

(2016) 08 SC CK 0117

In the Supreme Court Of India

Case No : Writ Petition (Civil) No. 404 of 2008

Archbishop Raphael Cheenath S.V.D.

APPELLANT

Vs

State of Orissa & Anr.

RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 357

Citation : (2016) 4 ACC 8 : (2016) AIR(SCW) 3639 : (2016) AIRSC 3639 : (2017) 2 JCR 75 : (2016) 8 JT 154 : (2016) 4 KCCR 515 : (2016) 4 LawHeraldSC 2637 : (2016) 3 RCRCriminal 967 : (2016) 5 RecentApexJudgments(RAJ) 309 : (2016) 7 Scale 553 : (2016) 9 SCC 682 : (201

Hon'ble Judges : T.S. Thakur, CJI. and Uday Umesh Lalit, J.

Bench : Division Bench

Advocate : Colin Gonsalves, Sr. Adv., B.D. Das, Nilakanta Nayak, Ms. Divya Jyoti, Dibakar Parichha, Ms. Jyoti Mendiratta, Advocates. in (WP(C) 404 of 2008), Romy Chacko, Varun Mudgal, Advocates. in WP(C) 76 of 2009, Ms. Manisha T. Karia, Advocate. in WP(C) 396 of 2009, for the Appellant; K. Radhakrishnan, Sr. Adv., Ms. Ranjana Narayan, Ms. Sadhna Sandhu, Ms. Sushma Suri, Altaf Ahmad, Sr. Adv., Shibashish Misra, Rana Mukherjee, Merusagar Samantaray, Ms. Kasturika, Suresh Chandra Tripathy, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

Uday Umesh Lalit, J.—Writ Petition (Civil) No.404 of 2008 has been filed in public interest seeking to highlight failure on part of State of Orissa in deploying adequate Police Force to maintain law and order in Kandhamal District of Orissa and in protecting innocent people whose human rights were violated after the unfortunate assassination of Swami Laxmanananda Saraswati and others on 23.08.2008 by some Maoists. Writ Petition (Civil) Nos.76 of 2009, 396 of 2009 and Writ Petition (Criminal) No.126 of 2012 also highlight the same issues. All these petitions inter alia pray for directions to the concerned authorities to provide proper and adequate facilities in refugee camps, to prevent communal violence, to provide adequate compensation to the victims of such communal violence, to order institution of Commission of Inquiry by a serving or a retired

judge, to order investigation into the crimes committed during such violence by Central Bureau of Investigation ("CBI" for short) and to set up special courts to deal with and try the offences committed during such violence. These petitions were heard together with Writ Petition (Civil) No.404 of 2008 as the lead matter.

2. The incident and circumstances that led to the unrest and communal violence were dealt with in the Report of the Investigating Team of the National Human Rights Commission (hereinafter referred to as the "NHRC"), certain portions of which for the sake of facility are reproduced hereunder:

"On 23.08.2008 at 19.55 hrs. when Swami Laxmanananda Saraswati was in his room, some armed men attacked his Jalespetta Ashram. Two of them took control of the four unarmed recruits standing outside the Ashram at gun point. The rest of them entered the Ashram and started indiscriminate firing killing Swami Laxmanananda Saraswati in the attached toilet of his room where he tried to hide himself. Mata Bhakti Mai and Kishore Baba were killed in the adjoining room. Simultaneously, some of them went into the room of the Personal Security Officer (PSO) who was not present that day and killed Swami Amrita Nand and local villager Puranjan who were lying in that room. The attackers fired about 50 rounds in fifteen minutes and ran away from the Ashram. In this regard FIR No. 37/08 u/s 147/148/149/452/302/120-B/IPC, PS-Tumdibandh was registered on the statement of the eyewitness Brahmachari Madhab Baba.....

