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(2012) 07 DEL CK 0114

In the Delhi High Court

Case No : Writ Petition (C) No. 7185 of 2009 and W.P. (C) No. 862 of 2011

Madangopal Khushiram Paul — APPELLANT

Vs

UOI and Another — RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Citation : (2012) 07 DEL CK 0114

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : K.M. Paul, in both Appeals, for the Appellant; Jatan Singh, for UOI in both Appeals, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petitioner claims to be an advocate and human rights activists and has filed these petitions in public interest. W.P.(C) No. 7185/2009 was filed pleading, i) that the petitioner had filed a complaint before the National Human Rights Commission (NHRC) for release of 16 Indian citizens languishing for long in Pakistani jails; ii) that the NHRC had passed an order dated 23.06.2007 and sent the matter to the Secretary, Ministry of External Affairs, Government of India; iii) that though the petitioner had made several representations but the order of NHRC was not implemented; iv) that in the meanwhile, three prisoners were released but the Government was not giving their lawful dues and compensation, to them. The petition, thus sought the relief of a direction to the Ministry of External Affairs to comply with the order of the NHRC. Notice of this petition was issued. The petitioner thereafter sought impleadment of the Ministry of Home Affairs as well as the Chief Advisor, Prime Minister''s Office, on the ground that they were liable to pay compensation to the prisoners held in jails in Pakistan. However, the learned Single Judge vide order dated 07.01.2010 dismissed this application holding that "in the petition filed before the NHRC the only issue was that the complaint should be transmitted to the concerned authority for such action as deemed appropriate"; that the writ petition sought only implementation of the order dated 23.06.2007 of NHRC and

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no prayer for compensation was made in the writ petition; hence the application for impleadment was misconceived. The petitioner preferred intra-court appeal being LPA No. 112/2010 against the said order but which was also dismissed on 16.02.2010. Counter affidavit has been filed by the respondents to which rejoinder has been filed by the petitioner. The petition was admitted for hearing on 29.09.2010. A further status report has been filed on behalf of the respondent. During the pendency of the aforesaid petition, W.P.(C) No. 862/2011 was filed pleading that the petitioner had got further information that in all 51 Indians were imprisoned in the jails in Pakistan; they are unable to themselves access the Courts; that the petitioner had called upon the respondents to give appropriate compensation to the said prisoners and their family members but to no avail. Mandamus is sought, directing the respondents to pay compensation, legitimate dues and other benefits to the said prisoners in Pakistani jails and their family members. This petition was clubbed along with the earlier petition aforesaid and status report and affidavit have been filed by the respondents and to which a rejoinder has been filed by the petitioner.

2. The counsels have been heard.

3. The NHRC, on 23.06.2007, on the complaint aforesaid of the petitioner directed as under:

The complaint be transmitted to the concerned authority for such action as deemed appropriate.

4. The respondents in their counter affidavits have stated that they have taken all possible actions seeking the release of Indian nationals from Pakistani jails; that the matter has been taken up with the Government of Pakistan at all levels; that the respondents thus cannot be said to have not complied with the orders of the NHRC. It is yet further informed that an Indo-Pakistan Judicial Committee on Prisoners has been formed and which has visited jails in Pakistan and India and made recommendations to both the governments; that the matter was also raised during the Foreign Secretary Level Talks held on 25.02.2010 and 24.06.2010 as well as during the Home Minister''s visits to Islamabad on 25-26.06.2010 and during Foreign Minister Level Talks on 15.07.2010 as also in the Foreign Secretary Level Talks in February, 2011 and the Home / Interior Secretary Level Talks on 28-29.03.2011. It is also stated that the said prisoners were Indian fishermen or civilians and Consular Access to such prisoners has also been sought. Assurance is given to take all further steps also in this regard. Else, it is stated that the Indian nationals listed in the petitions and in Pakistani jails are neither employees of the Ministry of External Affairs nor were they, in any manner engaged by the Government, so as to make the Government liable to pay to them any salary, compensation, allowance or benefits etc.- no such direction has been issued by the NHRC also.

