

(2012) 06 SHI CK 0133
In the High Court Of Himachal Pradesh
Case No : CWP No. 2384 of 2010-C

Paramjit Singh

APPELLANT

Vs

State of H.P. and Union of India

RESPONDENT

Date of Decision : 16-06-2012

Acts Referred:

Citation : (2012) 06 SHI CK 0133

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : Vandana Misra, for the Appellant; Ramesh Thakur, Asstt. A.G. for respondents 1 and 2 and Mr. Janesh Mahajan, CGSC for respondent 3, for the Respondent

Judgement

Justice Dharam Chand Chaudhary, Judge

1. This writ petition has been filed mainly with the following prayers: i) That the respondents may kindly be directed to pay compensation to the petitioner to the tune of Rs.1.5 crore (rupees one crore fifty lakhs) being the ten times of amount of total loss suffered by him which has been assessed at Rs.15,00,000/- (rupees fifteen lakhs) due to burning of his shops due to anti sikh riots as per policy/ guidelines issued by Respondent No.3 (Annexure P-2).

ii) That the respondents may further kindly be directed to pay Rs.5,00,000/- (rupees five lakhs) to the petitioner as compensation for his mental torture, harassment and humiliation at the hand of the local police who instead of protecting him and his property connived with the rioters and mobsters and abetted the hate crime against him and his property by filing false FIR and by torturing him for two days in police lock up.

iii) That the respondents may further kindly be directed to pay interest on the aforesaid compensation amount at the rate of 10 percent per annum as the petitioner was made to suffer total loss of livelihood and property.

The petitioner claims himself to be a victim of 1984 communal riots witnessed in several parts of the country immediately after the assassination of late Smt. Indira Gandhi, former Prime Minister of India on 3.11.1984 and allegedly suffered the loss in business to the tune of ` .15 lakhs which he was carrying on at Shop No.4 (1st Floor), Rink View Building, Rivoli Road, Shimla under the name and style "Shimla Messrs Footwear" and claimed a further sum of ` .5 lakhs as compensation on account of mental torture, harassment and humiliation at the hands of local police. Further that though he had submitted an application for award of compensation under the "Rehabilitation Package" sanctioned by the 3rd respondent to provide relief to the victims of 1984 riots like the petitioner to the 2nd respondent but of no avail.

2. Respondents No.1 & 2 when put to notice have contested the writ petition on the grounds inter alia that under the "Rehabilitation Package", the compensation was to be awarded to those riots victims whose damaged commercial/ industrial properties were uninsured. It is also pointed out that the present was not found to be a case of any such damage caused to the business and property of the petitioner due to communal clashes and rather his shop was gutted in fire due to natural calamity and, as such, he was not held entitled to the award of compensation under the "Rehabilitation Package" and rather was held entitled to ex-gratia payment to the tune of ` .4,000/- under the "H.P. Emergency and Relief Manual" applicable in the year 1984 and the 2nd respondent while taking a sympathetic view of the matter has awarded a sum of ` .40,000/- i.e. 10 times of ` .4,000/- in lump sum as compensation to the petitioner.

3. The simple plea raised by the 3rd respondent in its reply filed on the affidavit of Under Secretary, Ministry of Home Affairs, New Delhi is that as per the terms and conditions of "Rehabilitation Package" sanctioned by the Union of India, verification of claims and payment of compensation was for the respective State Governments and the Union of India had only to reimburse the payment made by the respective states to the victims under the package. The 3rd respondent is thus stated to have no role to play in the matter.

4. The petitioner in rejoinder to the reply filed on behalf of the 1st and 2nd respondents has stated that the provisions under the H.P. Emergency and Relief Manual were not applicable to the case of compensation awarded to the victims of communal Anti- Sikh Riots. Also that the fire in his business premises had not broken out due to any natural calamity but on account of rioting and, as such, the claim he lodged falls under the "Special Relief and Rehabilitation Package" sanctioned by the Union of India with a view to adequately compensate the victims of communal riots.