The violence in the present case started after the death of the Vishwa Hindu Parishad leader Swami Laxmanananda Saraswati allegedly by the Christians supported by the naxalites. The violence spread after the procession of the dead body of Swami Laxmananana Saraswati was taken through various parts of the district on a grand scale. Although the large scale violence started after his death, the cracks within the society were already existing as is evident from the data regarding clashes between these communities in the previous years (ref report of SP Kandhamal at P-911-913 of Annexure-II). This is also evident from the fact that litigations between both the communities are existing on the issue of reservation for the SC (Pano) Christians."

3. Writ Petition No.404 of 2008 filed on 02.09.2008, came up before this Court on 03.09.2008. This Court thereafter passed various orders from time to time to ensure that the situation was brought under control and relief in full measure was extended to the victims. Following were the orders passed by this Court:

A. 3.09.2008

"Issue notice.

Learned Addl. Sol. General/counsel for respondents appear and accepts notice.

The first respondent through its Chief Secretary is directed to file its response by way of an affidavit by tomorrow morning as to what steps are being taken to protect the life and property of the affected people in the State and also

regarding the proposed yatra on ensuing Friday.

The Secretary General is directed to send a copy of this order through telegram/fax to the Chief Secretary, State of Orissa immediately.

List the matter on 4.9.2008 at 2.00 p.m."

B. 4.09.2008

"Heard learned senior counsel for the petitioner, learned Additional Solicitor General and learned senior counsel appearing for the State.

Pursuant to our directions, Chief Secretary of the State of Orissa has sworn an affidavit given all the details taken place in the State of Orissa to control the violence erupted recently. In the affidavit, it is stated that all possible steps have been taken by the Government especially in the Kandhamal District. It is stated that there are 17 police stations in the District and in all these police stations necessary officers have been deployed and the service of the CRPF, Reserved Armed Forces (RAF) have also been obtained and deployed. 15 companies of CRPF, 24 platoons of Orissa State Armed Police (OSAP) and in addition to the District S.P. and other officers has taken adequate steps and has given security to those people visiting as well as for protection of others would be provided. It is also stated, the State will take all possible steps to maintain law and order in the event of any proposed Yatra by any one whatsoever. The State Government has been dealing with all the situations firmly and even handedly and will continue to do so.

Learned Additional Solicitor General submitted that yesterday the Union Home Minister visited the State of Orissa and even in some of the relief camps and satisfied with the service and they are properly operated. But it is submitted that still tension prevails in the State and adequate CRPF force has already been deployed to help the State Police to maintain the law and order situation and learned senior counsel appearing for the State of Orissa requested that in view of the tension four more new Battalions would be required in the State and learned Additional Solicitor General submits that urgent steps would be taken to deploy the required force.

As regards the proposed Yatra to be organised by the section of the people, it is submitted all possible steps would be taken to prevent any Yatra being held and police and other para military forces to make possible steps to prevent any untoward incident being taken place. Section 144 has already been imposed in the State in all the districts where tension prevails.

Learned counsel for the petitioner stated that even Yesterday night some of the houses were burnt out in Tikabali and Daringabadi villages. Learned counsel appearing for the State submitted that so far no such information has been received by them and the matter would be enquired into and urgent steps would be taken in these areas also to prevent any breach of law and order situation.

We hope the State police along with CRPF and other para military forces would ensure the law and order situation and people's life and property will be protected to best of their ability. The State Government would also take urgent steps to see that those who are in the relief camps are protected and no miscreants shall be allowed to visit the camps to create any problem....."

C. 22.10.2008

"On 4.9.2008, this Court had passed an order and expected that the State Government of Orissa would take all possible steps to control the violence that had been happening at the State of Orissa after the unfortunate killing of Swami Laxmanananda on 23.08.2008. We are told by the counsel for the petitioner that even after the incident, it was alleged that about 906 houses had been destroyed and about 19 churches have been partly damaged/burnt and 21 persons have been killed, including two policemen, and some incidents of rape have also occurred. In the additional affidavit the petitioner has alleged that large number of persons are in the relief camps. He further contended that the workers of the Non-Governmental organisations are not being allowed to meet the persons in the relief camps or to render help to them. The petitioner is also aggrieved by the stand taken by the State in not giving any compensation to the churches which had been destroyed/damaged by the miscreants. As regards one victim who had been allegedly raped, the petitioner wants that the investigation should be handed over to the CBI.

