue i.e. 31.07.2015.

3.2. The principles governing the grant of reward are given in Clause 3 of the guidelines. Clause 3.3 lays down the criteria for the grant of reward, which is extracted hereunder:

> *"3.1 Reward should not be granted as a matter of routine:- Reward is purely an ex-gratia payment which, subject to guidelines, may be granted based on the judgment of the authority competent to grant rewards and taking into account facts and circumstances of each case and cannot be claimed by anyone as a matter of right.*
>
> *3.2 Reward should not be sanctioned for routine and normal nature of work.*
>
> *3.3 Criteria for grant of reward: - In determining the reward which may be granted, the authority competent to grant reward will keep in mind the following:-*
>
> *3.3.1 In cases of collection of information / intelligence, in respect of cases of seizure made out/or infringements/evasion of duty/service tax etc:- The 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, infringements, evasion of duty, service tax or their associates etc., the risk involved for the Government Servants in working out the case, the difficulty in securing the information, the extent to which the vigilance of the staff led to the seizure, detection of infringements/evasion of duty/service tax, special initiative, efforts and skills/ ingenuity displayed leading to the recovery of Government dues during the course of investigation admitting their liability by way of voluntary deposit and whether, besides the seizure of contraband goods /detection of infringements/evasion of duty/service tax, the owners/organizers/ financiers/racketeers as well as the carriers have been apprehended or not. The reward has to be case specific and not to be extended, in respect of other cases made elsewhere/against other parties on the basis of a*

similar modus operandi. However, the Government Servants will be entitled for reward as per the normal guidelines when they book a case in their jurisdiction on the basis of modus operandi circulars issued by the Board/DRI/DGCEI.

3.3.2 In cases of successful investigation:- Special efforts made by Departmental officer in indepth investigation and collection of evidence for establishing the various infringements of law, unearthing and working out duty/tax involved etc.

3.3.3 In cases of post investigation work:- Defending the case in CESTAT, High Court/Supreme Court/Settlement Commission, resulting in confirmation of Duty/ service tax evaded / infringement of Law established/settlement of the case, the criteria given in respective Para will apply.

3.3.4 In cases of Audit/Special Audit in Central Excise and Post Clearance Audit in Customs: - Outstanding contribution in detecting major cases of evasion of Central Excise Duty, Customs Duty or Service Tax, the criteria given in respective Para will apply."

3.3. The petitioner is said to have provided an intelligence to the respondent authorities on 29.01.2001 concerning evasion of central excise duty across multiple locations.

3.4. The respondents issued a show cause notice to the defaulting company, demanding a sum of Rs. 23.89 crores, which was attributed to an unpaid duty resulting from a clandestine sale. The said notice was issued on 08.04.2003.

3.5. On 10.02.2020, a settlement is said to have been reached between the respondent authorities and the defaulting company under "Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019", wherein the liability of the defaulting company was reduced to 50% i.e. Rs.11.94 crores as against the demand of Rs.23.89 crores.

3.6. The petitioner made a representation on 18.05.2023 to the Principal Director General, Directorate General of GST Intelligence (DGGI) Headquarters at New Delhi, demanding 20% of the tax realized i.e. 2.33 crores.

3.7. In response to the said representation made by the petitioner, the petitioner was granted a reward of 25 lakhs (2% of the claimed reward). The petitioner, not being satisfied with the quantum of the reward, made representations to the respondents claiming therein that he is entitled to grant of reward of Rs.2.38 crores as per the Guidelines which, *inter alia*, stipulates that 20% of the recovered amount (Rs.11.94 Crores) should be paid to the informer. The basis of such a claim, as pleaded by the petitioner, is that clause 5.1.1 of the Guidelines which provides that Informers and Government Servants will be applicable for reward upto 20% of the net sale proceeds of the contraband goods seized and/or amount of duty/ Service Tax evaded plus amount of fine and penalty levied/imposed and recovered. Clause 5.1.1 of the Guidelines reads as under:

> *"5. QUANTUM AND CEILING OF REWARDS:-*
> *5.1.1 Informers and Government Servants will be eligible for reward upto 20% of the net saleproceeds of the contraband goods seized (except items listed in Para 5.2 below) and/or amount of duty/ Service Tax evaded plus amount of fine and penalty levied/imposed and recovered."*

3.8. The petitioner is said to have raised a grievance to the aforesaid effect before the Centralised Public Grievance Redress and Monitoring System (CPGRAMS), in response whereof the CPGRAMS closed the case of the petitioner by passing an order dated 23.07.2024.

