
(1995) 08 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : LPA (W) No. 109 of 1992

State of Jammu and Kashmir	Vs	APPELLANT
Jeet General Store and Others		RESPONDENT

Date of Decision : 28-08-1995

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : AIR 1996 J&K 51

Hon'ble Judges : M. Ramakrishna, C.J;V.K. Gupta, J

Bench : Division Bench

Advocate : A. Kapoor, AAG, for the Appellant; R.P. Bakshi and A.V. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Gupta, J.—This appeal under clause 12 of the Letters Pattern is directed against the judgment dated 18th May, 1992, passed, by the

learned single Judge of this Court in Writ Petition No. 273/1991. The judgment under appeal, however, is not a detailed one because it is based

on a judgment earlier pronounced by the learned single Judge on 8th March, 1991 in Writ Petition No. 5/1990 in the case of Inder Puri General

Store and Others Vs. Union of India (UOI) and Another,

2. It shall be advantageous and desirable to take note of facts leading to the filing of the present appeal by the State of Jammu and Kashmir. On 13

and January, 1989, the city of Jammu witnessed some unfortunate communal riots involving two communities. As a result of sudden outbreak of

these communal riots, a particular community suffered extensive losses with respect to its property, including damages and losses to the shops

situated and located in various areas and bazars of the town. It appears that

consequent upon the losses and damage suffered by such people in the aforesaid communal riots of 13 January, 1989, they attempted and tried to get help from the State Government so as to be compensated for such loss and damage but having failed therein, approached this Court by filing Writ Petition No. 5/1990. In the petition entitled M/s. Indu Puri General Store v. Union of India and another, as many as nine persons had joined as petitioners to claim compensation from the Union of India and the State of Jammu and Kashmir, for the losses suffered by them to the extent indicated in the annexures filed with that writ petition. For claiming such compensation in that petition, those petitioners had sought the mandamus from this Court directing respondents to pay the amounts reflected in Annexures to the petition in favour of the petitioners. Vide his detailed judgment dated 8th March, 1991, the learned single Judge of this Court allowing the aforesaid petition did in fact issue a mandamus to the respondent No. 2, that is, State of Jammu and Kashmir to pay to those petitioners the compensation to the extent of loss suffered by them as it was assessed by a Committee constituted by the Government for this purpose. It is worthwhile to mention here that immediately on the occurrence of the communal riots, in its aftermath, the State Government vide its order dated 23-1-1989, sanctioned ex-gratia relief in favour of the persons whose property had suffered damage. Vide Government Order No. Rev/ER/21 of 1989 dated 23-1-1989, the Govt. of Jammu and Kashmir accorded sanction to the grant of ex-gratia relief in favour of persons, apart from some others whose property had suffered damage during the communal riots occurred on 13-1-1989. One of the reliefs sanctioned relating to the properties reads as under:--

Relief at 10 per cent, of the estimated loss caused to the moveable or Immovable property including vehicles of all categories subject to the maximum of Rs. 25,000/- in each case. This was ipso facto apply irrespective of the insurance claim which the sufferers will get from insurance companies in due course of time.

3. On 20-1-1989, Deputy Commissioner, Jammu, had issued an order whereby a Committee of two persons, namely, Tehsildar and "Additional Tehsildar, Jammu, was constituted to assess and calculate the losses to the property which might have occurred due to the aforesaid communal riots

of 13th January, 1989. On 6-2-1989, the Deputy Commissioner had sanctioned ex-gratia relief in favour of some victims of these riots on the

basis of the representation of the aforesaid Committee and in accordance with the mandate contained in Govt. Order dated 23-1-1989 (supra).

4. Undoubtedly, the nine persons who were the petitioners in Writ Petition No. 5/90 did not feel satisfied with the grant of ex-gratia relief in the

manner it was given and accordingly approached this Court for the grant of compensation to the entire extent of the losses suffered by them or at

least to the extent as was assessed by the Committee constituted by the Deputy Commissioner vide his order dated 20-1-1989 (supra). After

discussing various aspects of case, the learned single Judge allowed the writ petition as noticed above. Writ Petition No. 5/90 was filed on 2-1-

1990. Writ Petition No.273/ 1991, M/s. Geet General Store v. Union of India and others out of which the present appeal has arisen was

admittedly filed after the aforesaid Writ Petition No. 5/90. Based on the judgment in Writ Petition 5/90, as already noticed, the learned single

Judge disposed of Writ Petition No. 273/1990 (1991) by placing reliance upon the earlier judgment.

