

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Judgment : 06.04.2009

+ W.P.(C) 2852/2007

ELAYATHARIL JOSEPH DANIEL Petitioner
Through Mr. K.Sunil, Advocate

versus

UOI Respondent
Through Ms. Monica Garg, Advocate

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J. (OPEN COURT)

1. Issue Rule. Ms. Monica Garg waives notice of the rule. With consent matter was heard finally.
2. The petitioner complains of arbitrariness by the respondent Central Government in regard to the application for award of compensation; he claims to be have incurred loss during the Gulf war 1991. The petitioner at that time was living in Kuwait.
3. Briefly the petitioner submits that he was residing in Kuwait at the relevant time and was working there. It is submitted that after the Gulf war ended the United Nations

evolved a scheme to compensate such of those who were residing and working in Kuwait and who suffered losses to property. The scheme was administered a body known as United Nation Compensation Committee (hereafter called "committee"). It is claimed that under the terms of the scheme claims had to be furnished; the petitioner contends having made a claim in 1998 in category 'C'; it is submitted that it was registered as No. C000026392. The petitioner states that despite furnishing details of the claims, no compensation amount was disbursed. He wrote to the respondent in February, March and August, 2000. In these circumstances it is claimed that on 25.8.2000 a letter was received that the registration number allotted to the petitioner had been given to the some other person namely Ali Husain of Nai Abadi, Banswada, Rajasthan. It is submitted that the said claim was, according to the respondent a duplicate claim as Ali Husain was already shown as having been disbursed claim no. C-107206. The petitioner, therefore, claims directions to the respondent to disburse amounts which he is entitled to.

4. The respondent refer to letter dated 25.8.2000. The said letter written to the petitioner by the Ministry of External Affairs; it is in the following terms"-

*"Deepak Ray
Joint Secretary (SKC)
Tel: 338 7012
Fax:338 6953*

*Special Kuwait Cell
ISIL Building
9, Bhagwan Dass Road
New Delhi – 110 001*

No. Q/SKC/424/1/2000

25 August, 2000

Dear Shir Daniel,

This has reference to your letter dt. 13.8.2000, addressed to Shir John Joseph, Hon'ble Member, National Commission for Minorities, New Delhi, re claim no. C-26392.

We have checked our coputer records as well as the original claim

form. We find that the registration no. C-26392 was in fact allotted to some other claimant (Ali Husain of Nai Abadi, Banswara, Rajasthan), In fact, this claim, C-26392, has been rejected by UNCC as a duplicate claim and against this another claim of the same claimant (Shri Ali Husain), no. C-107206, has been approved by UNCC. I regret to say that at this late stage we are not in a position to help you in any manner.

*Yours sincerely
Sd/-
(Deepak Ray)”*

5. The respondent further submits that on 10.7.2001 the Deputy Secretary, furnished a UNCC rejected list showing that the claim of Ali Husain registration no. (C-26932) stood rejected; a correspondence with the UNCC stating that on checking the record it was found that national claim C-26392 belongs to present petitioner and not to Mr. Ali Hussain, was also sent. Letter was in the following terms:

*“Anand K. Pandya
Deputy Secretary (SKC)*

Q/SKC/424/102001

10th July, 2001

Dear Madam,

Please find enclosed copy of the UNCC reject list (duplicate claims-C; sixth installment list). It shows that the claim of Hussain Ali (nat'1 No. (C) 23692 has been rejected. The corresponding, claim with UNCC NO. 1594505, has been approved. On checking our records we find that Nat'1 claim No. (C) 26392 belongs to Elayatharayil Joseph Daniel and not to Hussain Ali. It is not a duplicate claim of Hussain Ali, whose claim with UNCC No. 1594505 has been approved against Nat'1 reference No. C107206, SKC records show that this Nat'1 number rightfully belongs to Ali Hussain. A copy of the approved C-11 list is also enclosed.

The passport number of Elayatharayil Joseph Daniel is B836799 and that of Hussain Ali is B836798. We feel that because of the close proximity of the two passport numbers this confusion has arisen, i.e., the claim of E. Joseph Daniel has been rejected as the duplicate claim of Hussain Ali.

I request you to kindly take up the matter with UNCC and ask them

to explore possibility of re-evaluating the claim with nat'l No. (C) 26392 (UNCC NO. 1626007) which should in the name of E. Joseph Daniel, and not in the name of Hussain Ali.

This issues with the approval of Joint Secretary (SKC).

*Yours sincerely
Sd/-
(Anand K. Pandya)”*

6. Learned counsel for the respondent referred that further letters by the Central Government, drawn to the attention of the UNCC to the fact that there were some error and petitioner namely wrongfully considered rejected of being duplicate one. The said communications are in the following terms:

“Fax Message / Crash

To: Foreign New Delhi (Fax 0091-11-23389724 / 23386953	Date: 3 August, 2007
Rpt: JS(SKC & Library), MEA, New Delhi	No. of pages: 2
Internal distribution: APR / PR(o.r.)	No. GEN/PMI/186/07/2005

Shri A.K.Pandya, Director (SKC) from Couns (E) / HOC

Refernce your fax message no. Q/SKC/424/18/2007 dated 3 August 2007 regarding re-evaluation of the claim of Shri Elayatharil Joseph Daniel which has been rejected a duplicate claim of one Shri Hussain Ali.