5. Ms. Vandana Misra, learned counsel representing the petitioner has very ably argued that the approach on the part of the respondents not to grant adequate compensation on account of loss caused to the petitioner during communal riots broken out after the assassination of former Prime Minister is neither legally nor factually sustainable. Learned counsel has pointed out from the documents

available on record that the present is a case of damage caused to the business and property of the petitioner in communal riots and it is not an incident of fire allegedly broken out due to natural calamity. On the other hand, learned Assistant Advocate General while drawing the attention of this Court to the reply filed on behalf of the 1st and 2nd respondents has submitted that the petitioner being not a victim of 1984 riots is not entitled to the award of any compensation under the "Rehabilitation Package" and that he has rightly been awarded a sum of ` .40,000/- under the H.P. Emergency and Relief Manual. Further that in view of the highly disputed questions of facts which according to the learned Assistant Advocate General need cogent and reliable evidence for its proof, the relief sought in the writ petition cannot be granted.

6. Learned Central Govt. Standing Counsel has urged that the Union of India has no role to play in this matter as it was for the State Government to have made the payment of compensation to the petitioner and had any payment been made, the 3rd respondent would have reimbursed the same to the State Government.

7. The fate of this writ petition has to be decided in the light of the respective contentions made on both sides and also the pleadings of the parties as well as the documents annexed thereto.

8. It is worthwhile to mention here that Smt. Indira Gandhi, former Prime Minister of India was assassinated on 3.11.1984 by none else but her security guards, belonging to Sikh community. After her assassination, Anti-Sikh Riots had broken out at several places in the country. Few of such incidents had occurred in Shimla Town and also other parts of the State. With a view to extend immediate financial assistance to the victims of rioting, some amount was released to them by way of ex-gratia grant. The matter concerning with the rehabilitation of the victims of 1984 riots consequent upon the submission of report by Justice Nanavati Commission was under the active consideration of the 3rd respondent and ultimately a decision was taken to sanction ex-gratia amount (Annexure P-2/Annexure R-1) to provide relief to such victims under the package called as "Rehabilitation Package". The decision, Annexure P-2 was circulated to the riots affected States including the State of Himachal Pradesh.

9. Before entering into the controversy as to whether the petitioner is entitled to the grant of relief under the "Rehabilitation Package" circulated by the Ministry of Home Affairs, Govt. of India vide Circular dated 16th January, 2006 (Annexure P-2/Annexure R-1), it is desirable to refer the relevant terms and conditions governing the release of such relief to the victims of riots, which reads as under:

I am directed to say that in pursuance of the assurances given by the Prime Minister and the Home Minister during discussion on the Report of Justice Nanavati Commission of Inquiry into 1984 riots in the Lok Sabha and the Rajya Sabha, the matter has been considered by the Government and it has been decided to sanction ex-gratia amount and other assistance to the victims of 1984 riots as mentioned below:

1.(i) to (iii).....

(iv) No new claims for grant of Ex-gratia for death or injury would be entertained. Only those who received ex-gratia earlier should be eligible for the enhanced additional ex-gratia amount. However, if there are any pending or disputed cases which are awaiting decision for want of the necessary proof/evidence, such cases can be considered if they are finally accepted as genuine claims;

(v) Ex-gratia for damaged residential properties would be paid @ 10 times the amount originally paid after deducting the amount already paid;

(vi) Ex-gratia for damaged uninsured commercial/ industrial properties would be paid @10 times the amount minus the amount already paid;

3. The Governments of Uttar Pradesh, Madhya Pradesh, Chattisgarh, Haryana, Bihar, Jharkhand, J&K, Himachal Pradesh, Orissa, Maharashtra, Uttaranchal, Punjab and NCT of Delhi are requested to take immediate necessary steps to grant ex-gratia and other assistance to the victims of 1984 riots as per the following guidelines:-

(i).....