3.9. The petitioner aggrieved by the said order, filed W.P.(C) No. 14658/2024 with the prayer to set aside the order dated 23.07.2024 and with a further prayer to remand the matter back to the CPGRAMS to decide the matter afresh. The petitioner also claimed in the said writ petition that the respondents be directed to disburse the reward which is to be quantified at 20% of the net sales/ recovered amount. The said writ petition was, however, dismissed by a learned Single Judge of this Court by means of an order dated 29.10.2024. While dismissing the writ petition, the learned Single Judge placed reliance on Clause 3.3.1 of the Guidelines and observed that the said Clause is discretionary for evaluation by the competent authority on a case-to-case basis. It was also observed by the learned Single Judge that the claim of the petitioner to 20% is not a matter of right which can be sought in a petition under Article 226 of the Constitution of India. Reliance by the learned Single Judge was placed on the judgment of the Supreme Court in ***Union of India v. R. Padmanabhan*** (2003) 7 SCC 270 wherein the Hon'ble Supreme Court has held that determination with respect to reward scheme is essentially ex-gratia in nature and therefore, the same falls exclusively within the purview of the discretion of the competent authority. The Supreme Court in the said case has also held that, a writ of mandamus under Article 226 of the Constitution of India can only be issued in a case where a statutory obligation is imposed on a public officer and there is a failure on the part of such public officer in discharge of such obligation.

3.10. The petitioner, however, challenged the said judgment dated 29.10.2024 by filing an intra-court appeal, namely LPA 1219/ 2024, which too has been dismissed by a Co-ordinate Bench of this Court by means of its order dated 17.12.2024. The Division Bench while dismissing the LPA filed by the petitioner has noted the provisions contained in Clause 3.3.1 of the Guidelines and has returned a finding that the reasoning given by the learned Single Judge has appropriately interpreted the parameters laid down in Clause 3.3.1 and that the petitioner had not challenged the reward guidelines and, therefore, the Court need not go into the said issue any further.

3.11. The instant petition has thereafter been filed, challenging the constitutional validity of Clause 3.3.1 of the Guidelines.

SUBMISSIONS ON BEHALF OF THE PETITIONER:-

4. Challenging Clause 3.3 of the Guidelines, it has been argued by learned counsel for the petitioner that the said Guidelines do not provide for an appeal or review of the decision by the competent authority and further that since the Guidelines permit denial/ drastic reduction of reward without providing any reason or opportunity to be heard as such the same are not legally sustainable.

5. It has further been argued by learned counsel for the petitioner that though the scheme has been promulgated by the Government to incentivise public participation, however, the impugned Guideline is opaque and arbitrary in its implementation and, therefore, it violates Article 14 of the Constitution of India.

6. Further submission on behalf of the petitioner is that the best practices in the realm of whistle-blowers emphasizes on transparency, accountability and fair reward; however, such elements are absent in the impugned guidelines and, therefore, the same cannot be sustained.

7. It has also been argued that the Guideline can be interpreted to create a vested right in favour of the informer and, therefore, once the revenue is recovered, denial of reward is violative of Article 300A of the Constitution of India.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:-

8. Opposing the prayer made in this writ petition, learned ASG representing the respondents has argued that, since the scheme makes a provision of ex-gratia payment which may be granted at the absolute discretion of the competent authority, and, therefore, no one can claim the reward as a matter of right.

9. It has further been argued by the learned ASG that, this Court while exercising writ jurisdiction, cannot be permitted to examine or weigh various factors which are to be taken into consideration while deciding a claim and that such matters exclusively lie within the domain of the authorities of the department. Reliance has been placed by the learned ASG on the judgment of the Hon'ble Supreme Court in ***Union of India and Ors. v. C. Krishna Reddy***, MANU/SC/1070/2003. It has also been argued by the learned ASG that the claim of the petitioner has already been considered firstly by the learned Single Judge and, thereafter by a Division Bench of

this Court and has rightly been rejected and, therefore, the instant writ petition will not be maintainable for the reason that it was open to the petitioner to have made the prayer in the earlier round of litigation which has been prayed in the instant writ petition, and, thus, on the principle of Constructive *Res Judicata* the prayer made in this Writ Petition is barred.

10. Respondents have also argued that the claim in the instant writ petition is barred by the provisions contained under Order II Rule 2 of the CPC. Accordingly, it is the case of the respondents that firstly the claim of the petitioner has already been adjudicated in earlier round of litigation and secondly, the instant writ petition is not maintainable for the reason that the prayer made herein is barred by operation of the principle enshrined under Order II Rule 2 of the CPC. In his submission, thus, the learned ASG has argued that the writ petition deserves to be dismissed at the threshold itself.

