
(2017) 12 DEL CK 0494

In the Delhi High Court

Case No : Letter Patent Appeal No. 227, 228 Of 2010

Union Of India

APPELLANT

Vs

Durlabh Singh & Ors

RESPONDENT

Date of Decision : 01-12-2017

Acts Referred:

Citation : (2017) 12 DEL CK 0494

Hon'ble Judges : Hima Kohli, J; Rekha Palli, J

Bench : Division Bench

Advocate : Amit Mahajan, Samya Panjwani, Chandra Shekhar, Prashant Shekhar

Final Decision : Dismissed

Judgement

1. These are two unfortunate cases, where the appellant/UOI has elected to assail a common judgment dated 22.04.2009, passed by the learned

Single Judge in two petitions filed in the year 2008 by the respondents herein, both victims of the riots that had engulfed Delhi in the year 1984, in the

wake of the assassination of the then Prime Minister of the country, praying inter alia that directions be issued to the appellant/UOI to release the

compensation of Rs.50,000/- each in their favour, in terms of the Central Government policy published on 12.04.1985 and further, direct release of ex-

gratia payment in terms of the policy announced by the Government of India, vide Notification dated 16.01.2006.

2. By the common judgment dated 22.04.2009, passed in W.P.(C) 5373/2008 and 5444/2008, the writ petitions filed by the respondents were partly

allowed and directions were issued to the appellant/UOI to consider and verify the original documents filed by them and if they were found to be

genuine and disclosed assessment of losses suffered in the year 1986, disburse

the amounts in their favour as required under the Central

Government's policy dated 16.01.2006, without in any manner feeling inhibited by the expression, "paid" as used in para (vi) of the said

document. Further, the appellant/UOI was directed not to deny the claims of the respondents only on the ground that they did not receive any ex-

gratia payment, if their loss was otherwise assessed in any manner.

3. With the consent of the parties, LPA 227/2010 is being treated as the lead matter. As the facts of both the cases are similar, for the sake of

convenience the facts of LPA 227/2010 are being noticed. This order shall govern both the appeals. Before dealing with the submissions made by Mr.

Amit Mahajan, learned the counsel for the appellant/UOI, we may briefly allude to the facts of LPA 227/2010.

4. In the year 1984, in the wake of the riots and anarchy that had taken place in Delhi after the assassination of Smt. Indira Gandhi, the then Prime

Minister of India, the respondent had lodged a report at the Police Station on 07.11.1984, stating inter alia that his factory building and godowns were

set on fire and in the ensuing mob violence and looting, and all the material, finish/unfinished, equipments, movable/immovable goods lying therein,

including the vehicles parked in the premises were lost on 01.11.1984. The respondent who was insured, approached his insurance company, New

India Assurance Company Ltd. for conducting a survey of his premises to assess the loss and for making payments. The Insurance Company

appointed an Inspector to visit the premises of the respondent for assessing the loss, which was assessed in LPA 227/2010 at Rs.17,20,500/- and in

LPA 228/2010, at Rs.13,03,200/-. Subsequently, the Insurance Company repudiated the respondent's claim by issuing a letter dated 02.04.1985,

informing him that the loss suffered by him was not covered under the Insurance policy taken out by him.

5. On 12.04.1985, with a view to mitigate the hardship and agony suffered by the riot victims, the appellant/UOI announced a policy, declaring that in

cases where the insurance claims of insured persons did not cover riots or fire caused by the rioters, they would be covered for grant of ex-gratia

payment of Rs.50,000/- or 50% of the estimated loss, whichever is less.

6. Based on the aforesaid policy, the respondent approached the designated Claim Verification Authority, i.e., the Additional District Magistrate, Tis

Hazari Courts, for receiving ex-gratia payment of Rs.50,000/-. The respondent was called upon to submit his survey report indicating the losses

suffered by him. At that stage, when the respondent approached New India Assurance Company Ltd., with a request to furnish him the

Surveyor's report, he was called upon to deposit sum amount. The respondent in LPA 227/2010 was directed to deposit Rs.15,853/- and the

respondent in LPA 228/2010, a sum of Rs.12,724/-. However, having suffered immense financial losses during the riots, neither of them were in a

financial position to deposit the amounts demanded by the Insurance Company.

7. When the respondent approached the appellant/UOI for seeking the benefit of the relief package announced by them, vide letter dated 13.06.1986,

he was requested to approach the office of the Additional District Magistrate, Tis Hazari Courts, on an intimation that a sum of Rs.50,000/- towards

compensation stood deposited there. But on his approaching the office of the Additional District Magistrate, Tis Hazari Courts, for release of the

compensation, he was informed that his claim had become time barred in the year 1985. Aggrieved by the aforesaid decision, the respondent ran from

pillar to post and made several representations before the concerned authorities but failed to get any redressal.

