
(2013) 05 DEL CK 0022
In the Delhi High Court
Case No : Writ Petition (C) 8164 of 2007

Harjeet Singh

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 6 AD 428 : (2013) 201 DLT 336

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : B.R. Bhatla, for the Appellant; Zubeda Begum and Ms. Sana Ansari for R-2 and 3, for the Respondent

Judgement

Rajiv Shakdher, J.—The petitioner, who is a 1984 anti-sikh riot victim, has approached this court by way of the present writ petition for seeking enhancement of compensation in terms of the Government of India's Scheme dated 16.01.2006 (in short the 2006 Scheme). In the writ petition, it has been averred that on account of the petitioner's commercial establishment being looted and his business being destroyed, he took refuge in the State of Punjab. Consequently, in October, 1986 the petitioner was issued a Red Card bearing no. LDA-DLI-234, by the concerned authorities, in Ludhiana, Punjab. The petitioner also avers that he received a subsidy in the sum of Rs. 5000/-.

2. It appears that, thereafter, the petitioner returned to Delhi and applied for enhanced compensation under the 2006 Scheme, on 13.09.2006, which was rejected by the Commissioner, Delhi, Govt. of NCT of Delhi (GNCTD). The ground for rejection was that no relief had been provided to the petitioner, in the past, by the said office.

3. The petitioner appears to have made a representation to the Prime Minister's Office for release of enhanced compensation on 27.11.2006. The petitioner, being a person of modest means, approached the Delhi Legal Services Authority, who recommended his case for grant of compensation under the 2006 Scheme. Since,

there was no movement in the matter, the petitioner filed the present writ petition under Article 226 of the Constitution of India. The petitioner avers that presently he is working as Sewadar in Sheesh Ganj Gurudwara under the aegis of the Delhi Sikh Gurudwara Prabandhak Committee. It is his claim that, his economic condition being weak he has difficulty in raising his children and paying of rent qua his residence.

4. Notice in the writ petition was issued on 05.11.2007. Since, the GNCTD, i.e., respondent no. 2 took the stand that the initial compensation was paid by the State of Punjab, on an oral request of the petitioner, the State of Punjab, was impleaded as a party to the present proceedings vide order dated 29.11.2010. Accordingly, notice was issued to the State of Punjab. On 11.07.2011 the State of Punjab entered appearance and sought time to file a counter affidavit. The petitioner, thereafter, sought amendment of the writ petition, which was allowed by this court vide order dated 30.11.2011.

5. Counter affidavits have been filed on behalf of respondent no. 1, UOI, respondent no. 2 & 3, i.e., the SDM, Patel Nagar, as well as respondent no. 4, State of Punjab. The defence of respondent nos. 2 and 3 to the claim raised in the writ petition is pivoted on the following:

(i) That the initial compensation of Rs. 5000/- was granted by the Additional Deputy Commissioner, Ludhiana, Punjab towards subsidy qua the business of tyre repair carried out by the petitioner. That it was on this ground, no relief in the past was granted by the office of the Commissioner, GNCTD.

(ii) That GNCTD has been implementing the provisions of the 2006 scheme. As per paragraph 1(vi) of the said scheme, claimants are entitled to compensation on an ex-gratia basis for damaged uninsured commercial/industrial properties at ten (10) times the amount minus the amount already paid. Since, the petitioner had received subsidy from the Government of Punjab, and no compensation from GNCTD on account of damage to his shop run under the name and style of Patna Sahib Tyre, situate opposite Nawada Bus stand, Delhi, his claim was liable to be rejected.

(iii) It is also stated that, it is not clear as to the date on which Rs. 5000/- was paid to the petitioner by the State of Punjab.

5.1 In other words, stand taken is that, there is no clarity as to whether subsidy was paid to the petitioner prior to the coming into force of the 2006 Scheme or thereafter. To be noted, as indicated above, the 2006 Scheme came into force on 16.01.2006.

6. It may be noted that, after the amended writ petition was filed in which additional compensation of Rs. 2 lacs under para 1(xii) of the 2006 Scheme, was claimed by the petitioner, an additional affidavit-in-reply was filed by respondent no. 2, in which, there is no specific denial of the fact that the petitioner is entitled to compensation of Rs. 2 lacs, which was given to at least 22000

families, which had migrated to the State of Punjab from the riot-affected State.

7. At this stage, it would be important to note the stand of the UOI. In a short affidavit filed by the UOI, it is stated that the scheme of 2006 has to be read with a clarificatory letter issued by the Ministry of Home Affairs dated 08.03.2006. It is further stated that, the claimants are entitled to compensation under the 2006 Scheme under paragraphs 1(v) and (vi) on an ex-gratia basis depending on whether there is damage to the residential or uninsured commercial/industrial properties. It is also accepted that, the claimants would be entitled to ten (10) times the amount originally paid after deduction of the amount already paid. The claim, according to UOI, had to be paid by the concerned district authority under the concerned State Government under whose jurisdiction the incident took place. The stand of the UOI is that verification of the claim, so filed, and the payment, fully rests, with the State Government; and the claim, if found in order, has to be paid by the concerned State Government.