The respondents, though admit that the charge by the Pakistani Authorities against some of these prisoners is of spying, has pleaded that it is not within the

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power and jurisdiction of the Government of India to judge the circumstances under which the Indian nationals have been detained and accused of the charges against them under the laws of an alien country.

5. The petitioner during the hearing has been unable to state as to what additional steps can be taken by the respondents. The argument has thus been confined to issuance of a direction for payment of dues / compensation to the said prisoners. Reliance in this regard is placed on:

(i) Smt. Angrej Kaur Vs. Union of India (UOI) and Others,

(ii) Judgment dated 14.03.2011 of the Supreme Court in W.P.(Crl.) No. 16/2008 titled Gopal Dass Vs. UOI;

(iii) Jagjitsingh Aurora Vs. UOI 2012 (1) G.L.H. 362; and

(iv) Order dated 24.07.2000 of this Court in W.P.(C) No. 3099/2000 titled Sh. Rooplal Sharia Vs. UOI.

6. Angrej Kaur (supra) was a habeas corpus petition qua an "Indian soldier" in a foreign jail. It was held that though direction to authorities outside India could not be issued but direction was issued to the authorities to continue making efforts for his release from Pakistani jail. In Gopal Dass (supra) also direction sought was to take necessary steps for release and repatriation of the detenu in Pakistani jail, arrested on mistakenly crossing over the Indo-Pakistan Boarder. The Supreme Court though again holding that no direction could be given to Pakistani authorities, nevertheless made a request for release. In Rooplal Sharia (supra) consent order for payment of compensation was issued. The reliefs sought from the Gujarat High Court in Jagjitsingh Aurora (supra) also was for payment of emoluments to the families of "Indian soldiers" in the custody of Pakistan as Prisoners of War. It was further held that the writ Court cannot direct the Union of India (UOI) to take any decision in a particular manner regarding any of its policy towards the neighbouring country or as regards its War Policy. Finding, however, the Indian Government to be entitled to seek release of such persons under a bilateral agreement with the Pakistan Government, UOI was directed to approach the International Court of Justice for non compliance if any by Pakistan of the said bilateral agreement and direction was also issued for payment of emoluments.

7. However, the respondents in the instant cases deny that any of the persons for whose benefit the writ petitions have been filed, were soldiers or otherwise employed by the Indian Government. If they were arrested and imprisoned by Pakistani Authorities owing to having intentionally or mistakenly crossed over the border, as appears to be the case of the respondents and as also was the position in Gopal Dass (supra), the Government of India cannot be directed to pay any compensation to them. Compensation / emoluments were directed to be paid in the judgments supra in the face of admission that the detenues in the Pakistani Jails were Indian soldiers or on agreement.

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8. The petitioner, save for averring that some of the said persons have been charged by the Pakistan Authorities for spying, has no basis or material to even plead that the said persons were working for the Indian Government. However, that charge has not been leveled by the Government of India. Merely because the prosecution agencies of Pakistan levelled such a charge would not bind the respondents. The reliance on the judgments aforesaid is thus misconceived. In all the cases where any relief has been granted, there existed at least some material or admission to show the prisoners being either a soldier or otherwise an employee of the Indian Government or its agency. There is none in the present case. Rather neither the said persons nor anybody else on their behalf nor the family members of any of them appear to have taken any action. They, thus appear to be content in the belief that there is no cause of action for claiming any compensation against the respondents. We are unable to understand as to how in these petitions filed by way of public interest litigation can such a direction be issued especially when the particulars are completely lacking.

9. Moreover, it has already been held that at least in W.P.(C) No. 7185/2009, no relief of compensation has been sought. We therefore do not find any merit in these petitions. The same are dismissed. We however implore the Government of India to continue its efforts for release of these persons. We refrain from imposing any costs.

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