2. In this regard, we have sent another Note Verbale requesting UNCC to convey their decision urgently. A copy of the same is also faxed herewith. We have also been trying to contact. UNCC over telephone but have not been successful.

3. You may, therefore, like to follow necessary legal procedure on the basis of facts available with SKC Division, as on date. The Mission shall convey UNCC's decision, on receipt of the same, immediately.

*Sd/-
(Vijay K. Trivedi)”*

The letter enclosed a communication to the committee, in the following terms :

**“Permanent Mission of India
To the United Nations Offices,**

**9, Rue du Valais,
1202 Geneva
Tel: 41-22-906 8686
Fax: 41-22-906 8696
E-mail: mission.india@ties.itu.int**

No. GEN/PMI/186/07/2005

The Permanent Mission of India to the United Nations Offices and other International Organizations in Geneva presents its compliments to the United Nations Compensation Commission (UNCC) and in continuation to its Note Verbale of even number dated 20 July 2007 regarding the re-evaluation of the claim of Mr. E. Joseph Daniel which has been rejected as a duplicate claim of one Mr. Hussain Ali has the honour to state that Mr. Daniel has filed a writ petition in the Delhi High Court. The esteemed UNCC is again requested to kindly convey its decision urgently on the case of Mr. E. Joseph Daniel as the nodal authority the SKC Division of Ministry of External Affairs has informed that the same is required urgently to enable it to file a counter affidavit in the Delhi Hgih Court (copy attached). Hence, the esteemed UNCC is kindly requested to convey its decision urgently on the above case.

2. The Permanent Mission of India to the United Nations Offices and other International Organisations in Geneva avails itself of this opportunity to renew to the United Nations Compensation Commission the assurances of its highest consideration.

*United Nations Compensation Commission,
[Attn: Mr. Rolf Knutsson,
Executive Secretary, Claims Processing Department]
Villa La Pelouse,
Palais des Nations,
1211, Geneva
[Fax 022-9170069]*

Copy to Shri A.K. Pandya, Director (SKC), MEA, New Delhi, with reference to his fax No. Q/SKC/424/18/2007 dated August 3, 2007. We have been trying to contact UNCC over telephone for the last one week but have not been successful. You may like to follow necessary legal procedure ont eh basis of facts available with SKC, as on date. The Mission shall convey UNCC's decision, on receipt of the same, immediately.

*Sd/-
(Vijay K. Trivedi)*

The UNCC, on 28.2.2007 rejected the concerned claim stating as follows:

UNITED NATIONS

SECURITY COUNCIL

UNITED NATIONS
COMPENSATIONS COMMISSION

REFERENCE: UNCC/496/2007

The secretariat of the United Nations Compensation Commission ("UNCC") presents its compliments to the Permanent Mission of India to the United Nations Offices and other International Organisations in Geneva and has the honour to refer to the Permanent Mission's note no. GEN/PMI/186/07/2005 dated 20 July, 2007.

The secretariat notes that the Government of India has raised this matter previously. In 2001, at that time, the secretariat investigated the matter and concluded that, based on the information submitted to the UNCC, both UNCC claim nos. 1594505 and 1626007 belonged to Mr. Ali Hussain. The Permanent Mission was so notified by note no. UNCC/Exe/1007/2001 dated 10 October 2001. Accordingly, the Commission considers this matter to be closed.

The secretariat of the United Nations Compensation Commission avails itself of this opportunity to renew to the Permanent Mission of India to the United Nations Offices and other International Organisations in Geneva the assurances of its highest consideration.

20 August, 2007"

It is evident from the above discussion that the scheme, whereby compensation claims were made by the petitioner was evolved by the United Nations. The petitioner has not produced a copy of the same; he is not alleging that the respondents are in anyway connected with the administration of the scheme and were liable to disburse any amount. All that the respondents were required to do was to liaise with the UNCC and inform the applicant about the outcome of the proceeding of the commission. The record discloses that at least on two occasions the respondent did bring to the notice of UNCC about the petitioner's case recommending it and stating that the latter's (UNCC's) determination that it was duplicate claim, was not borne out from the record.

The Central Government also recommended that the petitioner's claim has not been decided.

9. In similar circumstance this court in the judgment dated 10.02.2006 (Mr. Gatakala Venkateswarlu Vs. Union of India & Anr. W.P. (C) 4645/2001) held that such questions cannot be decided in writ proceedings and that the remedy, if at all with the parties is to seek civil remedies.

10. Having regard to the above circumstances and the said judgment, this court is of the opinion that the claims made by the petitioner primarily contain his grievance relating to the UNCC's determination that the application for compensation has been considered or determined wrongly. The respondent's role in the administration of such schemes being virtually none – its function being only one as a forwarding agent - in the facts of this case the court is of the opinion that the Central Government did not act arbitrarily; on the contrary the record shows that communications were addressed to the UNCC on the several occasions and the matter was re-examined at least twice.

11. For the above reasons writ petition cannot be entertained and is accordingly dismissed.

S. RAVINDRA BHAT,J

APRIL 06, 2009

'b'