7.1 Importantly, there is an affirmation of the provisions of paragraph 1(xii) of the 2006 Scheme which provides for payment of rehabilitation grant at the rate of Rs. 2 lacs per riot affected family. What is important, is that, UOI clearly takes the stand that similarly placed families and victims of riots living in other States, would also be entitled to rehabilitation grant at the rate of Rs. 2 lacs per family. Apparently, the UOI further re-affirms that, if the amount is disbursed by the concerned State Government to eligible claimants, it would be reimbursed to the concerned State Government by the UOI. As a matter of fact, UOI has taken umbrage to the fact that it has been unnecessarily impleaded as a party to the present proceedings.

8. The State of Punjab, i.e., respondent no. 4, has also filed an affidavit which takes the stand that since the petitioner is not residing in the State of Punjab, he should approach the State Government within whose jurisdiction the petitioner resides. It is specifically averred in paragraph 2 of the preliminary submissions that petitioner is not covered under the 2006 Scheme read with Punjab Government letter dated 10.02.2006, in view of the fact stated above. What is clearly admitted by respondent no. 4 is that, the petitioner was issued a red card in 1986 by the Government of Punjab. It is also admitted that the petitioner did approach respondent no. 4 for grant of rehabilitation in the sum of Rs. 2 lacs, which was rejected for the reason that the petitioner was not residing in the State of Punjab. The factum of grant of subsidy to the petitioner in October, 1986 is not denied.

9. The counsels for the parties have argued in line with the pleadings filed on their behalf. After hearing the counsels for parties what clearly emerges is as follows:

- (i) that the petitioner is a victim of the 1984 anti-sikh riot;
- (ii) that he was issued a Red Card and paid a subsidy of Rs. 5000;

(iii) that he has approached respondent no 4, i.e., State of Punjab, both for enhancement for compensation and payment of rehabilitation grant;

(iv) his claims on both accounts have been rejected by respondent no. 4 on the ground that the petitioner was not the resident of State of Punjab; and

(v) that the shop, i.e., commercial shop is located in Delhi and the only ground on which respondent nos. 2 and 3 have rejected the petitioner's claim for enhancement of payment of rehabilitation grant of Rs. 2 lacs is that, initial subsidy was not paid to him by the concerned authority of GNCTD.

10. Having regard to the aforesaid facts, I am of the view that since the business establishment of the petitioner was located in Delhi, the petitioner ought to be paid compensation by respondent nos. 2 and 3. The fact that subsidy was paid, in my view would fulfil the requirement in the 2006 Scheme that enhanced compensation would be paid only after initial amount has been paid irrespective of whichever State Government paid the amount. This is because, to my mind, the said condition is provided in the 2006 Scheme to establish two things: (i) First, that the claim is genuine; and (ii) Second, that there is a base figure over which enhancement can be given. The argument of learned counsel for GNCTD that compensation will not be paid because initial compensation was paid by the State of Punjab, in the facts and circumstances of this case, at least cannot be accepted.

11. I must point out that Ms Zubeda Begum did make a submission that the provisions in the 2006 Scheme to the effect that the concerned State Government, within whose jurisdiction the incident of rioting takes place, should pay the compensation, is significant for the reason that funds are allocated to the various State Governments by the UOI and, if this modality is not followed, it would eat into the funds available with the GNCTD for victims residing within its territorial jurisdiction. While this argument has some practical efficacy, it cannot result in denial to the petitioner compensation qua a genuine claim of damage to property.

11.1 The petitioner in this case has exhausted his remedy by approaching the State of Punjab; having had his claim rejected, he has approached the GNCTD. This court cannot shut its eyes to the fact that harassment is caused to the petitioner in this case. Once a claimant is found entitled to compensation-the scheme being funded by the UOI, some State Government would have to be held responsible for payment of compensation.

11.2 It is only a matter of internal accounting which, I am sure, the UOI would be able to carry out if, compensation is paid by one or the other State Government. The UOI can in its wisdom come to a decision one way or the other, who is responsible for payment of compensation. But that decision by itself cannot deprive the petitioner, of his claim for compensation.

12. In any event, in my view, based on the facts which have emerged from the

record, as indicated above, the GNCTD is liable to pay compensation to the petitioner. At the risk of repetition, since the commercial establishment of the petitioner was located in Delhi, the damage necessarily occurred in Delhi and, therefore, the petitioner ought to be paid compensation by the GNCTD.

13. Accordingly, the writ petition is allowed with following directions:

(i) The petitioner will be paid a sum of Rs. 2 lacs as rehabilitation grant, under para 1(xii) of the 2006 Scheme.

(ii) In so far as loss to commercial establishment is concerned, the SDM, Patel Nagar, Delhi would ascertain the exact loss within a period of two weeks from today, and thereafter, pass an appropriate order for release of compensation. For this purpose, the petitioner shall approach the concerned SDM with requisite material on 20.05.2013 at 11.00 a.m.

(iii) Both on Rs. 2 lacs, paid as rehabilitation grant, as well as the compensation to be quantified by the SDM, Patel Nagar, New Delhi, qua damage caused to commercial establishment, will be paid with simple interest at the rate of 9% per annum from 16.01.2006 till the date of payment.

(iv) The loss quantified towards damage to commercial establishment will be paid to the petitioner within two weeks of the quantification.

(v) The payment of Rs. 2 lacs, towards rehabilitation grant alongwith interest, as indicated in clause (iii) above, will be paid within two weeks from today.

With the aforesaid directions, the writ petition is disposed of. The petitioner will, however, be paid a sum of Rs. 10,000/- towards costs. The costs shall also be paid within two weeks from today.

Dasti.