Heard learned senior counsel appearing for the petitioner, the State and learned Additional Solicitor General for the Union of India. The Principal Secretary, Home Department of the State of Orissa has filed a detailed additional affidavit dated 17.10.2008 wherein it was stated that enough policemen had been deployed in the area and the learned senior counsel for the State highlighted all the details that were given in the counter affidavit. It is also stated by the learned counsel that, apart from these police forces, there are also additional police and paramilitary personnel, sent by the Government of India who were allowed to be in the State, be allowed to continue at least till the end of December, 2008, i.e. till the festival season is over.

As regards the alleged rape, it is stated that nine accused have so far been arrested by the police and the victim is not cooperating with the police for having the Test Identification Parade.....

.....As the accused have already been arrested, we do not think that at this stage, the further investigation should be handed over to the CBI. In the interest of victim and all others, we wish that the victim would cooperate with the State police for the further investigation of the case.

Learned senior counsel appearing for the State submitted that the relief camps are working well and all such details have been stated in the affidavit filed by the Home Secretary. We make it clear that any member of the NGO can associate in the Committee coordinating the relief work in the relief camps. Sufficient security

also be provided by the State in the relief camps.

The State is also agreed to give compensation to the victims. It is stated in the affidavit of the State that Rs. 50,000/- is being given for the fully damaged house, Rs. 25,000/- for partly damaged house and Rs. 2 lacs each is being given to the damaged public institutions like schools, hospitals, etc. and Rs. 2 lacs each from the Chief Minister's Relief Fund to each of the families of the persons killed in the violence. The petitioner has prayed that the churches which are being destroyed or partly damaged should also be given their financial assistance. Learned counsel appearing for the State submitted that the State has taken a policy that religious or worship place of any religion is not being given any financial assistance though several institutions working under these religion are being given. We are told by the counsel for the petitioner that approximately 16 churches have been fully or partly damaged. As regards the damaged churches also the State can have a generous attitude on the matter and assess the damage of those churches or other religious places and render reasonable help to rebuilt the same. We hope that the State could create an atmosphere where there shall be complete harmony between the groups of people and the State shall endeavour to have discussions with the various groups and bring about peace and do all possible help to the victims. The existing battalions/police force sent by the Government of India would continue till the end of December, 2008.

The State has also submitted that fast track courts are established to clear the cases arising out of these incidents....."

D. 5.01.2009

"This Court by an order passed on 22.10.2008 indicated that sufficient paramilitary forces be deployed in the State of Orissa till December, 2008. Learned counsel for the State submits that still these forces are required in the State to maintain the law and order situation even if removal of group of battalion is necessary the same should be done in a phased manner. We make it clear that the State Government may have discussions with the Home Secretary of the Home Ministry and take an appropriate decision having regard to the law and order situation prevailing in the State for protection of minorities in the State.

The learned counsel appearing for the petitioner stated that large number of churches have been demolished and the State Government is giving meager amount by way of compensation. Some churches and religious places were in existence which are being destroyed and the State Government is not giving any compensation on the ground that there is some dispute regarding the land. The Government may formulate a scheme regarding these religious places and take appropriate decision....."

E. 13.04.2009

"Heard learned counsel for the petitioners.

It is alleged by the petitioner that large number of houses were either destroyed

or partially damaged and in some cases compensation has been given to the owners of these houses. It is also alleged by the petitioners that nearly 183 churches have been partially damaged and compensations have been paid only in respect of five churches. The petitioners also states that about 93 persons have died in the various incidents but, according to an estimate of the State, only 32 persons have died and the compensations have not been given to the dependents of these persons, who died. The petitioners also allege that large scale unemployed person are waiting for the work under the NREGA scheme and the cards are not provided to them. It is also alleged that so many persons have lost their ration cards and they required fresh ration cards to get the articles under the public supply system. The petitioners have given some details i.e. name, village and other details regarding the individuals.

