(2019) 04 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 611 Of 2015

Prithvi Raj Sharma APPELLANT

Vs

State Of Jammu & Kashmir Anothers RESPONDENT

Date of Decision : 22-04-2019

Acts Referred:

Citation : (2019) 04 J&K CK 0023

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Nitin Bhasin

Final Decision : Disposed Off

Judgement

1. Despite direction, counter affidavit has not been filed by the respondents.

2. The case of the petitioner is that he and his wife were working in Song and Drama Division, Ministry of Information and Broadcasting, Srinagar zone and were residing at Nirankari Bhawan Srinagar. It is stated that during the period 11.05.1984 to 09.06.1984, when the petitioner and his wife were away from their residence in connection with their official work, the whole moveable property of the petitioner worth Rs. 73,650/- (the then price of the Articles / goods) was set ablaze by some miscreants during riots. The Government took a policy decision and vide Govt. order No. 1421-GD of 1984 dated09.08.1984 granted ex-gratia relief/ compensation to the persons whose property was set ablaze during riots in Nirankari Bhawan and nearby area like Arya Samaj Mandir/ School etc. It is further stated that the case of the petitioner was verified by the concerned authorities and then sent to the General Administration Department for passing the orders for grant of ex-gratia relief. Despite verification of the claim of the petitioner and repeated requests of the petitioner, compensation was not released in his favour.

3. From the perusal of the documents annexed with the petition, it is evident that the petitioner previously filed a writ petition bearing OWP No. 29/2005 for

grant of compensation/ex-gratia relief in terms of Government Order No. 1421-GD of 1984 dated 09.08.1984, which came to be disposed of by this Court vide order dated 01.03.2010. The concluding para of order dated 01.03.2010 reads as under:-

"This petition is, accordingly, disposed of with the direction to respondents, more particularly to respondents 1 and 2?to consider the case of the petitioner in accordance with Rules and mandate of policy decision if any covering the case of the petitioner and pass appropriate order within a period of two months from the date copy of this order is served on them.

Disposed of along with all connected CMP(s)."

4. In compliance to the aforesaid direction passed by this Court, Secretary to Government, General Administration Department, vide Government Order No. 1716-GAD of 2013 dated 19.12.2013 granted ex-gratia relief to the petitioner. The said Government order reads as under:-

"Subject:- OWP No. 29/2005 (Contempt Petition No. 111/2013)-titled Prithvi Raj Sharma Vs. State & Ors.

Government Order No. 7/6 GAD of 2013 D a t e d 19.12. 2013

In compliance with the directions of Hon'ble High Court dated 01.03.2010 passed in OWP No. 29/2005 tilled Prithvi Raj Sharma Vs. State &Ors, read with order dated 21.11.2013 passed in contempt petition (OWP) No.111/2013, sanction is hereby accorded to the payment of Rs. 73,650/- in favour of petitioner namely, Prithvi Raj Sharma S/O Shri Mansa Ram Sharma R/O 59-Gali Baba Lal Ji, Jain Bazar, Jammu, as ex-gratia relief on account of losses caused to the immovable property of the petitioner during 1984 riots. The amount shall be debited to Security Related Expenditure (SRE) and payable by the Government in the Home Department.

By order of the Government of Jammu and Kashmir."

5. From the perusal of the aforesaid Govt. order, it is evident that no interest has been given to the petitioner.

6. I have heard learned counsel for the petitioner and gone through the material on record.

7. In Union of India vs. Smt. Mithauli Devi, 2007 (58) AIC 613 (Civil Misc. Writ Petition No. 26910 of 2007 decided on 11.06.2007, Hon'ble Division Bench of Allahabad High Court has held as under:-

"3.The case represents a very sorry state of affairs, as earlier the respondent had approached the Tribunal for quashing the impugned orders dated 02.08.1999 and 24.02.2003 by filing the Original Application No. 768 of 2003, by which she had been denied the ex gratia payment,. The said Application was disposed of vide judgment and order dated 8th January, 2004, The Tribunal while deciding the case had taken note of the fact that during the pendency of the Application, the payment of the ex gratia had been directed and the said application was disposed of with the following directions.

"Now that the respondent has already taken a decision to grant ex gratia payment to the applicant in accordance with law, Office Memorandum dated 13.05.1988, I am sure they would apply their mind to the point of delay also and in case it is so admissible under law, she may be granted the interest as well at admissible rates in accordance with law."

4. Thus, it is evident from the aforesaid judgment and order that the issue of grant of ex gratia payment had been decided by the petitioners themselves and it has not been decided by the Tribunal. Therefore, the issue agitated before us cannot be entertained.

5. So far as the impugned order dated 24th November, 2006 is concerned, admittedly, there was a delay of 9 years in making the ex gratia payment, which the respondent was entitled in view of the decision taken by the petitioners themselves. In the facts and circumstances of the case, direction for making the payment of interest is justified.

6. Interest is compensatory in character and can be recovered for withholding the payment of any amount when it is due and payable. It is different from penalty and tantamount to compensation as the person entitled for recovery has been deprived of the right to use the said amount.