ISSUES:-

11. Having regard to the fact that the claim regarding quantum of reward as raised by the petitioner has already been dismissed by this Court in earlier round of litigation by means of judgments dated 29.10.2024 and 17.12.2024 rendered by the learned Single Judge and a Co-ordinate Bench of this Court respectively, the only issue which arises for our consideration is '*as to whether the prayer made in the present petition is barred by the principle of* Constructive *Res Judicata*'.

ANALYSIS AND CONCLUSION:-

12. The principle of Constructive *Res Judicata* is an extension of the principle of *Res Judicata*. The origin of this principle in law can be found in the provisions contained in Order II Rule 2 read with Section 11 of the CPC

13. Order II Rule 2 pertains to relinquishment of part of claim, according to which, in a situation where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he cannot afterwards sue in respect of the omitted portion of his claim or the claim which has been relinquished.

14. Section 11 of the CPC contains the principle of *Res Judicata*, according to which, a subsequent suit in respect of a claim between the same parties is barred if an earlier suit has been tried involving the same issue which have been directly and substantially in issue and between the same parties.

15. Explanation IV appended to Section 11 of the CPC provides that any matter which might or ought to have been made ground of defence or attack in a former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

16. Thus, so far as the proceedings of a suit where CPC is applicable, are concerned, the principles of *Res Judicata* and Constructive *Res Judicata* are applicable and, accordingly, if any matter which might or ought to have been made a ground of attack or defence shall be deemed to have been a

matter directly and substantially in issue in such suit and, therefore, any subsequent suit will not be maintained.

17. However, we may also note that Section 141 of the CPC provides that the procedure provided therein shall be followed in respect of suits and the procedure of CPC shall be applicable in all proceedings in any Court of civil jurisdiction as far as it can be made applicable.

18. The Code of Civil Procedure was amended in the year 1976 by promulgating Code of Civil Procedure (Amendment Act), 1976 whereby an explanation to Section 141 came to be inserted, according to which, the expression 'proceedings' occurring in Section 141 includes proceedings under Order IX, but does not include any proceedings under article 226 of the Constitution.

19. Thus, before adverting to the issue as culled out above i.e. as to whether the prayer made in the present petition is barred by principle of Constructive *Res Judicata*, it will be appropriate to discuss the extent of applicability of the provisions of the CPC on proceedings drawn and tried under Article 226 of the Constitution of India.

20. The principle of *res judicata* though appears to be technical or artificial prescribed by the Code of Civil Procedure, however, the said principle is founded on considerations of public policy as well, because in case the doctrine of Constructive *Res Judicata* is not applied to writ proceedings, it may lead to a situation where a party will be entitled to take

one proceeding after another and urge new grounds every time which will be inconsistent with the consideration of public policy.

21. The Hon'ble Supreme Court in the judgment rendered in the case of ***Devilal Modi v. Sales Tax Officer, Ratlam and Others***, **1964** ***SCC OnLine SC 17*** has clearly held that principle of *Res Judicata* would be applicable to the writ proceedings as well, though fundamental rights guaranteed in Part III of the Constitution of India are a significant feature of our Constitution and the High Courts under Article 226 are bound to protect these Fundamental Rights.

22. The question which was considered by the Hon'ble Supreme Court in ***Devilal Modi***, (Supra) is as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Article 226 of the Constitution of India, and it has been held that such a question cannot be answered merely in the light of the significance and importance of the citizens' fundamental rights. The Court has clearly held that the general principle underlying the doctrine of *Res Judicata* is based on considerations of public policy, and one important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate Courts. The Hon'ble Supreme Court has further held that no one should be made to face the same litigation twice, because such a process would be contrary to the considerations of fairplay and justice. Paragraphs 8 and 9 of the judgment in ***Devilal Modi***, (Supra) are extracted herein below:

> *"**8.** There can be no doubt that the fundamental rights guaranteed to the citizens are a significant feature of our Constitution and the High Courts under Article 226 are bound to protect these fundamental rights. There can also be no doubt that if a case is made out for the exercise of its jurisdiction under Article 226 in support of a citizen's fundamental rights, the High Court will not hesitate to exercise that jurisdiction. But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Article 226 cannot be answered merely in the light of the significance and importance of the citizens' fundamental rights. The general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fairplay and justice, vide Daryao v. State of U.P. [(1962) 1 SCR 574] .*
>
> ***9.** It may be conceded in favour of Mr Trivedi that the rule of constructive res judicata which is pleaded against him in the present appeal is in a sense a somewhat technical or artificial rule prescribed by the Code of Civil Procedure. This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy to which we have just referred."*