Learned counsel appearing for the State of Orissa seeks time to inquire into the details of these facts given by the petitioners and the learned counsel seeks time to furnish the details regarding the steps already taken by it. It is stated that a committee has also been constituted to give relief to the affected persons. The correctness of these details would be enquired into by the State and a detailed report be furnished to this Court within a period of four weeks. It is also submitted that the State is taking steps to see that all the persons who are in the relief camps exercise their franchise in the ensuing general election and steps are being taken to take them to the polling booths on the date of polling under the protection of the police. Learned Addl. Solicitor General of India submits that a sum of Rs. 3 lacs each is proposed to be given to the dependents of the persons who have died and as soon as the details are available from the State the amount would be made available to the State.

In the meanwhile, the relief works, which are already in progress, may be continued....."

F. 11.05.2009

"Heard learned senior counsel for the petitioner and also learned counsel for the State.

It is pointed out by learned counsel for the petitioners that in some of the cases where the houses have been destroyed and damaged, full compensation has not been paid. It is also submitted that all the dependents of the deceased persons have not received compensation.

On the other hand, learned senior counsel appearing for the State of Orissa submitted that it has been assessed that about 4,588 houses spread over in 8 blocks suffered damage and steps are being taken to pay compensation. It is pointed out that in these 8 blocks one I.A.S. Officer each has been deputed to look after the rehabilitation measures and it is also stated that in some of the cases first instalment has been paid and in some cases second instalment has been paid and in some other cases third instalment has also been paid. It is pointed out by learned counsel for the petitioners that in the case of 917

families, first instalment has not been paid but it is disputed by learned counsel for the State. The State may pursue the disbursement of compensation to these families.

It is submitted by counsel for the State that in the case of 42 deaths which have taken place, dependents/legal heirs of the deceased have been paid compensation by the State of upto Rs. 2 lacs and Rs. 3 lacs has to be paid by the Union of India and the list has already been sent by the State but learned Additional Solicitor General submits that only 33 cases have been recommended by the State and out of them 30 have been paid compensation and the rest of the three have been rejected. As regards the rest, the State may send its recommendations to the Central Government and as soon as the same are received by the Central Government, it may take appropriate action and the compensation shall be disbursed at the earliest....."

4. The monitoring by this Court through interim orders passed from time to time and the efforts on part of the State Government to control and remedy the situation and provide relief to the victims having yielded results, according to the petitioner in the lead matter, most of the issues and grievances highlighted in the petition, now stand addressed. According to the petitioner what remains to be considered are prayers D, G and H in Writ Petition No.404 of 2008 which are set out hereunder:-

"D. Issue a writ of mandamus or any other appropriate writ order or direction, directing the State of Orissa to forthwith pay compensation to all those families whose houses have been fully damaged @ of Rs. 4 lakhs per family and Rs. 2 Lakhs per family for partial damage and Rs. 5 Lakhs for every family where death has taken place and Rs. 1 Lakh for every family where injuries have taken place.

G. Issue a writ of mandamus or any other appropriate writ order or direction, directing the Respondents to constitute and appoint an Independent Commission for the framing of the rehabilitation and compensation scheme and to assess the quantum of damage, extent of damage, methodology of assessment and for proportionate allocation of funds in the affected areas.

H. Issue a writ of mandamus or any other appropriate writ order or direction, directing the Respondent State to pay all the victims of communal violence full compensation for all the loss incurred at actual market value proportionate to their loss".