5. For disposing of this appeal we summoned the record of Writ Petition No. 5/90 and found that in that case, the appellant-State had filed its

counter in answer to the writ petition. Since the counter in that petition dealt with all the points raised and urged in the present case, we had no

hesitation in considering that counter for the purposes of ascertaining the facts in the present case.

6. The question as to whether the respondents in the present appeal, who were the writ petitioners in Writ Petition No. 273/1991 should be held

entitled to any compensation as a matter of right indeed requires our consideration and determination in this appeal. This question is based on a

careful examination of the liability of the State in the peculiar facts of the present case. If the State is indeed found liable to compensate the

petitioners for the losses suffered because of communal riots, we should have no hesitation in upholding the judgment and reiterating directions to

the State to pay amounts in question to the writ petitioners. If, however, on consideration and examination of the issues involved, we find that the

State cannot be held liable in the circumstances of the present case to compensate the writ petitioners for the losses suffered, we should have

equally no hesitation in allowing this appeal by observing that the directions issued by the learned single Judge were not based on correct application of law.

7. In the course of the judgment in Writ Petition No. 5/1990, the learned single Judge has dwelt into the scope and application of Article 21 of the

Constitution of India on the question of the concept of right to life and liberty and has relied upon the judgments of the Supreme Court in the case

of *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, ; *M.C. Mehta and another Vs. Union of India and others*, ; *Bandhua*

Mukti Morcha Vs. Union of India (UOI) and Others, , *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, ; *Bhim Singh, MLA Vs.*

State of Jammu & Kashmir and Others, . Ultimately the learned single Judge relied upon a judgment of a single Bench of Madras High Court in the

case of *R. Gandhi and Others Vs. Union of India (UOI) and Another*,

8. The concept of right to life and liberty as enshrined under Article 21 of the Constitution of India, being a guaranteed fundamental right

undoubtedly is very wide in its scope and applicability and with the advent of the modern strides in jurisprudence, with the revolutionary

pronouncements by the Apex Court in judgment after judgment over past two decades or so has assumed wider connotations and amplifications'.

Under this noble concept, everyone in this country has been guaranteed the right to life and liberty. The existence of the fundamental right of life

and liberty of course is one thing but the extent of the obligation of the State to protect the life and liberty is a slightly different matter.

Undoubtedly, the existence of the fundamental right of life and liberty correspondingly does create an obligation upon the State to ensure that this

right is exercised in all its fairness and absolute degree, yet the question may arise whether any abstract and absolute obligation exists in so far as

the State is concerned to ensure that by all means and methods, the State is under an absolute obligation to protect the life and liberty of the

citizens, which includes the citizens' property, whatever the circumstances may be, whatever the situation exists, irrespective of the degree of the

gravity and irrespective of a sudden, abrupt situation erupting without any warning or notice taking almost everyone unawares. Is the obligation of

the State absolute? Does such obligation not exclude some given situations, not

comprehensible? Does the State have any defence in the discharge of such obligation of a resource crunch, lack of resource management, unintended and abrupt waking of situations, where the action, even though intended is not wholly possible? Do not the circumstances exist and situations come about, even in the most advanced, developed and prosperous countries of the world, so thoroughly swearing by the concept of the rule of law, principle of life and liberty that even there the obligation of the State to protect is not complete or absolute? Answers to all these and other related questions, have to be searched and found out. After all, as to whether what is expected from the State is total, complete and absolute obligation to protect or only a fair degree of duty, undoubtedly otherwise cast upon the State, leaving the rest not only to the individual citizens themselves, but to such management matters as may take care of day-to-day routine affairs. How far and how much is the State under such obligation perhaps will depend upon each and every individual case and event.