(ii) Each State Government will publicize the particulars of officers authorized to receive claims from riot victims. They will also nominate a senior officer as "Liaison Officer" for this purpose. His/her particulars will be communicated to the Ministry of Home Affairs;

(iii) All the claims will be duly verified/scrutinized by the local administration/ agency of State Governments;

(iv) Each state government will constitute a Committee, which will consider the verified/ scrutinized claims and give recommendation whether the claim should be accepted for payment or rejected;

(v) Based on the recommendation of the Committee, the State Governments will initially make disbursement of the amount from their own budget;

(vi) After making disbursement, the State Governments will calculate the total expenditure incurred on payment of exgratia/ compensation and seek reimbursement form the Ministry of Home affairs;

(vii)

(viii) The State Governments would review the procedures prescribed for verification/scrutiny of claims to make it simple and less cumbersome to avoid delay and harassment to the riot victims;

(ix) In cases where the claims are supported by proof of having received the amount of compensation paid by the State Governments earlier, that may be considered as adequate and no additional proof may be required. It would be

ensured that the claims are not rejected on technical/flimsy grounds.

10. It is seen that the petitioner has claimed the relief under the package for the damage he sustained on account of his shop along with stock having been set on fire by some miscreants during communal riots broken out in Shimla Town on 3.11.1984. As per Clause 1(v) & (vi) of the Circular (Annexure P9 2/Annexure R-1), a victim is entitled to be compensated under the package only qua such damage caused to his uninsured commercial/industrial properties @ 10 times of the amount originally paid after making deduction thereof.

11. If coming to the own case of the petitioner as set out in the writ petition, he was dealing with the whole sale business of shoes and the stock thereof on the ground floor of his business premises duly insured for a sum of `2,30,00/-. If it is so, the damage, if any, caused to him being duly insured, he is not entitled to any relief under the "Rehabilitation Package". He was running the business under the name and style "Shimla Messrs Footwear". Thus, prima facie as is evident from the name and style under which he was running the business, in the given facts and circumstances, it is difficult to believe that the uninsured stock worth `8 lakhs of cosmetic items was also stored on the first floor of the said business premises. Otherwise also as per Clause 3(iii) to (vi) of the Circular (Annexure P-2/Annexure R-1), all the claims were to be scrutinized by a Committee constituted by the State Government and thereafter to make recommendation as to whether the claim should be accepted for payment or rejected. Based on such recommendations of the Committee, the amount, if any, was to be disbursed by the State Government from its own budget, no doubt subject to reimbursement thereof by the Govt. of India, Ministry of Home Affairs.

12. In the present case, the petitioner has lodged the claim with the 2nd respondent vide his applications dated 20.4.2006 (Annexure P-5) and dated 11.01.2010 (Annexure P- 7). It has been got inquired into from the Tehsildar (U), Shimla, who had conducted the investigation and recorded statement of the petitioner (Annexure P-10), statements of Sh. Ramakant Aggarwal, his neighbourer (Annexure P-9) and one Sh. Parkash Chand, his another neighbourer (Annexure P-11) as well as considered the certificate (Annexure P-12), which was issued by the Vice President, Sri Guru Singh Sabha, Shimla. After considering such material, he collected during the course of inquiry, the report (Annexure P-13) was submitted to the Sub Divisional Officer (C), Shimla (Urban) reporting therein the total loss caused to the petitioner as `15 lakhs out of which `1,18,000/- was paid to him as insurance claim by the Insurance Company. The Sub Divisional Officer (C), Shimla (Urban) in turn submitted the report so given by the Tehsildar to the 3rd respondent vide communication (Annexure P-14). The 2nd respondent after taking into consideration the report so submitted by Tehsildar (U), Shimla and Sub Divisional Officer (C), Shimla (Urban) had reported the matter vide letter dated 15.2.2010 (Annexure P-15), to the Under Secretary (Home) to the Govt. of Himachal Pradesh, intimating thereby that though as per the inquiry conducted by the Sub Divisional Officer

(C), Shimla (Urban), the loss caused to the petitioner has been assessed to the tune of ` 15 lakhs, however, in view of no exgratia payment having been made to the petitioner earlier, the directions of the Govt. of India in Clause 1(v) & (vi) of its Circular dated 16th January, 2006 (Annexure P-2/ Annexure R-1) were not applicable in his case. Also that the petitioner, however, was held entitled to the maximum claim/ex-gratia amount to the tune of as ` 4,000/- and as per the Circular of the Govt. of India, the 10 times thereof i.e. ` 40,000/- was sanctioned in his favour and recommended to be paid under the H.P. Emergency and Relief Manual. Reply to the writ petition filed on behalf of the 1st and 2nd respondents reveals that a sum of ` 40,000/- was released to the petitioner though Cheque No.8303827 dated 25.3.2010 as ex-gratia amount being a case of natural calamity.