5. It may be noted at this stage that during the pendency of these matters, an Investigating Team of NHRC visited the areas in question and submitted its Report. The relevant portions of their report are to the following effect:

"10.3.11. It is evident that more forces were sent as and when the violence started spreading to different areas of Kandhamal. Had the forces arrived in sufficient strength in the initial stage itself, the violence and the number of

deaths could have been controlled. As far as the contingency plans are concerned, it seems that it was not properly formulated in the district. In December, 2007, the deployment was issued by the District SP in the form of a small wireless signal instead of a detailed order whereas the danger of communal violence was imminent. The district authorities took measures to control the violence after 23.08.2008. Additional deployments were made. FIRs were lodged promptly and arrests were made. A total number of 732 FIRs were lodged and 597 arrests were made till 17.11.2008. Out of the arrests made 259 number of arrests were of persons against whom FIRs were lodged by name. Relief camps were also provided with armed guards and patrolling was being done. Despite all the effort, the force strength was not to the extent that all the migrants could be provided with security in their own villages. A total of 38 number of companies of the CRPF, seven platoons of the OSAP and seven sections of APR, have been deployed in Kandhamal so far

10.4.6. There is no evidence regarding the police conniving with the perpetrators of violence and allowing the fundamentalists to attack the Christian community. The details of cases registered against the perpetrators of violence and the details of persons arrested is available in Pages 545-805 of Annexure-I.....

10.8. The relief camps have been well established by the District Authorities. The size of the relief camps are very large this time. Thousands of people have taken shelter in each of these camps. Relief work, however, was going on in full swing and basic requirements of food, clothing shelter and medicines were being met. The inhabitants of the camps did not complain regarding any shortcoming in the relief operations. All the relief camps are guarded with armed guard. Compensation has been provided to those killed in the recent violence at the rate of Rs. two lacs from CM Relief Fund. (Ref. Page 983-985 Annexure-II). In some cases recommendation of grant of compensation of Rs. 3 lacs has been sent to the Central Govt. (Ref. Page 983-985 Annexure-II). The investigation team also observed that efforts were being made by the district authorities to carry out a census of children in these camps and provide them education in the camps itself. Doctors were found attending the patients in these camps. There was also a stock of medicines in these camps."

6. The Report of the NHRC also included a Status Report on "Relief, Rehabilitation and Reconciliation Measures taken up by the District Administration, Kandhamal" which was submitted to NHRC on 14.1.2011. Chapter III of that Status Report deals with Rehabilitation and Reconciliation efforts under following heads:

- (I) Assistance to Next of Kins of Dead Persons.
- (II) House Building Assistance
- (III) Financial Assistance to Religious Institutions
- (IV) Assistance to Damaged Shop/Shop-cum-Residence

(V) Financial Assistance to Public Institutions

(VI) Assistance to the Children of Victims of Communal, Ethnic or Terrorist Violence.

(VII) Financial Assistance to SHG Centres

(VIII) Special Steps for Rehabilitation of Affected Families.

(IX) Administration of Justice

(X) Strengthening of Policing Infrastructure in District

(XI) Dialogue and Peace Committees.....

(XII) Theatre, Drama, Music.....For Peace.

For the present purposes, we may quote items (IX) and (X) which were as under:-

"(IX) Administration of Justice

Government has taken following steps for ensuring justice to the victims of violence:

A) State Government has constituted a Commission of Inquiry consisting of Shri Justice S.C.Mohapatra, a retired Judge to enquire into various matters relating to killing of Swami Laxmanananda Saraswati and others and incidents of violence in its aftermath.

B) In order to speed up investigation process in aftermath of the communal/ethnic violence, a Special Investigation Team was constituted by the State Government to investigate the cases related to communal/ethnic violence in the district. Because of the efforts of this team, investigation have been completed in 790 cases out of total number of 828 cases registered in various Police Stations with respect to communal/ethnic violence in the district in 2008. The detailed status of cases related to communal/ethnic violence is given in Annexure-9.

C) Two Fast Track Courts have been constituted to ensure speedy disposal of cases related to communal/ethnic violence in the district. Government of Orissa has also appointed Special Public Prosecutor to deal with such cases in an effective and efficient manner.

(X) Strengthening of Policing Infrastructure in District: State Government has taken a number of steps for strengthening and streamlining policing in the district. Steps taken include:

(1) New Police Station has been created at Chakapad with sanctioned strength of Inspector of Police (01), Sub-Inspector of Police(02), Assistant Sub-Inspector of Police(02), Havildar(01), Constable (10) and Assistant Driver(01).

