

SUPREME COURT OF INDIA

Sudesh Dogra

Vs.

Union of India

(P.Sathasivam CJI., Ranjan Gogoi and N.V.Ramana JJ.)

07.04.2014

JUDGMENT

RANJAN GOGOI, J.

1. The petitioner in Writ Petition (Criminal) No. 125 of 2013 is the Political Secretary of J & K National Panthers Party (JKNPP) which is a political party recognised by the Election Commission of India. Setting out figures and statistics of innocent people who have lost their lives in incidents of crime and terrorists acts committed from time to time in the State of Jammu & Kashmir, the persistent failure of the State Government to prevent such untoward incidents have been alleged alongwith the perceived inefficiency of the State Government in providing adequate relief and rehabilitation measures including compensation following such incidents. Specifically, the writ petition centres around an incident that had occurred on 17/18 of July, 2013 at a place called Gool in District Ramban, in the course of which a large body of civilian population had attacked a BSF camp and in the exchange of fire that ensued, 4 civilians had died and 44 others received serious injuries. Accordingly, the writ petition was filed seeking the following reliefs:

“(a) issue an appropriate writ order or direction in the nature of mandamus directing respondent no.2 to institute a high power judicial inquiry into the circumstances that led to the killing of four villagers and injuring more than three dozens on 18.07.2013 in village Gool, Ramban District J&K. The four villages were killed in firing whereas 42 were injured on the same day.

(b) direct respondents no.1 & 2 to provide full security, boarding and lodging facilities, besides, all medical, care to the pilgrims to Shri Amarnath & Shri Mata Vaishno Devi who have been stranded at different stations during their journey in the State of J&K due to the imposition of curfew.

(c) that the Hon'ble Court may be pleased to direct the Governor of J&K to act in accordance with Section 53 r/w Section 92 of the Constitution of J&K in the interest of unity, integrity and sovereignty of India.

(d) the Hon'ble Court may further be pleased to direct the respondents to extend the fundamental rights in the Constitution of the State in the interest of human dignity and rule of law.

(e) this is further prayed that the respondents may be directed to pay compensation to the families of those killed @ Rs.50 lacs each and @ Rs.10 lacs to each person injured in the firing on 18.07.2013.

(f) pass any other appropriate order/direction in the interest of justice, equity and rule of law.”

2. It may be specifically noticed, at this stage, that Section 53 of the J&K Constitution empowers the Governor of the State to, inter alia, dissolve the legislative assembly. Section 92 contemplates the manner of running the administration of the State once a proclamation of failure of constitutional machinery in the State is issued by the Governor.

3. Notwithstanding the above and the tenor of a substantial part of the pleadings which would seem to indicate a somewhat overenthusiastic attempt on the part of the petitioner to discredit the functioning of the State Government, we have not allowed the aforesaid negative features of the case to detract us from the otherwise beneficial effect of the public interest litigation brought before this Court. Notice, therefore, was issued on 8.8.2013.

4. Criminal Miscellaneous Petition No.16696 of 2013 was, thereafter, filed drawing the attention of the Court to another incident that had occurred at Kishtwar town on 9.8.2013 in the course of which 2 persons had died and over 50 were injured in police

firing. In the aforesaid Crl. M.P., it was also alleged that thousands of Hindu pilgrims travelling from Machel to Batote (National Highway) have been stranded on the 60 kms. long route from Padar (Atholi) to Kishtwar and such pilgrims were left exposed to the vagaries of inclement weather without any facilities of board and lodging. In the above situation, while seeking a judicial inquiry into the incident that led to the disturbance in Kishtwar on 09.08.2013, specific directions were also sought to provide safe passage, food and medical facilities to the stranded pilgrims so as to enable them to return to their homes.

5. On 13.08.2013 the following order was passed in the aforesaid Criminal Miscellaneous Petition:

“In the writ petition, the petitioner has sought for certain directions, directing the respondent No.2, namely, the Government of Jammu & Kashmir, to institute a high power judicial inquiry about the incident occurred on 18th July, 2013 in village Gool, Ramban District, Jammu and Kashmir, and other reliefs including the safety of pilgrims, who have been stranded on different stations. The petitioner also prayed for adequate compensation for the victims.

On 8th August, 2013, we issued notice returnable in two weeks.

In the meanwhile, the petitioner has also filed Crl.M.P.No.16696 of 2013, praying for further directions, which are as under:

a) direct the respondents, the Union of India and the State of J&K to hold a judicial inquiry into the entire circumstances that led to the disturbance in Kishtwar on 9th August, 2013, resulting into death of two civilians and injuring to several residents.