23. Similar view has been expressed by the Hon'ble Supreme Court in the case of ***State of U.P. v. Nawab Hussain***, **1977 2SCC 806**, wherein it has been held that, there may be a situation that the same set of facts may give rise to two or more causes of action, however, in such a case, if a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden

of litigation and, therefore, such a course of action will be an abuse of the process of law. Paragraphs 3 and 4 of the judgment in ***Nawab Hussain*** (Supra) read as under:

> *"**3.** The principle of estoppel per rem judicatam is a rule of evidence. As has been stated in Marginson v. Blackburn Borough Council [(1939) 2 KB 426 at p. 437] , it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action". This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata.*
>
> ***4.** But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process and Somervell, L.J., has answered it as follows in Greenhalgh v. Mallard [(1947) All ER 255 at p. 257] :*
>
> > *"I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the*

> *process of the court to allow a new proceeding to be started in respect of them."*
>
> *This is therefore another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has some times been referred to as constructive res judicata which, in reality, is an aspect or amplification of the general principle."*

24. It may be noticed that the matter in ***Devilal Modi***, (Supra) related to the invocation of writ jurisdiction, whereas the matter in ***Nawab Hussain***, (Supra) had arisen out of a suit.

25. Though the Explanation appended to Section 141 of the CPC inserted in the year 1976 states that the expression 'proceedings' occurring in Section 141 of the CPC will not include proceedings under Article 226 of the Constitution of India, however, despite the said provision, it is well settled that as regards maintainability of successive writ proceedings, the consideration of public policy also plays a significant role.

26. As already observed above, the Hon'ble Supreme Court has clearly held that application of the principle of **Constructive *Res Judicata***, though is founded on the provisions of the CPC, however, it also has another facet i.e. concerning public policy. In case it is held that the principle of Constructive *Res Judicata* will not be applicable to writ proceedings, that will clearly be against the public policy, as finality of decisions is an important facet of it.

27. Constructive *Res Judicata* is based on the principle *inter-alia* that the parties to a proceeding should present their entire case in one go to avoid

multiplicity of litigations over the same issue, and that if a party could have raised a particular issue in a prior proceeding but failed to do so, even due to negligence or oversight, in our opinion, such a party will be deemed to have lost the right to raise it in a later proceeding. Such a doctrine has been developed to permit finality in legal proceedings and prevent parties from repeatedly litigating. The principle of Constructive *Res Judicata* does not require a final judgment on the issue which was not raised earlier. It operates on the premise that, the issue should have been included in the earlier proceedings.

28. We may also observed that the principle of Constructive *Res Judicata* has been developed to avoid multiplicity of litigations, which forms a significant facet of public policy.

29. In ***Forward Construction Co. v. Prabhat Mandal (Regd.),*** **(1986) 1 SCC 100 [3 – Judge Bench]**, Hon'ble Supreme Court has held as under:

> *"20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually*

> ***<u>controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force.</u>***"

30. The Hon'ble Supreme Court in ***M. Nagabhushana v. State of Karnataka, (2011) 3 SCC 408***, has concluded that principle of Constructive *Res Judicata* as explained in the Explanation IV of Section 11 of CPC is applicable to Writ Petitions. Relevant extract of this judgment are quoted herein below:

> "***2.*** *From the perusal of the judgment of the learned Single Judge it appears that the appellant claims to be the owner of the land bearing Survey No. 76/1 and Survey No. 76/2 of Thotada Guddadahalli Village, Bangalore North Taluk. The appellant alleged that these two plots of land were outside the purview of the Framework Agreement (FWA) and notification issued under Sections 28(1) and 28(4) of the Karnataka Industrial Areas Development Act (the KIAD Act). While dismissing the writ petition, the learned Single Judge held that the acquisition proceedings in question were challenged by the writ petitioner, the appellant herein, in a previous Writ Petition No. 46078 of 2003 which was initially accepted and the acquisition proceedings were quashed. Then on appeal, the Division Bench (in Writ Appeals Nos. 713 and 2210 of 2004) reversed the judgment of the learned Single Judge. Thereafter, the Division Bench order was upheld by this Court and this Court approved the acquisition proceedings. Therefore, the writ petition, out of which this present appeal arises, purports to be an attempt to litigate once again, inter alia, on the ground that the aforesaid blocks of land were outside the purview of the FWA dated 3-4-1997.*
>
> ***3.*** *The learned Judges of the Division Bench held that the second round of litigation is misconceived inasmuch as the acquisition proceedings were upheld right up to this Court. The Division Bench in the impugned judgment noted the aforesaid facts which were also noted by the learned Single Judge. Apart from that the Division Bench also noted that another batch of public interest litigation in WP No. 45334 of 2004 and connected matters were also disposed of by this Court directing the State of*