(2) K. Nuagam Out-Post has been upgraded to a Police Station with additional

sanctioned posts of Inspector of Police(01), Sub-Inspector of Police(02), Assistant Sub-Inspector of Police(01), Constable(04) & Assistant Driver(01).

(3)As Police Station areas of G. Udayagiri, Raikia, Tikabali & Chakapad were some of the worst affected areas during the communal/ethnic violence in 2008, Office of the Sub-Divisional Police Officer (SDPO) has been created at G. Udayagiri for better coordination and immediate response to any such situation in future.

(4)One post of Additional Superintendent of Police, Kandhamal has been created for assisting Superintendent of Police, Kandhamal in management of law and order.

(5)One post of Reserve Inspector (General) has been created in Office of the Superintendent of Police, Kandhamal.

(6)40 posts of Constables have been upgraded to Assistant Sub-Inspector of Police.

(7)The State Government has sanctioned 750 posts of Special Police Officer (SPO) for the district.

(8)Physical infrastructure has been strengthened by way of building 100 men barracks in each of the Police Station in the District. This allows positioning of CRPF, OSAP, OSSF and other such special police forces, within the campus of Police Station, which results in better coordination and immediate response to any law and order situation."

7. The last affidavit on record filed on behalf of the State of Orissa on 01.03.2016 sets out in detail the steps taken by the State and the present status. Paragraphs 3 to 8 of said affidavit are as under:-

"3. That it is humbly submitted that during Kandhamal Riots 2008, 827 FIRs were received and registered and have been duly investigated into. Two Fast Track Courts have been established to ensure speedy disposal of the cases relating to communal/ethnic violence in the district. Special Public Prosecutors have also been engaged to deal with such cases in an effective and efficient manner. The current status of the cases are given below:

1.

No. of communal violence cases registered

827

2.

No. of cases final form submitted

827

3.

No. of cases final reports submitted

315

4.

No. of cases charge-sheets submitted

512

5.

No. of cases trial have been completed

362

6.

No. of cases ended in conviction

78

7.

No. of persons convicted

493

8.

No. of cases ended in acquittal

284

9.

No. of cases pending trial

150

10.

No. of cases appeal have been made

15

11.

No. of accused persons arrested/surrendered

6495

4. That it is humbly submitted that during Kandhamal Riots 2008, relief camps were set up at Tikabali, G.Udayagiri, Raikia, K.Nuagaon, Baliguda, Daringibari, Phulbani and Phiringia to provide immediate relief to the victims of violence. All efforts were taken for safe return of camp inmates to their villages. As result of which all relief camps are closed now and the last relief camp was closed on

25.08.2009.

5. That it is respectfully submitted that 39 persons had died in group clashes during Kandhamal Violence, 2008. In all these case Ex-gratia @ Rs. 2.00 lakhs has been paid to the next-of-kins of such victims out of the Chief Minister's Relief Fund(CMRF). Similary, Central Assistance @ Rs. 3.00 lakhs to the next-of-kins of the victims have been disbursed to the NOKs of 39 deceases persons. Not a single case of reported death during Kandhamal violence is pending for sanction of ex-gratia compensation.

6. That it is further respectfully submitted that a total number of 4822 houses have been affected which includes 3316 partially damaged and 1506 fully damaged houses. House Building Assistance (HBA) @ Rs. 50,000/- each for fully damaged house, Rs. 20,000/- each for partially damaged houses have been provided out of the Chief Minister's Relief Fund. In addition to this financial assistance @ Rs. 20,000/- for each fully damaged house and Rs. 10,000/- for each partially damaged house have been provided by the Government of India.