13. As a matter of fact the 1st and 2nd respondents never admitted the case of the petitioner as a victim of 1984 riots. No doubt, it has come in the inquiry conducted by the Tehsildar (U), Shimla that the business premises of the petitioner was set on fire by some miscreants during Anti Sikh Riots and violence having taken place on 3.11.1984. However, except for the statements (Annexures P-10 & P-11) of the so called neighbours of the petitioner and also the certificate (Annexure P-12), issued by the Vice President, Sri Guru Singh Sabha, Shimla, neither the report of Patwari/Kanungo nor the copy of FIR has been produced on the record of this writ petition. As a matter of fact, it is these documents which would have thrown some light into the cause of fire which broke out in the business premises of the petitioner. He, however, to the reasons best known to him has withheld these documents from this Court. As per his own case that instead of registering a case at his instance, it is he who was arrested by the police and tortured while in custody, leads to the only conclusion that the facts are not so straight as pleaded in the writ petition. It has also come on record that some FIR was registered pertaining to this incident, however, that case was closed being untraced. Though nothing in this behalf has been brought on record, however, it appears that the FIR was closed for want of evidence suggesting that the petitioner was a victim of communal riots. The petitioner thus seems to have not been included in the list of victims of Anti Sikh Riots as has come in reply to the writ petition filed on behalf of 1st and 2nd respondents. However, keeping in mind that his business premises were gutted in fire, he has been awarded ex-gratia amount under the H.P. Emergency and Relief Manual, which was assessed by the 2nd respondent as ` 4,000/- and by allowing the benefit of the Circular (Annexure P-2/Annexure R-1) issued by the Govt. of India, Ministry of Home Affairs, he has been made payment @ 10 times thereof i.e. ` 40,000/-.

14. As has been pointed out at the outset, no doubt the present is a case where the business premises of the petitioner was gutted in fire and he has received the insurance claim from the Insurance Company qua the damaged insured stock stored in the said premises. The claim that there was stock of uninsured cosmetic items worth ` 8 lakhs, also lying on the 1st floor of the premises, is

highly disputed. Similarly, the fact whether his business premises, were set on fire by some miscreants during the Anti Sikh Riots having taken place after the assassination of Smt. Indira Gandhi, former Prime Minister of India, is also required to be pleaded and proved before an appropriate forum, if so advised. The loss caused to the petitioner is to the tune of `15 lakhs on account of business and `5 lakhs allegedly on account of his harassment, mental torture and humiliation while in police custody, being a contentious issue also needs to be pleaded and proved by way of cogent and reliable evidence. This Court is of the considered opinion that in writ jurisdiction, such complicated questions of fact cannot be gone into nor any such relief can be granted to the aggrieved party.

15. Although as per the stand taken by the 1st and 2nd respondents, the case of the petitioner was never included being that of a victim of 1984 riots nor any ex-gratia amount/payment ever released in his favour and in terms of Circular (Annexure P- 2/Annexure R-1), it is only those riots victims who initially were identified to be so and made some payment and already released some amount by way of ex-gratia grant, were held entitled to 10 times of such amount already paid to them under the "Rehabilitation Package" sanctioned by the 3rd respondent, yet irrespective of such stand and factual position come on record, the petitioner may approach the appropriate forum for redressal of his grievances, if so advised. So far as the relief sought in this writ petition is concerned, the same for the reason recorded hereinabove cannot be granted in writ jurisdiction.

16. In the light of what has been stated hereinabove, this writ petition fails and the same is accordingly dismissed. Liberty however, is reserved in favour of the petitioner to approach an appropriate forum in accordance with law having jurisdiction over the matter for redressal of his grievances, if any, if so advised. In view of the dismissal of the main petition, pending application(s), if any, stands disposed of.