8. In the meantime, the Ministry of Home Affairs, Government of India issued a Notification dated 16.01.2006, sanctioning a rehabilitation package to

provide relief to the victims of the 1984 riots. The relevant para (vi) of the aforesaid Notification dated 16.01.2006, for sanctioning ex-gratia amount

and other assistance to the victims of 1984 riots reads as below:-

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

paid.â??

9. Referring to the aforesaid policy sanctioned by the appellant/UOI, the respondent filed his claim alongwith the requisite documents, vide a claim

petition dated 27.02.2006, but he did not receive any response. After waiting for about two years, when the appellant/UOI failed to process his claim

petition, the respondent adopted the RTI route to gather information and vide letter dated 07.04.2008, was informed that under the Notification dated

16.01.2006, payment of ex-gratia relief was being made only to those applicants, who had received the ex-gratia earlier to the said Notification, which

was a pre-requisite.

10. Aggrieved by the aforesaid decision, both the respondents filed writ petitions in the High Court stating inter alia that they had been left remediless

by the appellant/UOI as they had neither received the fixed sum of Rs.50,000/- and nor had they received the ex-gratia payment in terms of the

Notification dated 16.01.2006. On taking note of the letters dated 13.06.1986 and 18.06.1986 written by the Central Government to the respondents,

informing them that their cases had been recommended for receiving compensation of Rs.50,000/- each and further, taking into consideration the

subsequent policy dated 16.01.2006 declared by the appellant/UOI, the learned Single Judge partly allowed both the petitions and held as below:-

â??9. The Court has considered the submissions of parties. The Central Governmentâ??s endeavour through the new policy announced and

implemented w.e.f. 2006 is to ensure that wider coverage is achieved and more meaningful compensation is disbursed to the victims. That the

petitioners were victims of economic losses does not appear to be in serious dispute, as appeared from the documents placed on the record.

Their Units were also assessed since they were insured. However, the insurance amounts could not be released to them because

Surveyorâ??s fee was not paid.

10. The fact of this case as presented is somewhat peculiar and if one can term it so, unfortunate picture. The respondents assumed the

responsibility of compensating the survivors of victims who died in the riots; the responsibility of compensating economic loss was also

assumed. This was not predicated upon the victims or their dependents having been insured. In that sense, the 16.1.2006 policy is a broad

welfare measure meant to alleviate the difficulties which were perceived as un-redressed grievance of a class or section of the people. Such

being the position, the petitionersâ?? misfortune appears to be that they had insured their Units, but were unable to get the benefits of

insurance amounts for want of money or deposit of such demands at the relevant time.

11. The objective in either case, i.e., compensating the losses suffered is common. In the case of insurance, the insurer or the company

bears the responsibility of indemnifying the loss. Such losses could not be

compensated for whatever reasons but was apparently assessed.

Having regard to the broad objective of the 2006 policy meant to disburse enhanced compensation, this Court is of the opinion that if the

petitioners' claims are being denied only on the ground that they were not 'paid' the amounts in 1985-86, such interpretation or

construction would be arbitrary and appear in a discriminatory manner.

12. For the above reasons, the Writ Petitions are partly allowed. A direction is issued to the respondents to consider and verify the

petitioners' original documents and if found to be genuine and having disclosed assessments of loss in 1986 as claimed, disburse the

amounts required under 16.1.2006 Central Government's policy without any manner feeling inhibited by the expression 'paid'.

Likewise the respondents shall not deny the petitioners claim only on the ground that they did not receive any ex-gratia payment, if their loss

was otherwise assessed in any manner. The entire process shall be completed within three months from the date of receipt of application.

11. Aggrieved by the aforesaid judgment, the appellant/UOI has filed the present appeals. We may note that on 09.04.2010, when the appeals were

listed for admission, while issuing notice, the appellant/UOI was directed to deposit in court, a sum of Rs.5 lakh in each of the appeals, which was in

turn, directed to be placed in FDRs. The said order was duly complied with.

12. The main plank of the arguments addressed by Mr. Mahajan, learned counsel for the appellant/UOI is that the learned Single Judge erred in

directing any payment to be released in favour of the respondents as they did not fulfil the requirement in terms of the policy of the Govt. of India and

the very fact that they did not take any step from the year 1986 to 2006 in this regard, was itself sufficient ground to have non-suited them.