Karnataka and all its instrumentalities including the Housing Board to forthwith execute the project as conceived originally and upheld by this Court and it was also directed that the FWA be implemented. ***The Division Bench, however, noted that on behalf of the appellant an additional ground has been raised that the acquisition stood vitiated since no award was passed as contemplated under Section 11-A of the Land Acquisition Act (hereinafter "the said Act").***

7. *Challenging the aforesaid judgment, the present appellant filed a special leave petition before this Court, which, on grant of leave, was numbered as Civil Appeal No. 3878 of 2005. The grounds which were substantially raised by the present appellant in the previous appeal (No. 3878 of 2005) have been raised again in this appeal. The alleged grounds in the present appeal about acquisition of land beyond the requirement of the FWA were raised by the present appellant in the previous Appeal No. 3878 of 2005 also.*

16. *It is nobody's case that the appellant did not know the contents of the FWA.* ***From this it follows that it was open to the appellant to question, in the previous proceeding filed by it, that his land which was acquired was not included in the FWA****.* ***No reasonable explanation was offered by the appellant to indicate why he had not raised this issue****.* ***Therefore, in our judgment, such an issue cannot be raised in this proceeding in view of the doctrine of constructive res judicata.***

20. *This Court in AIMO case [(2006) 4 SCC 683] explained in clear terms that principle behind the doctrine of res judicata is to prevent an abuse of the process of court. In explaining the said principle the Bench in AIMO case [(2006) 4 SCC 683] relied on the following formulation of Somervell, L.J. in Greenhalgh v. Mallard [(1947) 2 All ER 255 (CA)] (All ER p. 257 H): (AIMO case [(2006) 4 SCC 683] , SCC p. 700, para 39)*

> *"39. … '****I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.' "***

(emphasis supplied in AIMO case [(2006) 4 SCC 683])

The Bench in AIMO case [(2006) 4 SCC 683] also noted that the judgment of the Court of Appeal in Greenhalgh [(1947) 2 All ER 255 (CA)] was approved by this Court in State of U.P. v. Nawab Hussain [(1977) 2 SCC 806 : 1977 SCC (L&S) 362] , SCC at p. 809, para 4.

***21.** Following all these principles a Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] laid down the following principle: (SCC p. 741, para 35)*

> ***"35. … an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case.*** *We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata."*

22. In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of constructive res judicata, as explained in Explanation IV to Section 11 CPC, are also applicable to writ petitions."

31. In view of the aforesaid, we are of the opinion that though the provisions of CPC contained in Order II Rule 2 and Section 11 may not be strictly applicable to the proceedings under Article 226 of the Constitution of India, however, the broad principles enshrined therein including the principal of Constructive *Res Judicata*, will have application even to writ proceedings.

32. Having discussed the issue relating to applicability of the principle of Constructive *Res Judicata* to the proceedings drawn under Article 226 of the Constitution of India, we may now examine as to whether the petitioner could have, or ought to have, or might have, raised the issue in the earlier round of litigation which has now been raised in the present writ petition. In the earlier round of litigation, the petitioner had challenged the decision of the respondents whereby his claim for payment of a particular quantum of reward was not acceded to. At the time of filing the earlier writ petition, which has been dismissed, and the intra-court appeal has also been dismissed by this Court, Clause 3.3 of the Guidelines was available and, therefore, the same could have been, or might have been, challenged by the petitioner in the earlier writ petition itself.

33. Challenge to Clause 3.3 of the Guidelines, having been omitted by the petitioner in earlier round of litigation, in our opinion, by applying the principle of Constructive *Res Judicata*, the instant writ petition, where a prayer to strike down Clause 3.3 of the Guidelines as being unconstitutional has been made, will not be maintainable. If such a challenge is permitted, there will be no end to the litigation between the petitioner and the respondents. The principle of Constructive *Res Judicata* has evolved as a matter of public policy to prevent multiplicity of litigations on an issue.

34. For the reasons aforesaid, we are of the considered opinion that, the prayer made in the present writ petition is barred by the principle of

Constructive *Res Judicata* and, therefore, the writ petition is not maintainable.

35. Resultantly, the writ petition is dismissed. However, there shall be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

MAY 05, 2025
N.Khanna/S.Rawat