7. That it is also humbly submitted that 232 religious institutions were damaged during the violence. Out of which 7 are big churches, and 225 are small churches/prayer houses. Financial assistance of Rs. 2 lakhs each to number of severely damaged big churches and Rs. 1 lakh each to 5 numbers of partly damaged big churches were disbursed. Similarly, Rs. 50,000/- each to 35 numbers of fully damaged small churches/prayer houses, Rs. 20,000/- each to 63 numbers of severely damaged small churches/prayer houses and Rs. 10,000/- each to 127 numbers of partly damages small churches/prayer houses were disbursed.

8. That it is humbly submitted that 119 number of shops/shop-cum-residence were damaged. Depending on extent of damage a total amount of Rs. 19,45,000/- was disbursed to 119 shops/shop-cum-residence. Similarly, Rs. 6,30,000/- out of Chief Minister's Relief Fund and Rs. 12,00,000 out of Prime Minister's Relief Fund were disbursed to 12 number of public institutions which were damaged during violence. Rs. 1,30,000/- was also given to 4 number of damaged self-help group (SHG) centers. "

8. In written submissions filed on 03.03. 2016 on behalf of the petitioner in the lead matter, the facts asserted in the affidavit dated 01.03.2016 are not contested but what is stressed is that out of 512 charge-sheets submitted, trials have been completed only in 362 which resulted in conviction in 78 cases while 284 cases ended in acquittal and only 15 appeals have been filed.

9. While dealing with cases concerning communal violence that occurred in and around Muzaffarnagar in State of Uttar Pradesh in September 2013, this Court in its judgment rendered on 26.03.2014 in Mohd. Haroon and Ors. v. Union of India and Anr., (2014) 5 SCC 252 had dealt with financial assistance given to the families of the deceased and injured persons, the relevant paragraphs being:-

"49. According to Letter No. 1027k/chh-sa.ni.pr-13/15(14)2013 dated

10-9-2013 and Government Order No. F.A.-2-367/Ten-92-100(30)D/92-Home Police, Section-12 dated 21-12-1992, financial assistance to the families of deceased and injured persons is to be given at the following rates:

In case of death

L 10,00,000 per death

In case of serious injury

L 50,000 per person

In case of simple injury

L 20,000 per person

56. The Government of India has also sanctioned ex gratia relief from the Prime Minister's Relief Fund at the rate of Rs. 2 lakhs per family for the dependants or legal heirs of the deceased and at the rate of Rs. 50,000 for the seriously injured persons....."

Paragraph 71 of the decision discloses that the State granted further compensation of Rs. 300,000/- taking the total compensation in cases of death during communal violence to the extent of Rs. 15,00,000/-.

10. It is true that the incidents of communal violence had occurred in and around Muzaffarnagar in the year 2013 and that the State itself had decided to pay compensation in the scale as mentioned above. We have considered the scales at which compensation has been granted and disbursed in the present matter. In our view the ends of justice would be met if the State Government and the Central Government are directed to pay additional compensations as set out in the chart below. The compensation suggested in Writ Petition No.404 of 2008 as against each of the categories is set out in Column No.2 while Column No.3 gives the figures of compensation already granted and disbursed. In our view, the additional compensation as detailed in Column No.4 ought to be paid to the victims or their family which will provide solace and succor. It is ordered accordingly.

1

2

3

4

Categories

Compensation suggested in WP 404 of 2008

Compensation already granted and disbursed

Additional Compensation that shall be paid

In case of every death during communal violence.

Rs. 5,00,000.00

Rs. 200,000 by State Govt. + Rs. 300,000 by Central Govt.

Rs. 300,000 by State Govt.

In case of injuries suffered by victims during such violence

Rs. 2,00,000.00

Nil

Rs. 30,000 in cases of serious injury and Rs. 10,000 in cases of simple injury-to be paid by State Govt.

In case of fully damaged houses

Rs. 400,000 per family

Rs. 50,000 by State Govt. + Rs. 20,000 by Central Govt.

Rs. 50,000 by State Govt. + Rs. 20,000 by Central Govt.

In case of partly damaged houses

Rs. 200,000 per family

Rs. 20,000 by State Govt. + Rs. 10,000 by Central Govt.