9. The balance, therefore, is to be struck between obligation of the State to protect the property of its citizens in absolute terms and the need to protect the property in the light of the sources available as also the practical problems and difficulties faced in the day-to-day administration of the State. When, therefore, one looks into the totality of circumstances, one finds that the expectation from the State should be in the realm of reasonable care required to be taken by the State in giving such protection to the property of its citizens as in normal circumstance is required. The concept of reasonable care, therefore, in turn gives rise to an equally important concept of negligence on the part of the State. Because once a fair degree of care is expected of the State to mobilise resources and make arrangements for protecting the property of its citizens, it follows that, the negligence of the State in giving such care should be viewed with culpability. If, therefore, the Court finds that in a given set of circumstances, State was found negligent in protecting the property of its citizens, the Court cannot countenance such negligence and has to burden the State with adverse consequences. After all, being a custodian of the interests of the citizens, it is expected of the State to ensure that it is not negligent when it comes to giving protection to the life and liberty, which of course includes taking care of the property of the citizens.

10. In the aforesaid legal background one thing which very strongly emerges for our consideration is the fact, as to whether the writ petitioners had laid any foundation in the pleadings with regard to the obligation cast upon the State to protect the properties and as to whether, in the light of such obligation, the State was negligent in performing its duties or not? We are saying so because, in writ jurisdiction this Court decides the issues and questions only on the basis of the pleadings of the parties. If, therefore, a person approaches this Court invoking its extraordinary jurisdiction, he is expected to plead all necessary facts in the petition so as to constitute the sufficient cause of action, not only giving jurisdiction to the Court to entertain the matter but to even grant relief to the party coming for this purpose. This is so because, in writ jurisdiction this Court does not take evidence nor does it subject the parties to any other tests., like cross-examination of witnesses etc. so as to elicit certain facts which might be disputed by the opposite party. In a civil suit, of course the matter is entirely different because there the foundation is not so much found in the pleadings, as it is laid subsequently during the course of trial by adducing enough evidence by the parties with regard to their rival contesting stands.

11. We have very carefully scanned through and minutely considered the writ petition. This was done to find out as to whether the petitioners pleaded such facts, directly or indirectly, closely or even remotely, which would constitute allegations against the State for not either taking proper care to protect the properties or for being negligent in the discharge of its constitutional obligations of protecting the life and liberty (including' properties) of the petitioners. We are saying so because had such allegations been levelled in the writ petition these would have constituted and given rise to triable issues so as to enable and enjoin upon the respondents to effectively deal with them in their counter. Unfortunately, we have found that the petitioners totally failed and omitted to level any such allegations. The petition is woefully silent with regard to any such allegation against the respondents. We are very categorical in our observations that the petitioners did not level any such allegations against the respondents. This is despite the fact that the learned counsel for the respondents invited our attention to paras 13 to 17 of the writ petition. These paras are reproduced below:--

13. That the respondents have failed to protect the life and property of the citizens and the petitioners have been made to suffer huge loss for no

fault of theirs. So the petitioners are fully entitled to the amount of loss they have suffered in their property, stock and trade and in their business.

The respondents are under constitutional obligation to pay the losses sustained by the petitioner for no fault of theirs.

14. That depriving the petitioners of their properties and business by looting and reducing the same to the ashes by force of darkness and evil is a

clear deprivation of the right of property guaranteed by the Constitution.

15. That the petitioners have been made to suffer because of timely inaction of the law enforcing 'authorities'.

16. That the petitioners have been made to suffer because the respondents failed to carry out their elementary function of enforcing public order.

So the respondents are fully liable to pay the amount of losses as the same are sustained because of the breakdown of the Government machinery.

17. That the constitutional right of the petitioners to the property have been flagrantly 'infringed by the inaction of law and order enforcing

authority. The amount paid to the petitioners which is reflected in Annexures P-I to P-10 by the respondent No. 2 -are not only too meagre but

negligible. It is not charity that is expected of the Government, but legal recompense for wrong done to the petitioners on account of the

breakdown of Government machinery.