13. Mr. Chandra Shekhar, learned counsel for the respondents counters the aforesaid submission and supports the impugned judgment by stating that

the respondents cannot be blamed for the delay as they had taken every step required of them to seek compensation. He states that it cannot be

denied by the other side that having lost almost everything during the 1984 riots, the respondents' financial position was so strained that they were

not in a position to deposit the Surveyor's fee, as was demanded by the Insurance Company. In any event, it is contended that the respondents

had admittedly approached the appellant/UOI immediately on issuance of the Notification dated 16.01.2006 and they had submitted all the relevant documents in terms of their claim petitions dated 27.02.2006 and it was the appellant/UOI, who had not taken any steps thereafter, for which no blame could have been laid at their door.

14. We have heard the arguments advanced by learned counsels for the parties and having examined the documents placed on record, are of the opinion that instead of challenging the impugned judgment, the appellant/UOI should have gracefully accepted it, particularly when it was a beneficial policy that was declared by the Government for disbursing compensation to the victims of the 1984 riots. The entire object of the said policy was to give a helping hand to persons like the respondents who had suffered enormous loss of business and assets during the rampant violence that had taken place during the riots. At that time, the respondents were in such a precarious financial position that they could not even afford to pay for the Surveyor's fee as was demanded by the Insurance Company for claiming benefit under the insurance policies taken out by them.

15. Fact of the matter is that after the passage of 33 years reckoned from 1984, the respondents have not received a penny from the Insurance Company. All that they could have received under the policy dated 12.04.1985, was a sum of Rs.50,000/- that the appellant/UOI had decided to disburse to the survivors towards compensation for the economic loss suffered by them. But that was not to be. Had the said amount been released in favour of the respondents in the year 1985-86, it would have perhaps offered them some succour and helped them build back their business thereby restore normalcy to their lives. Regretfully, the sum of Rs.50,000/-payable to each of the respondents towards compensation, though sanctioned, was not released on a specious plea that their claims had turned stale. Even after the Notification dated 16.01.2006 was declared by the appellant/UOI, sanctioning a rehabilitation scheme for victims of the 1984 riots, the claims of the respondents were yet again rejected and this time on the ground that they had not received the ex-gratia payment earlier. We are firmly of the view that the said claims could not have been turned down by the appellant/UOI just because the respondents were not paid any amount earlier, as contemplated under the 2006 policy, when they had admittedly

approached the office of the Additional District Magistrate, Tis Hazari Court for release of the compensation deposited in their favour, only to be

turned back empty handed. Any other interpretation given to clause (iv) of the policy dated 16.01.2006, will amount to nullifying the underlying object

of providing broad based relief measures to victims/survivors of the 1984 riots, like the respondents herein. For the aforesaid reasons, we are afraid,

we are not in a position to accept the plea of the learned counsel for the appellant/UOI that the respondent do not fulfil the eligibility criteria for

disbursement of ex-gratia payment. There is no infirmity in the impugned judgment dated 22.04.2009, which is accordingly upheld.

16. We may note here that directions were issued in the impugned judgment to the appellant/UOI to consider and verify the respondents' original

documents and if found to be genuine and disburse the amounts under the Central Government Policy dated 16.01.2006. Learned counsel for the

appellant/UOI states that the exercise of verifying the respondents' documents is required to be undertaken by the Government of NCT of Delhi,

for which the respondents shall have to approach the respondent No.5 for completing necessary formalities and till then, the amounts deposited in

court may not be released in their favour.

17. Having regard to the fact that the respondents have been patiently waiting for relief for the past 33 years, to which they were rightfully entitled in

the year 1985-86, it would be a travesty of justice if the amounts deposited in the present appeals are not released in their favour forthwith. The

amounts in question shall be released by the Registry in favour of the respondents through their counsel, alongwith the interest accrued thereon.

However, to safeguard the interest of the appellant/UOI, it is deemed appropriate to direct the respondents to file their affidavits within four weeks,

undertaking inter alia that in the event their original documents are not found to be genuine or turned down by the respondent No.5/GNCTD for any

valid reason, then they shall refund the amounts released in their favours alongwith the interest accrued thereon.

18. To avoid any further delay in verifying the claims of the respondents, the respondent No.5/GNCTD is directed to process them within a period of

three months, in terms of the 2006 Policy. As none is present on behalf of the respondent No.5/GNCTD today, a copy of this order shall be dispatched

by the Registry forthwith to the Standing Counsel (Civil), Govt. of NCT of Delhi, for perusal and compliance.

19. The present appeals are accordingly dismissed as meritless, with costs quantified as Rs.20,000/- in each case, to be paid to the respondents through counsel within four weeks.