Rs. 20,000 by State Govt. + Rs. 10,000 by Central Govt.

11. The report of the Investigating Team of the NHRC as stated above, does show that though adequate forces were deployed and sent as the violence started spreading, the forces could have arrived in sufficient strength at the initial stage itself. If there were incidents of unrest in the past, the State ought to have been more vigilant. The NHRC team has found that there was no evidence regarding the police conniving with the perpetrators of violence. Further, immediate steps were certainly taken, in that relief camps were set up and strength of police contingents were increased.

Paragraphs IX and X of the Status Report submitted by the District Administration to the NHRC on 14.01.2011 show the concern of the State Government under respective heads. The State Government shall do well to enquire into and find the causes for such communal unrest and strengthen the fabric of the Society. Strengthening of police infrastructure in the District as detailed in Paragraph 10 of that Status Report will undoubtedly help in curbing any re-occurrence of such communal violence but at the same time peace building measures must also be undertaken.

12. In Mohd. Haroon (supra), 6 months after the violence had occurred, this Court found it difficult to direct that investigation be handed over to any Agency

other than the State. Paragraph 115 of the judgment sums up the discussion on this issue in following words:-

"115. At this juncture viz. after a period of six months, whether an agency other than the State is to be directed to investigate and take appropriate steps. We have already noted various circumstances under which the court can entrust investigation to agency other than the State such as SIT or CBI. We have to keep in mind, as observed by the Constitution Bench State of W.B. v. Committee for Protection of Democratic Rights (2010) 3 SCC 571 referred to supra, that no inflexible guidelines can be laid down to decide whether or not such power should be exercised. However, this Court reiterated that such order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the State Police. In other words, this extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility or instil confidence in investigation or where such an order may be necessary for doing complete justice in enforcing the fundamental rights. Apart from this, immediately after the occurrence, Writ Petition (Crl.) No. 155 of 2013 came to be filed in this Court even in the first week of September, 2013. Pursuant to the same, this Court, after taking note of the importance of the issues viz. many people lost their lives and properties, sufferings of both communities and children, issued various directions to the State and the Central Government. We have already extracted those orders in the earlier part of our judgment."

13. In the present case, the order dated 22.10.2008 discloses that this Court did not think that further investigation be handed over to the CBI. At this length of time, when final form has been submitted in all 827 cases of communal violence which were registered, it would not be proper to direct that the investigation and consequential steps be entrusted to the CBI. We, therefore, reject such prayer made in the connected petitions. The request for setting up of Special Courts to deal with and try the offence committed during such violence, already stands granted as the State has set up two Special Courts.

14. The affidavit filed on behalf of the State on 01.03.2013 discloses that out of 827 registered cases, 512 cases resulted in filing of charge-sheets while in 315 cases final reports were submitted. In other words, in 315 cases either no offence was found to have been made out or the offenders could not be detected. Such large proportion is quite disturbing. The State could do well in looking into all these 315 cases and see that the offenders are brought to book. Similarly, out of 362 trials which stand completed only 78 have resulted in conviction, which again is a matter of concern. The concerned authorities must see to it that the matters are taken up wherever acquittals were not justified on facts.

15. Finally, we must remind ourselves of the observations of this Court in Ahmedabad St. Xavier's College Society and another v. State of Gujarat and another, 1974 (1) SCC 717 though made in the context of rights of minorities to set up and administer institutions for imparting education, are quite apt even in

the present context:-

".....The minorities are as much children of the soil as the majority and the approach has been to ensure that nothing should be done, as might deprive the minorities of a sense of belonging, of a feeling of security, of a consciousness of equality and of the awareness that the conservation of their religion, culture, language and script as also the protection of their educational institutions is a fundamental right enshrined in the Constitution.

... It can, indeed, be said to be an index of the level of civilisation and catholicity of a nation as to how far their minorities feel secure and are not subject to any discrimination or suppression."

16. With the directions as stated above, these petitions are disposed of.