

(2012) 02 DEL CK 0608

In the Delhi High Court

Case No : Writ Petition (C) No. 2604 of 2010 and W.P. (C) No. 3035 of 2010

Partap Singh

APPELLANT

Vs

Union of India and Others
 Daljit Singh and Others Vs
Government of NCT of Delhi and Others

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 8 AD 160 : (2012) 188 DLT 574

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Parul Goel, in W.P. C No. 2604/2010 and Ms. Madhu Tewatia, in W.P. C No. 3035/2010, for the Appellant; A.S. Chandhiok, ASG with Ms. Rita Kaul, Bhagat Singh, Vidit Gupta and Ms. Hasleen Singh and Mr. Nazmi Waziri in W.P. (C) No. 2604/201 and Mr. A.S. Chandhiok, ASG with Mr. Anuj Aggarwal, Bhagat Singh, Vidit Gupta and Ms. Hasleen Singh for UOI and Mr. Nazmi Waziri, for GNCTD in W.P. (C) No. 3035/2010, for the Respondent

Judgement

Vipin Sanghi, J.—The petitioners in both these writ petitions under Article 226 of the Constitution of India seek the same prayer i.e., for a direction to the respondents i.e., the Government of NCT of Delhi and the Union of India to pay and release to the petitioners rehabilitation grant of ex-gratia at the rate of Rs. 2 lacs per family, along with interest, on account of delay, in terms of notification no. U13018/46/2005-DELHI-I(NC) dated 16.01.2006 issued by the Union of India.

2. The petitioners claim that they were residents of Delhi when the communal riots in the wake of assassination of late Prime Minister Smt Indira Gandhi broke out in the year 1984. The petitioners claim that they migrated to Punjab in the wake of the said riots and they were issued red cards by the State of Punjab which evidences the fact that they started residing in Punjab. According to the petitioners, they continued to live in Punjab for several years and when the situation normalized in Delhi after few years (i.e., four years) they returned back

to Delhi and started living in Delhi.

3. Pursuant to Justice Nanavati Commission Enquiry Report which went into the 1984 riots, the Government of India issued the aforesaid decision dated 16.01.2006 on the subject of sanction of rehabilitation package to provide relief to victims of 1984 riots. This communication was addressed to various affected States, primarily in North India. The said communication conveyed the decision of the Government of India to sanction ex-gratia amount and other assistance to the victims of 1984 riots. Twelve different kinds of ex-gratia payments and other assistance were provided in the said policy decision. Clause 12 of the first paragraph is what is relevant for the purpose of the present petition, and the same reads as follows:-

(xii) Approximately 22,000 families of victims of the riots, which migrated to Punjab from other riot affected States and are still living there, would be paid Rehabilitation Grant @ Rs. 2 lakh per family. Similarly placed families of victims of the riots living in other States may also be given Rehabilitation Grant at the rate of Rs. 2 lakh per family.

4. When the petitioners applied for grant of rehabilitation grant at the rate of Rs. 2 lacs per family, the same was met with refusal on the ground that the petitioners had returned to Delhi and they did not continue to remain in Punjab to which State they had migrated after the riots in the year 1984. On account of the said stand taken by the respondents, this petition has been preferred by the petitioners.

5. The submission of learned counsels for the petitioners is that the interpretation sought to be given of Clause (xii) aforesaid by the respondents and, in particular, by the Union of India is very narrow, and defeats the very purpose of granting rehabilitation package to the riot victims. It is submitted that the purpose of Clause (xii) was not to deny rehabilitation grant to such families which migrated to the Punjab and other States, from their home States (where they were earlier residing), but after a few years, returned back to Delhi/ their home State for whatever reasons. It is submitted that even such families required rehabilitation which had migrated to other states, as they had to flee for their lives without their valuables and belongings, and had to struggle in the State to which they migrated, to settle themselves. Their subsequent relocation to their parent State (in this case Delhi) did not mean that they were not entitled to rehabilitation grant in terms of Clause (xii) aforesaid.