7. In Associated Cement Co. Ltd. v. Commercial Tax Officer, Kota and Ors., AIR 1981 SC 1887, the Hon'ble Apex Court held as under:

Interest is ordinarily claimed from an assessee who has withheld payment of any tax payable by him and it is always calculated at the prescribed rate on the basis of the actual amount of tax withheld and the extent of delay in paying it. It may not be wrong to say that such interest is compensatory in character and not penal.

8. A similar view has been reiterated in Baij Nath Gupta v. State of Bihar and Ors., (1996) 10.SCC 297 ; S.R. Bhanrale v. Union of India and Ors.,(1996) 10 SCC172 ; Pratibha Processors and Ors. v. Union of India and Ors., (1996) 11 SCC101 ; Union of India v. Ujagar Lal, (1996) 11 SCC 116 and Om Prakash Gargi v. State of Punjab, (1996) 11 SCC 399: 1997 (75)FLR 41(SC).

9. In Abati Bezbaruah v. Deputy Director General, Geological Survey of India and Anr.,(2003) 3 SCC 148: 2003(5) AIC 394 (SC): 2003(51) ALR 111. the Hon'ble Apex Court held that interest is a compensation for forbearance from detention of money and that interest being awarded to a party only for being kept out of the money which ought to have been paid to him.

10. Interest means, inter-alia, a compensation paid by the borrower to the lender for deprivation of the use of his money as held by Hon'ble Apex Court in

Consolidated Coffee Ltd. v. Agricultural Income Tax Officer, Madikeri and Ors. (2001) 1 SCC 278 and Central Bank of India v. Ravindra and Ors. AIR 2002 SC 3095.

11. In Secretary, Irrigation Department, Government of Orissa and Ors. v. G.C. Roy , AIR 1992 SC 732: 1992 (19) ALR 4 (Sum), the Constitution Bench of the Hon'ble Apex Court observed that a person deprived of use of money to which he is legitimately entitled as of right, to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages.

12. The payment of interest can be awarded by application of the statutory provisions as held by the Supreme court in Mafatlal Industries Ltd. v. Union of India and Ors., (1997) 5 SCC 536 ; Kuil Fireworks Industries v. Collector of Central Excise and Anr.,AIR 1997 SC 3559, and GTC Industries Ltd. v. Union of India and Ors., (1998) 3 SCC 376.

13. Interest may also be awarded on equitable grounds. Vide Bengal Nagpur Railway Co. Ltd. v. Ruttanji Ramji and Ors. A.I.R. 1938 P.C. 67; Satinder Singh v. Umrao Singh and Anr. AIR 1961 SC 908 ; Laxmichand v. Indore Improvement Trust, AIR 1975 SC 1303 ; D.P. Gupta v. Union of India and Ors.,AIR 1987 SC 2257; United India Insurance v. Ajmer Singh Cottan & General Mills and Ors., AIR 1999 SC 3027: 1999(37) ALR 12; Sovintorg (India) Ltd. v. State Bank of India., AIR 1999 SC 2963: 1999 (37) ALR 121.

14. That payment of interest is obligatory on the part of that party responsible for withholding the amount legally due to another party is crystallized as law by the Apex Court in the case of Union of India v. Justice S.S. Sandhawalia.,(1994) 2 SCC 240: 1994 (68) FLR 595 (SC) as already cited above.

15. When rules are silent about payment of interest, whether an individual is entitled to grant to interest on equity basis? Answer to this question is available in Union of India v. J.K. Goel (Dr) 1995 Supp (3) S.C.C. 161.

16. In J.K. Synthetics Ltd. v. Commercial Taxes Officer, AIR 1994 SC 2393, the Constitution Bench of the Hon'ble Apex Court overruled its earlier judgment in Associated Cement Ltd. (supra) on certain points but observed as under:

"Therefore, any provision made in a Statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not adjectival law."

17. In Union of India and Ors. v. Upper Ganges Sugar Industries Ltd., (2005) 1 SCC 750: 2005(26) AIC 23 (SC), after considering various aspects of interest, the Court held that the interest can be granted on the grounds of equity or in view of the statutory requirement but where the amount has not been withheld without any justification, the equity would not apply. The Court held that in absence of any provision in the contract or any statutory provision and not justifying on equity, the interest should not be awarded.

18. Thus, the law can be summarised that the interest, being compensatory in nature, should be awarded if it is provided in the contract/agreement, or the statutory provisions provide for it. It may also be awarded on equitable ground, provided the facts and circumstances of the case justify it and the law does not prohibit it.

19. If the instant case is examined in the aforesaid settled legal propositions, the case does not present special features warranting any interference with the impugned judgment and order of the learned Tribunal.

20. Petition is totally misconceived and accordingly dismissed."

8. In view of the above quoted law, the petitioner is also held entitled to interest at the rate of 6% p.a from the date of incident i.e., 09.06.1984 till the aforesaid Govt. order dated 19.12.2013 was passed by the Secretary to Government, General Administration Department.

9. The writ petition stands disposed of, in the above terms.