(b) to hold judicial inquiry into the failure of the government to provide protection to the lives, properties and infrastructures belonging to a particular community which were attacked by an uncontrolled mob in Kishtwar on 09/08/2013;

(c) grant the relief to the extent that the respondents may be directed to provide safe passage to the stranded pilgrims, so that they may be able to return to their

homes. Also the respondents may be directed for providing food and medical facilities to the stranded pilgrims till their evacuation as the physical survival of the said pilgrims is under threat;

(d) to provide compensation without delay to all those whose houses, shops, infrastructures, belonging have been destroyed by the unruly mob in Kishtwar yesterday.

Mr. Gaurav Pachnanda, learned senior counsel appearing for the respondent No.2-State of Jammu & Kashmir, made a statement before this Court that with regard to reliefs (a) and (b), the State Government has taken a decision to constitute a Commission headed by a retired Judge of the Jammu & Kashmir High Court. The formal order in that regard is yet to be passed. Learned senior counsel has also informed us that the State Government has decided to pay compensation at the rate of Rs.5 lacs in the case of death and up to Rs.2 lacs in the case of injuries. Learned senior counsel also informed that the formal decision in this regard would be taken up shortly. [subsequently the amount of Rs.2 lakhs was accorded as compensation payable for loss of properties]

Coming to relief (c), the learned senior counsel for the State, on instructions, states that 357 yatris/pilgrims have been stranded at Gulab Garh. It is also stated that required security arrangements have been made and the State Government is taking steps to evacuate those stranded pilgrims to the safer places.

The above statement of the learned senior counsel appearing on behalf of the State of Jammu & Kashmir, are hereby recorded.

Professor Bhim Singh, learned senior counsel appearing for the petitioner, has raised an apprehension about the present move of the State Government. However, we hope and trust that the State Government would take adequate measures to help the stranded pilgrims, as well as about the safety of the people residing in and around the area concerned.

In view of the seriousness of the matter, we direct the Chief Secretary of the State of Jammu & Kashmir to file a detailed affidavit with regard to the steps

taken by them in respect of the incident that took place on 9th August, 2013 at Kishtwar and follow up action on the next date.

List the matter on 21st August, 2013, for further consideration.”

6. Pursuant to the aforesaid order of the Court, the Chief Secretary of the State had filed an affidavit dated 19.08.2013 stating that, in addition to the initial loss of 2 lives, one further death was reported from the Padder area of the district. According to the Chief Secretary all required measures had been taken by the State authorities to prevent recurrence and to control the situation in order to ensure that no further loss of life and damage to property is caused. Assistance of the Army was also taken and adequate deployment of paramilitary forces and State Police was made. The Chief Secretary, in his affidavit, had mentioned about the Government decision to constitute a Commission of Inquiry to enquire into the circumstances leading to and surrounding the incident and to provide ex- gratia relief of Rs.5 lakhs to the next of the kin of the deceased persons. Further, relief to injured persons as per Government Order No.723-GAD of 1990 dated 10.07.1990, as amended, was stated to be under consideration in addition to compensation for damage to immovable property subject to assessment by the revenue authorities. The Chief Secretary, in his affidavit, had also mentioned about the constitution of a special investigation team to investigate 15 cases that were registered in respect of the incident. So far as stranded pilgrims are concerned, according to the Chief Secretary, effective measures had been taken to ensure their return home. In conclusion, the Chief Secretary had asserted that the situation was fast returning to normal and after the initial incidents no further untoward incident has been reported.

7. The optimism expressed by the Chief Secretary was not shared by the petitioner and the effectiveness of the measures undertaken was seriously disputed in the rejoinder dated 23.8.2013. It was claimed that setting up of a Commission of Inquiry was a mere eyewash; the relief measures initiated were inadequate and the amount of compensation contemplated was meagre. It was stated that compensation for damages to immovable property upto a maximum of 50% of the assessed loss or Rs. 1 lakh, which is less, in terms of Government Order No.710-GAD dated 3.07.1991, is highly discriminatory and illusory. The adequacy of the relief measures provided to the stranded pilgrims was also questioned. It was claimed that many pilgrims were still to reach their homes. Complaints of ineffective investigation of the criminal cases by the

SIT or by the State Police machinery were also made in the rejoinder affidavit; it was contended that such investigations be handed over to the CBI. Of particular significance is the stand taken in the rejoinder with regard to the alleged discrimination in the matter of grant of compensation under Government Order No.723-GAD of 1990 dated 10.07.1990 which, according to the petitioner, carved out two different categories within the CAPF personnel who may have been victims of mob violence or terrorist acts. In this regard, it is pointed out that while State subjects get a higher compensation, non-State subjects are being given compensation at a lower rate which offends Article 14 of the Constitution.