6. The petitioners have placed reliance on couple of decisions of this Court in this regard. In *S. Swarn Singh Arora vs. UOI & Ors.*, W.P.(C) 692/2007 decided on 10.02.2009, the dispute, as initially resolved by the Court, was whether the Delhi Government or the Punjab Government would provide the rehabilitation package of Rs. 2 lacs to such of the families who had migrated to Punjab after the riots, but after a few years, had returned back to Delhi. The Court took the view that since they have re-migrated to Delhi, the Delhi Government should disburse the

rehabilitation grant and the State Government would be entitled to claim reimbursement from the Central Government as, under the circular dated 16.01.2006, all the grants had to be eventually provided by the Government of India. A review petition was preferred in the said case, being Review Petition No. 260/2009, which was disposed of on 18.09.2009. In this order the Court specifically interpreted the Clause (xii) aforesaid, in the following manner:-

The submission made is that though the petitioner was displaced due to riots from Delhi and stayed in Punjab, he would be not entitled as he no longer resides there. Apart from reiterating the findings made earlier, this Court is of the opinion that the submission is untenable. Para-1 (xii) is explicit in this regard; which reads as follows:-

1(xii) Approximately 22,000 families of victims of the riots, which migrated to Punjab from other riot affected States and are still living there, would be paid Rehabilitation Grant @ 2 lakh per family. Similarly placed families of victims of the riots living in other States may also be given Rehabilitation Grant at the rate of Rs. 2 lakh per family.

The last sentence emphasizes that similarly placed families of victims of the riots living in other States should also be given Rehabilitation Grant.

The review petitioner's argument about the petitioner's disentitlement is based on his not staying on in Punjab. This argument is particularly untenable since there is no denial of the basic foundation (sic) of the writ petitioner's entitlement as a riot victim and his being forced to move on to Punjab at the relevant period. That he was unable to stay on there due to vicissitudes of time is an irrelevant factor, if the overall objectives of the policy to rehabilitate the victims, is kept in mind. Besides, the last sentence emphasizes that the families of victims in other States could also be given Rehabilitation Grant. The restrictions urged by the review petitioner is, therefore, not supportable in terms of the policy itself as it artificially creates (sic) a single class of victims into two groups; those who were able to stay on at the place where they went to, and who are unable to do so because of the change in fortune.

In view of the above discussion, the review petition is unmerited; it is accordingly dismissed. In the circumstances of the case, the respondents shall file an undertaking to comply with the directions in the writ petition within two weeks and an affidavit in that regard shall be filed within a week from today. All pending applications stand disposed of.

7. The Letters Patent Appeal preferred by the Government of NCT of Delhi and Others was also dismissed by this Court on 10.03.2010.

8. Reliance is also placed on another decision of the learned Single Judge of this Court in *Sardar Paramjeet Singh vs. Govt. of NCT of Delhi & Ors.* W.P.(C) No. 4832/2007 decided on 29.04.2009. In this case as well, the riot victim had migrated to Punjab, and thereafter returned to Delhi after considerable time. The

claim for rehabilitation grant was rejected by both, the Punjab Government and the Govt. of NCT of Delhi. Once again, the Court lamented at this state of affairs which had caused immense prejudice to the claimant for whose benefit the rehabilitation package had been formulated. Once again the Govt. of NCT of Delhi was directed to make payment of the rehabilitation grant of Rs. 2 lacs and the Govt. of NCT of Delhi was specifically declared to be entitled to claim the said amount from the Government of India in terms of the circular dated 16.01.2006.

9. Mr. A. S Chandhiok, learned ASG, who appears for the Union of India, has opposed the petition by submitting that Clause (xii) of the circular dated 16.01.2006 clearly provides that for becoming eligible for rehabilitation grant, it is essential that the family should be still living in the State to which it migrated on account of the 1984 riots. The said grant would not be available to a victim's family who may have returned back to the home State. Mr Chandhiok submits that this circular was issued in the year 2006, whereas the riots had taken place in the year 1984. The Government of India was conscious of the fact that there were about 22000 such families who had migrated from one State to another and had settled in the later State. He submits that the interpretation as suggested by the petitioner, if adopted, would open a Pandora's box and would put undue strain on the government's resource which it had not foreseen while formulating the policy dated 16.01.2006. Mr. Chandhiok also places reliance on the decision of the Jharkhand High Court in a batch of writ petitions including W.P. (C) 3748/2005 decided on 02.04.2008. In those proceedings, the Government of India had produced before the Court the clarification issued by it to the aforesaid Clause (xii), which stated that such families which had temporarily migrated to Punjab, but had subsequently returned to their original place, would not be entitled to rehabilitation grant of Rs. 2 lac per family. Mr. Chandhiok submits that the said clarification had been accepted and implemented by the Court.

10. Mr. Chandhiok has also sought to draw a distinction between the present cases and the one dealt with by the Division Bench in LPA 109/2010 in the case of S. Swarn Singh Arora (supra). He submits that in that case the riot victim was initially staying in the State of Uttar Pradesh. He first migrated to the State of Punjab and thereafter to Delhi. He submits that the victim did not go back to the State of Uttar Pradesh which was his home State. He submits that it was in those circumstances that the Division Bench had upheld the grant of the rehabilitation grant to the victim.