12. Learned counsel for the writ petitioners tried to persuade us to take the view that the aforesaid paragraphs did contain such allegations which

would constitute dereliction of duties, negligence and lack of required care on the part of the State in protecting the properties of the citizens. We

must say that we do not agree with their submissions because we found that the paragraphs are not only vague but so woefully deficient of such

allegations that not a single line, not a single sentence, not a word in these paragraphs, in our view amounts to any such allegations which would

constitute any culpability on the part of the State. We are saying so because we are conscious that it was the duty of the writ petitioners to have

specifically alleged as to how, in what manner and why was the State negligent. In the context of the facts of the present case, the minimum that

was required to be pleaded was the background relating to the outbreak of the

communal riots, did the State have any prior knowledge of the plans of miscreants and anti-social elements, based on such prior knowledge, did the State make any arrangements and, if so, were the arrangements adequate or not. The details of the processions etc. which were taken out, the route of the procession, anticipated trouble etc. were the factors which ought to have been pleaded by the petitioners in their writ petition. We are saying so because, a situation can exist where the State had no knowledge of any plans of any procession or whether communal riots occurred all of a sudden without any premeditated plan, without any previous conspiracy or design. Whenever a communal riot or a disturbance takes place all of a sudden, without any notice or warning and without any preparation or premeditation and if as a result, the disturbances take place in a very very short spell of time, and if consequently some property is damaged, surely the State squarely cannot be blamed for not protecting citizens' property. After all, it is not expected that in every town, every house, every shop, every property shall be guarded by the State around the clock. Actually one does not expect the State to do such guarding every-where, every time. After all some planning is to come in such management of protection system.

13. The question of grant of ex-gratia relief was argued. It was suggested that the very act of the State granting ex-gratia relief amounted to admission on the part of State of its culpability or negligence. We are not impressed' with the argument or by this suggestion and we do not agree with the same. Grant of ex-gratia relief cannot amount to any admission on the part of State. There are cases galore where the State grants ex-gratia relief to citizens in some tragic situations and events, where it even indirectly had no role to play with such events or happenings. Take for instance, the cases of floods, earthquakes or plain road accidents involving motor vehicles wholly owned by private parties. In all such unfortunate incidents and happenings, where the State is not connected with any act, it does grant ex-gratia relief to the citizens so that they tide over there (their) immediate difficulties. This is not done by the State because it thinks that it is or was responsible for any such act. This is done only because the State being a welfare State thinks that it should help citizens in their hour of need by some assistance, in one form or the other because the

citizens have suffered and they need help in their hour of difficulty.

14. This welfare helpful attitude of the State, therefore, cannot be construed either as any admission on its part, of its liability or obligation to pay or

of any involvement in the act which resulted in the happening or the incident. By its very nature, payment of ex-gratia relief is such that it does not

cast any obligation upon the State paying the relief.

15. The reliance placed upon the judgments of the Supreme Court in the cases of Olga Tellis and Others Vs. Bombay Municipal Corporation and

Others, ; M.C. Mehta and another Vs. Union of India and others, ; Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, and Bhim

Singh, MLA Vs. State of Jammu & Kashmir and Others, is wholly misplaced and totally out of context because in none of these judgments, the

Supreme Court was dealing with any matter relating to the obligation of the State in the protection of the property of the citizens. All these cases

related to the events where acts of commission were either alleged or attributed and it was because of such acts of commission that the State was

bound by the Court with regard to its liability to compensate the victims. Act of commission is an entirely different matter than the act of omission.

The case before us does not relate to any act of commission on the part of the State, the entire basis of the allegations of the respondents is with

regard to act of omission on the part of the State in not protecting the properties of respondents. These judgments, therefore, are of no help to the

respondents.

16. The single Bench judgment of Madras High Court in the case of R. Gandhi v. Union of India (supra) also could not be availed of by the

respondents in aid of their submissions because that case depended upon specific, categorical and unambiguous facts alleged by the petitioners

there, which, according to the Court did constitute act of omission on the part of the State in being negligent and careless in protecting the

properties of the citizens in the aftermath of the incidence. As noticed in the earlier part of this judgment, it was the responsibility of the writ

petitioners to have specifically pleaded precise details of the incidence, with reference to material particulars so as to constitute a definite cause of

action so that the State could be held liable. Precisely in R. Gandhi's case, the petitioners had laid the foundation in their pleadings with regard to

such facts but in the case before us as noticed no such foundation was laid, absence of any allegations or averments in the pleadings.

17. In the result, therefore, we are of the considered view that this was a case where the learned single Judge ought not to have fastened any

liability upon the"" State for payment of any compensation. That being the case, directions issued to the State to pay sums of money to the

respondents were neither warranted nor called for. We, therefore have no option but to set aside the judgment in appeal.

18. The result is that the appeal is allowed. The judgment impugned is set aside.

No costs.