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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM No.11336/2011 in W.P.(C) 9460/2007

GURBACHAN KAUR & ORS. Petitioners

Through: Mr. J.K. Dhingra, Adv.

Versus

UOI & ANR. Respondents

Through: Mr. B.V. Niren, CGSC for R-1 UOI.
Ms. Ruchi Sindhwani with Ms.
Bandana Shukla, Advocates for R-
2/GNCTD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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04.08.2011

CM No.11336/2011 (of the petitioner no.9 for relief)

1. The writ petition was filed by ten petitioners, each claiming to be a victim of the 1984 riots and seeking mandamus for payment of adequate and appropriate compensation under the policy/scheme framed in that regard by the Government and impugning Clause (iv) of Para 1 of the Notification dated 16th January, 2006 sanctioning further rehabilitation package to the riot victims.

2. The writ petition was disposed of vide judgment dated 28th September, 2010. This Court in the said judgment considered the claims of each of the petitioners and issued separate directions with respect to each of the petitioners. The relief sought of quashing Clause (iv) of Para 1 of the Notification dated 16th January, 2006 was not granted.

3. As far as the petitioner no.9 / applicant herein is concerned, the said judgment records the statement of the counsel for the GNCTD that the case of the petitioner no.9 applicant had been re-examined and on 15th July, 2010 his claim had again been rejected. The respondent GNCTD was directed to place the said decision before the Court. However thereafter on 28th September, 2010 the counsel for GNCTD stated that the case of petitioner no.9 will be re-examined on the basis of available material. The writ petition qua petitioner no.9 was thus disposed of leaving it open to the petitioner no.9 to seek appropriate remedies if remained dissatisfied with decision to be so taken.

4. The petitioner no.9 / applicant has now filed this application stating that the respondents have vide order dated 2nd March, 2011 again rejected

the claim of the petitioner no.9 / applicant and impugning the said rejection and seeking direction for compensation.

5. The counsel for the respondent GNCTD appearing on advance notice has correctly stated that if the petitioner no.9 / applicant is aggrieved from the said order, his remedy is not by way of this application in the disposed of writ petition but by way of a separate writ petition. However since the entire material is available before this Court and this Court has gone through the file and heard the counsels, it is not deemed expedient to direct the petitioner no.9 / applicant to prefer a separate writ petition.

6. The Deputy Commissioner (Central) has in the order dated 2nd March, 2011 held that the petitioner no.9 / applicant was heard again; all the documents produced by him considered afresh; that the petitioner no.9 applicant had filed the original claim in 1988 for damage of building and the goods and raw materials of his factory at A-84, Industrial Area, Wazirpur, New Delhi which was set on fire; however the said raw materials and finished goods were insured and an insurance claim of Rs.1,41,186/- was received by the petitioner no.9 / applicant from New India Assurance

Company; that though the petitioner no.9 / applicant was also selling the said goods from 413, Sita Ram Bazar, Hauz Qazi, New Delhi and had preferred a claim for Rs.1,47,000/- for damages to goods therein also but the said claim was rejected on 4th October, 1988 since as per the then policy of the Government, *ex gratia* assistance for loss/damage of commercial premises or assets was payable at the rate of 50% of the estimated loss subject to a maximum of Rs.50,000/- and out of which the amount of insurance claim received was deductible; that since the petitioner no.9 / applicant had received insurance claim in excess of Rs.50,000/-, the petitioner no.9 / applicant was not entitled to any compensation. It was further held that the Notification dated 16th January, 1996 under which the petitioner no.9 / applicant was claiming was only enhancing the quantum of compensation and the claim of the petitioner no.9 applicant having been already rejected, the question of his being entitled to any enhancement did not arise.

7. The counsel for the respondent GNCTD states that the petitioner no.9 applicant did not challenge the rejection dated 4th October, 1988 of his claim and the said rejection thus attained finality; only after the policy, vide

Notification dated 16th January, 2006 for payment of enhanced compensation was brought in force, the petitioner no.9 / applicant joined in filing the writ petition.

8. The Deputy Commissioner in the order dated 2nd March, 2011 has held that no ground for reviewing earlier order dated 4th October, 1988 of rejection was made out and that under the 2006 policy, the claim which had been rejected could not be re-considered.

9. The counsel for the petitioner no.9 / applicant neither in the application nor during the arguments has pleaded/contended that the policy prior to 2006 was not as aforesaid i.e. of compensation being not payable if insurance claim had been received. Upon the same being pointed out to him, he seeks an adjournment to study the policy as in existence prior to 2006.

10. However now when the matter has been heard and when the counsel himself has not challenged the reasoning aforesaid given in the order, it is not deemed expedient to adjourn the matter. The counsels cannot be permitted to keep the proceedings pending in the said manner and ought to come prepared on all grounds on which they seek to challenge the order.

11. The contention of the counsel for the petitioner no.9 / applicant however appears to be that the insurance claim was with respect to the goods in the factory premises only and not the goods in the shop at Sita Ram Bazar. However the maximum compensation payable under the policy under which the petitioner no.9 applicant claimed compensation being Rs.50,000/- and the petitioner no.9 applicant having received insurance claim in excess thereof, it cannot be said that there is any error requiring judicial interference in the order.

12. The counsel for the petitioner no.9 / applicant has also referred to Clause (iv) aforesaid of the Notification dated 16th January, 2006 to contend that the purport thereof was to revive the claims which had been rejected earlier. It may however be noticed that the petitioners in the writ petition impugned the said Clause as discriminatory and which relief was not granted. Clause (iv) clearly provides that “no new claims” would be entertained under the 2006 policy and “only those who had received *ex gratia* payment earlier”, would be eligible thereunder for the enhanced additional *ex gratia* amount. Though provision was made for pending or

disputed cases but the claim of the petitioner no.9 applicant having been rejected eighteen years prior thereto cannot be said to be pending in dispute as on date of coming into force of the 2006 policy.

13. The counsel for the petitioner no.9 / applicant has also referred to the FIR dated 1st November, 1984 to contend that the same contains the address of the shop at Sita Ram Bazar but the same does not constitute any ground for interfering with the decision impugned.

14. The counsel for the petitioner no.9 / applicant had contended that Clause (iv) aforesaid provides for consideration of “genuine claims”. It is contended that the claim of the petitioner no.9 applicant is genuine. However again the same does not detract from the reasoning given in the impugned order.

15. No ground is thus made out for challenge to the order. The petitioner no.9 / applicant is not found to be entitled for any amount of compensation.

The application is dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J

AUGUST 04, 2011/bs..