11. Mr. Waziri, learned counsel for the Govt. of NCT of Delhi submits that even if the Govt. of NCT of Delhi is of the view that the persons, such as the petitioners, are entitled to be paid the said rehabilitation grant, the Union of India is opposing the release the said amounts to Govt. of NCT of Delhi.

12. Having heard learned counsels for the parties and perused the various decisions relied upon by the parties, as also examined the circular dated 16.01.2006, I am of the view that there is merit in these writ petitions and the petitioners are entitled to grant of rehabilitation grant of Rs. 2 lacs per family,

provided they otherwise are able to satisfy the concerned authorities with regard to the genuineness of their case. The families who migrated to other States on account of the breaking out of the riots in the year 1984; settled there, and; subsequently returned to Delhi after few years cannot be denied the said rehabilitation grant merely on account of the fact that they returned to Delhi subsequently after a few years.

13. The interpretation to Clause (xii) sought to be given by the Union of India, in my view, is very constricted and narrow. The purpose of granting the rehabilitation grant of Rs. 2 lac per family, on a plain reading of Clause (xii), appears to be that families which had fled from the riot affected areas in a given State to, either Punjab, or some other State, and had settled down in the later State required support, as their rehabilitation in the later State was unplanned, and such persons had to flee for their lives without all their belongings, and without any avocation or source of livelihood. Such families had to restart their lives in the relocated State to find their feet. They had to find jobs, avocations, fend for their children's education and mix with people in a new environment, who may not, always, have been conducive and sensitive to their needs and plight. It was to assuage the difficulties that such families would have faced in the process of rehabilitation, that the rehabilitation grant of Rs. 2 lacs per family was granted under Clause (xii) of the circular dated 16.01.2006. The said circular does not expressly state, and does not purport to exclude from rehabilitation grant, such families which may have returned back to their parent States after few years.

14. It would be a different matter if a family were to migrate from the home State to another State, only for a few weeks or months, and thereafter return back to the home State. But where a family has migrated and lived in another State for a few years (in these cases at least four years), such families obviously settled down in the migrated States and remained there for substantial lengths of time, for which they would be entitled to one time rehabilitation grant. The Govt. of India has recognized the fact that such families, who relocated to another State, are entitled to the said grant. Merely because such families may have returned back after few years would not disentitle them to the said grant.

15. The distinction sought to be drawn by the Union of India between cases where the migrants did not return to the home State, and those who did so after settling down in the other State has no nexus with the object sought to be achieved, which is to provide rehabilitation grant to those families which were uprooted from their home State because of the riots and got rehabilitated in a State different from their home State. This distinction is, therefore, arbitrary. What is relevant is that the migrant family had the animus residendi to settle in the migrated State when it migrated to the other State, and it settled down, as a matter of fact, there for a considerable length of time.

16. The decision of the Jharkhand High Court relied upon by the learned ASG does not advance the respondent's case, for the simple reason, that the

Jharkhand High Court has not interpreted Clause (xii) of the aforesaid circular dated 16.01.2006, and has merely accepted the self serving clarification issued by the Govt. of India. There is absolutely no discussion or debate in the judgment of the Jharkhand High Court as to whether Clause (xii) aforesaid would apply to cases of the kind considered by this Court. Moreover, the classification was that clause (xii) would not apply where the movement of the family from the home state to the other state was "temporary". Where the family had moved to another state and settled there for four long years before returning to the home state, it cannot be said to be temporary. The settlement was as good as permanent for all practical purposes and clearly so in the context of clause (xii) of the letter dated 16.01.2006.

17. In my view, the aforesaid distinction made out in the case of S. Swarn Singh Arora (*supra*), makes no difference whatsoever in the light of the discussion above. Moreover, the subsequent decision in Sardar Paramjeet Singh (*supra*), is a decision of the coordinate bench of this Court with which I am in respectful agreement and see no reason to differ with. The submission that the Union of India would not have the resources to defray the grant to all those eligible under clause (xii) cannot be accepted. It is for the Central Government to make available the resources. Such an argument cannot justify discriminatory or arbitrary treatment between similarly situated persons.

18. Accordingly, these petitions are allowed with costs of Rs. 10,000/- in each petition. I direct the Govt. of NCT of Delhi to examine the cases of each of these petitioners on merit, and if they are found to be genuine, grant the rehabilitation grant of Rs. 2 lac per family. The said examination be completed within the next two months and, if the petitioners cases found to be genuine, the grant be disbursed within one month thereafter. It shall be open to the Govt. of NCT of Delhi to claim reimbursement of the amounts disbursed to the petitioners from the Central Government.

19. Petitions stand disposed of.