

(2008) 06 J&K CK 0013
In the Jammu And Kashmir High Court

Mst. Fatima	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 02-06-2008

Acts Referred:

Citation : (2008) 3 JKJ 179

Hon'ble Judges : Bashir. A. Kirmani, J

Bench : Single Bench

Judgement

Bashir A. Kirmani, J.—One Mohammad Shafi Gujri expired in some militancy related incident in lieu whereof Dy. Commissioner, Srinagar

granted ex gratia relief in favour of his next of kin under order No. DCS/Relief/20 of 2003 dated: 6.3.2003 on basis whereof the petitioner herein

namely Mst. Fatima mother of above said deceased obtained succession certificate from District Judge, Srinagar for the exgratia amount of Rs.

1.00 lac sanctioned as above. The certificate was, however, cancelled by the said Court on 12.11.2003 at the behest of respondent through

respondent No. 2, the step brother of deceased and the succession proceedings were finally disposed of with an observation that exgratia relief

would not be covered by the provisions of Succession Certificates Act leaving the parties at liberty to agitate their respective rights before a

competent civil court.

2. The Succession Certificate Litigation is followed by present writ petition whereunder the petitioner, mother of deceased, seeks a direction to

Dy. Commissioner, Srinagar for releasing exgratia amount sanctioned by him vide above mentioned order in her favour as being the NOK of

deceased nearer in relation than respondents and as such entitled to the same.

In reply respondents contest the petition on the ground that

petitioner had been left by her husband around two decades back and as such not entitled to any portion of the exgratia relief.

During course of submissions appearing counsel reiterated and further elucidated their pleadings.

3. I have heard learned Counsel and considered the record. Settlement of whole controversy directly depends upon the meaning/import of the

expression ""next of kin"" which should ordinarily have been defined by the Dy. Commissioner who sanctioned the amount of exgratia in favour of

the next of kin of the deceased which however, does not appear to have been done creating space for litigation between the parties.

4. According to ordinary dictionary meaning the word ""kin"" means one's relation or family which may be used both in singular or plural form

referring to an individual as also a group of relatives. The expression ""next of kin"" thus both in singular and plural form means the closest living

relative or relatives of the deceased. Considered in context of Dy. Commissioner's order granting exgratia to the next kin of deceased Muhammad

Shafi Gujri, the expression appears to have been used in plural sense, because had it been meant to relate to a specific person or a single individual

he/she would have been clearly named. Since that is not so, it should be taken to have been used in plural sense. At this stage, it would be pertinent

to notice that the expression ""next of kin"" is different and distinct from the expression ""nearer of kin"" which according to dictionary would mean

closely related ""by blood"" which is not the expression used in Dy. Commissioner's order.

5. Otherwise also taking use of the expression ""next of kin"" in plural form appears to be more plausible in the subjective back drop in which the

exgratia relief is granted to relatives of the persons dead or injured in an act of violence. Since the whole scheme underlying relevant government

orders authorizing grant of exgratia relief is aimed at saving the nearest relatives of the deceased who in all probability must have been dependant

on him from starvation and lack of maintenance, it appears to be in accordance with its essence that benefit thereof is available to the larger number

of dependant close relatives of deceased and his family members.

6. In view of what has preceded hereunder logically the next question arising

would be as to what should be the definition of expression ""family"" for purposes of identifying the dependants/close relatives of the deceased. Ordinarily the expression ""family"" would mean the parents and their children which according to dictionary meaning can be expanded to include such relations as live together as members of a household or descendants of a common ancestor. For the sake of instant case, however, I feel that the family of deceased to find out his closest relations as next of kin would have to be taken to be comprising of his mother, the petitioner as also his brothers from second wife of his father, i.e. respondents which in given circumstances appears to be most plausible for achieving the objective underlying grant of exgratia relief under Dy. Commissioner's order under reference.

7. Accordingly and for what has been stated above, the petition is disposed of by providing that under the Dy. Commissioner's above said order being No. DCS/Relief/20 of 2003 dated: 6.3.2003 the exgratia relief of Rs. 1.00 lacs granted to next of kin of deceased Muhammad Shafi Gujri shall be payable to the petitioner as mother of deceased and respondents as his brothers i.e., father's sons from other wife in equal shares as warranted by peculiar circumstances of this case. The Dy. Commissioner concerned would follow up in the matter accordingly.

Petition disposed of alongwith connected CMPs.