8. The State having been asked by the Court to clarify its stand with regard to the above alleged discrimination, an affidavit dated 13.09.2013 had been filed contending that protective treatment towards State subjects is permissible under the special provisions of the J&K Constitution (Article 35A as applicable to State of J&K). It was also pointed out that enhanced compensation to the State subjects who are members of the CAPF was considered necessary to reduce the disparity in the total amount of ex-gratia received inclusive of what is awarded by the Central Government and by the different States to which a non-state subject may belong. It is in these circumstances that a distinction between State and non-State subjects has been made. In view of the explanations furnished we do not find any fundamental error in the policy of the State in awarding a higher amount of compensation to State subjects who are Members of CAPF so as to require a further probe into the constitutionality or validity of the compensation scheme framed by the State Government.

9. Two further affidavits dated 24.02.2014 and 03.03.2014 have been filed by the State Government placing before the Court the details of the compensation awarded and other relief and rehabilitation measures undertaken by the State Government in respect of the victims of the two incidents. In so far as the Gool (Ramban district) incident is concerned, in the affidavit of 24.02.2014, it has been stated that compensation at the rate of Rs.5 lakhs each has been paid to the next of kin of the persons who had lost their lives in the said incident. Besides, compassionate appointment of the dependents of such deceased are also under active consideration of the Government. Additionally, 27 injured persons who have been identified with minimum injuries have been paid Rs.5000/- each and those (15 in number) whose injuries required reference to a more advanced Medical centre i.e. the medical college at Jammu/Srinagar were paid Rs.10,000/- each. Registration of some criminal offences

in connection with the incident and due investigation thereof has also been claimed. The said aspect of the case is being dealt with separately. No further issue with regard to the Gool incident having been raised or is subsisting we do not consider it necessary to pass any further orders or directions in respect of the said incident save and except that consideration of eligible cases for compassionate appointment stated to be pending before the State Government be expedited and finalised if not so done in the meantime.

10. In the affidavit dated 03.03.2014 payment of compensation of a similar amount i.e. Rs.5 lakhs to the next of kin of the deceased in the Kishtwar incident is mentioned. Additionally, it is stated that a Government Order No.1264-GAD of 2013 dated 04.09.2013 has been issued laying down the norms for ex-gratia relief in respect of destruction and damage to immovable property. Details of compensation paid in 76 cases have been furnished to the Court; it is stated that 13 more cases are under process and in the meantime 35 more claims have been received which will also be processed. In so far as the Commission of Inquiry, mentioned at the very initial stage of the present proceeding is concerned, in the affidavit dated 03.03.2014, it has been stated that an interim report of the said Commission headed by Justice R.C. Gandhi, retired Judge of the Jammu & Kashmir High Court, has been received and time for submission of the final report has been extended upto 22.02.2014.

11. It is in the conspectus of facts narrated above that this Court is required to decide whether any further direction to the State Government in respect of the Kishtwar incident is called for and if so what should be the specific contents of the directions that should be issued by this Court.

12. The terms of reference of the Commission of Inquiry constituted by the State Government under the Jammu & Kashmir Commission of Inquiry Act, 1962, are as hereunder:-

- a) enquire into the circumstances which led to the violence and arson and the consequent loss of life and property in District Kishtwar;
- b) enquire into the administrative lapses, if any, while handling the situation;
and

c) fix the responsibility of the persons, involved in acts of violence, arson and the loss of life and property.

13. In a situation where the State Government, at the very outset, had committed itself to setting up of a Commission of Inquiry and in fact had issued the necessary Notification on 23.08.2013 containing very wide terms of reference, as seen, we do not consider it necessary to go into any of the issues that are presently before the Commission. Two apprehensions have been expressed on behalf of the petitioner in this regard. The first is that the mechanism set up is highly time consuming and, secondly that the report of the Commission is merely recommendatory. In so far as the first apprehension is concerned, the same can be resolved by a direction requesting the Commission to complete its task within a particular time frame. In so far as the legal effect of the findings of the Commission are concerned, it will be wrong to assume anything in this regard at this stage, including, the possible stand of the State Government. The reports of such commission, in our considered view, should be objectively viewed by the State Governments and necessary corrective steps and action should be initiated to further good governance. In a democracy governed by the Rule of Law every institution is open to self-correction and must acknowledge its shortcomings, if any. In view of the above and taking into account that parties aggrieved by the report that may be submitted and such action as may be taken by the State on the basis of such report are not without their remedies in law we are of the view that the Commission should be allowed to complete its task at the earliest. We, accordingly, request the Commission to complete its enquiry as early as possible, preferably, within a period of three months from today, if the final report has not already been submitted in the meantime. The Government will naturally be duty bound to take all necessary and consequential steps on the basis of the said report as would be mandated in law.

14. Pending submission of the final report by the Commission of Inquiry constituted by the State Government, the payment of compensation on all counts has to be understood to be in the nature of ex-gratia, particularly, as identification and apportionment of liability is yet to be made. Such payments are ad-hoc in nature. In so far as G.O. No.1264-GAD of 2013 dated 04.09.2013 (referred to in the additional affidavit dated 3.4.2014 filed by the State) in respect of compensation for destruction and damage to immovable property is concerned, the same provides for 50% of the actual loss or Rs.5 lakhs, whichever is lesser, as the maximum compensation payable.

The said G.O. is certainly an improvement over the initial G.O. No.710-GAD dated 30.07.1991 (referred to in the affidavit filed on 19.08.2013 by the Chief Secretary) which contemplates an upper limit of Rs.1 lakh. Yet the ceiling fixed in the later G.O. i.e. Rs.5 lakhs may require some re-consideration at the hands of the Government. However, keeping in view that what is provided under the said G.O. No.1264-GAD of 2013 dated 04.09.2013 is payment in the nature of ex-gratia and as in the instant case we have held that all payments that have been made or are proposed to be made are ad-hoc in nature and subject to outcome of the report of the Commission of Inquiry and also having regard to the law laid down by this Court in State of Rajasthan & Ors. Vs. Sanyam Lodha[1], we do not consider it necessary or proper at this stage to cause any interference with the said G.O. dated 4.09.2013. Rather, we are of the view that the matter should be suitably reconsidered by the State Government.

15. In so far as the investigation of the criminal cases by the SITs in respect of both the incidents is concerned, unfortunately, the present position with regard to such investigation has not been laid before the Court by either of the parties. We are, therefore, unable to assess the effectiveness of the State's action in the matter. In the above circumstances the State Government is directed to ensure due and proper investigation of all such cases registered in connection with the two incidents in question if such investigation has not been completed in the meantime and thereafter bring all such cases to a logical end in accordance with law by completion of the trial against the accused, wherever necessary.

16. The writ petition shall stand disposed of in terms of the above directions and observations.

Writ Petition (Crl.) No.251 of 2011

17. This Writ Petition was heard analogously with W.P. (Crl.) No.125/2013.

18. The petitioners, 10 in number, are the widows of permanent residents of Chhattisgarh who, while working as contract labourers, were killed by militants at Mirbazar Tehsil Kelgam, Distt. Anant Nag, Jammu & Kashmir. The said incident occurred on 1.08.2000. The grievance raised is with regard to the inadequacy of the compensation paid by the State of Jammu & Kashmir and also by the Chhattisgarh Government. Enhanced compensation of Rs.8,35,000/- which was paid to victims of a

similar incident in Udhampur Nagar, Uttarakhand by this Court is prayed for.

19. Affidavits have been filed by the State of Jammu & Kashmir as well as State of Chhattisgarh.

20. In so far as State of Jammu & Kashmir is concerned, the stand taken is that in terms of Government Order No.723-GAD of 1990 dated 10.07.1990, as amended, persons other than the Government employees who have lost their lives in militant activities or acts of violence are to be paid ex-gratia of Rs.1 lakh. It is not in dispute that the said amount of compensation has been paid by the State of Jammu & Kashmir.

21. In so far as the State of Chhattisgarh is concerned, it is stated that while seven petitioners have received a total sum of Rs.2,52,000/- the other three petitioners have been paid a sum of Rs.2,00,000/- each which is inclusive of Rs.1 lakh paid by the Government of Jammu & Kashmir. The additional amount paid by the State of Chhattisgarh, it is stated, is by way of ex-gratia relief.

22. The petitioners who are widows of the victims of the unfortunate incidents of violence have received ex-gratia of Rs.1 lakh each both from the State of Jammu & Kashmir and State of Chhattisgarh. Ex-gratia is an act of gratis and has no connection with the liability of the State in law. The very nature of the relief and its dispensation by the State cannot be governed by directions in the nature of mandamus unless of course there is an apparent discrimination in the manner of grant of such relief. It is not the case of the petitioner that they have been so discriminated. In so far as the claim of additional compensation on the basis of the award made to the victims of Udhampur Nagar incident is concerned no particulars in this regard have been furnished to enable the Court to comprehend under what circumstances such compensation was ordered to be paid to the victims involved in the said case.

23. That apart, the present incident had occurred in the year 2000 and the claim for additional compensation has been made nearly after a decade. Taking into account all the aforesaid facts, we are of the view that no directions at this belated juncture will be justified.

24. The reliefs prayed for are declined and the writ petition is disposed of accordingly.

[1] (2011) 13 SCC 262